

05-9222 BURTON V. STEWART

DECISION BELOW:142 Fed Appx 297

LOWER COURT CASE NUMBER: 03-35095

QUESTIONS PRESENTED:

Mr. Burton was given an exceptional sentence of 258 months above the 305 month ceiling of the statutory sentencing range and this Washington State sentence became final

after Apprendi v. New Jersey, but before Blakely v. Washington:

1. Is the holding in Blakely a new rule or is it dictated by Apprendi?
2. If Blakely is a new rule, does its requirement that facts resulting in an enhanced statutory maximum be proved beyond a reasonable doubt apply retroactively?

Cert. Granted 6/5/2006