

The Supreme Court - June 23, 2017

The Supreme Court of the United States issued decisions in three cases today:

Perry v. Merit Systems Protection Bd., No. 16-399: Petitioner Anthony Perry was a federal employee at the U.S. Census Bureau and in 2011, received notice he would be terminated due to spotty attendance. Perry and the Bureau entered into a settlement in which Perry agreed to a 30-day suspension and early retirement, and which also required Perry to dismiss discrimination claims he had filed with the EEOC. Perry appealed his suspension and retirement to the Merit Systems Protection Board (“MSPB”). The MSPB was created by Congress in the Civil Service Reform Act of 1978 to review certain serious personnel actions against federal employees, with judicial review in the Federal Circuit. In contrast, federal employees asserting only federal anti-discrimination claims have judicial review in the federal district court. Here, Perry’s complaint was a “mixed case,” asserting both civil-service rights and discrimination claims. The MSPB determined that it did not have jurisdiction over Perry’s claims, finding that the settlement was not coerced and that Perry’s retirement was voluntary. The Court of Appeals found that the Federal Circuit, not district court, was the proper forum. Today, the Court reversed, holding that the review route is to the district court when the MSPB types its dismissal of a mixed case as “jurisdictional.”

The Court’s decision is available [here](#).

Murr v. Wisconsin, No. 15-214: Petitioners own two adjacent lots along the St. Croix River, a federally protected river managed by the States of Wisconsin and Minnesota. Wisconsin rules preclude adjacent lots from being sold or developed as separate lots unless they meet certain lot size requirements. When the petitioners sought to sell one of the lots, they were prevented from doing so, with the Wisconsin Court of Appeals finding that the local ordinance effectively merged the two lots such that petitioners could only sell or build on the larger lot. Petitioners then brought an action in Wisconsin state court, alleging that this restriction on their ability to sell or develop the lots separately amounted to a regulatory taking. The county circuit court granted summary judgment to the State,

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and the Wisconsin Court of Appeals affirmed. The Court today affirmed, eschewing any bright-line test for determining the question of the proper parcel in a regulatory taking case, and instead finding that courts must define the parcel in a manner that reflects reasonable expectations about the property. Applying that approach here, the Court held that treating the lot in question as a single parcel is legitimate for purposes of this taking inquiry, and this supports the conclusion that no regulatory taking occurred.

The Court's decision is available [here](#).

Jae Lee v. United States, No. 16-327: Petitioner Jae Lee is not a U.S. citizen, but has lived in the U.S. for most of his life. Lee was indicted for possessing ecstasy with intent to distribute, and the evidence of Lee's guilt was overwhelming. Lee had fears about what effect a conviction would have on his resident status in the U.S., but after his attorney assured him the Government would not deport him, Lee pleaded guilty in order to receive a lesser prison sentence. It is undisputed that amounted to objectively unreasonable representation, because the conviction subjected Lee to mandatory deportation. The District Court, however, denied Lee's motion for relief under 28 U.S.C. §2255 on ineffective assistance of counsel grounds, finding that due to the overwhelming evidence of guilt, Lee was not prejudiced by pleading guilty and receiving a shorter prison sentence. The Sixth Circuit affirmed. Today, the Court reversed, holding that Lee could show prejudice, where his claim that he would not have accepted a plea had he known it would lead to deportation is backed by substantial and uncontroverted evidence.

The Court's decision is available [here](#).