

Wednesday, May 28, 2008

When acquitted conduct is considered for federal sentencing.

Â Bill of RightsÂ (From public domain.)Â Last December 2007's GallÂ and KimbroughÂ opinions from the U.S. Supreme Court raise questions about whether it any longer is legitimate for sentencing courts to consider acquitted conduct in setting a sentence. Â In an unpublished opinion from March 21, 2008, the Fourth Circuit reversed a sentencing that refused to consider acquitted conduct, and held that the standard at sentencing is whether a crime can be proven by a preponderance of the evidence, even if the conduct was acquitted under the beyond a reasonable doubt standard. U.S. v. Ibanga, Crim. No. 06-4738 (4th Cir. March 21, 2008). Â Thanks to bloggers Dan Berman and Scott Greenfield for discussing the Supreme Court's denial of cert. on the foregoing issue here and here. Until the Supremes review this issue on cert., it is necessary to know how one's circuit has or will handle this issue post-Gall and Kimbrough. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:05