September 2023 Brown Bag

Summaries of Recent Criminal Decisions by the United States Court of Appeals for the Eleventh Circuit

United States v. Talley, --- F.4th ---, 2023 WL 5767516 (11th Cir. Sept. 7, 2023) (A term of supervised release is not tolled when a releasee absconds from supervision. While supervised release may be *revoked* after the term's end for a violation alleged in a warrant or summons issued before the term's end, 18 U.S.C. § 3583(i), the revocation may only be based on conduct during the term, though a revocation sentence may take account of any conduct before the sentence is imposed.).

United States v. Curtin, --- F.4th ---, 2023 WL 5521087 (11th Cir. Aug. 28, 2023) (When a defendant is hospitalized for competency restoration under 18 U.S.C. § 4241(d), and the hospitalization exceeds the four-month maximum duration set by § 4241(d)(1), the remedy for that violation is the defendant's release from hospitalization, not dismissal of the criminal case. In a concurring opinion, Judge Newsom addressed another of Mr. Curtin's arguments, which was that his sentence was substantively unreasonable because the district court considered an improper factor under 18 U.S.C. § 3553(a). Eleventh Circuit precedent classifies such an error as substantive—which makes preservation requirements less stringent but makes appellate review more deferential than for procedural errors—but Judge Newsom wrote that such errors are better viewed as procedural, and that the court should reconsider the matter en banc "to set our law straight.").

United States v. Moore, --- F.4th ---, 2023 WL 5163272 (11th Cir. Aug. 11, 2023) (Federal Rule of Evidence 609's ten-year limitation on the age of a witness's prior felony conviction that is admitted for impeachment runs from the date of "conviction or release from confinement for it, whichever is later." The ten years begin to run "at the witness's release from any *physical* confinement, or in the absence of confinement, the date of the conviction," and "do[] not include periods of probation.").