

# Vera Institute of Justice

## Criminal Justice Issues and Prisoners' Rights

**<https://www.vera.org/blog/descamps-v-united-states-sentencing-courts-cannot-unpack-prior-convictions-in-applying-sentence-enhancements-current-thinking-edit-box-descamps-v-united-states-sentencing-courts-cannot-unpack-prior-convictions-in-app>**

## Public Facing Advocacy Writing

In *Descamps v. United States*, the Supreme Court ruled on the approach lower courts may use when deciding whether state offenses count for the purpose of federal sentence enhancements that rely on an offenders criminal record. Like its earlier decision in *Alleyne v. United States*, the Supreme Courts opinion in *Descamps v. United States* is a reminder of the importance of finality in jury verdicts and guilty pleas.

When Michael Descamps was sentenced on federal weapons charges, his substantial criminal record would have subjected him to a higher mandatory sentence if three of his prior convictions, which included a burglary conviction from California, amounted to violent felonies. According to [federal law](#), burglary is only a violent felony if it involves unlawful entry. But, in California, the state is not required to prove that a person charged with burglary unlawfully entered premises, meaning that someone who is convicted of burglary in that state could have engaged in breaking and entering, or merely shoplifting. This placed the court which sentenced Michael Descamps in a difficult position. Either it could ignore the burglary conviction, not knowing what it involved, or it could look beyond the fact Descamps was convicted of burglary and work out the actual behavior involved in his crime. Applying analogous Supreme Court precedent, it chose the latter approach, by considering how his offending was described in court by the prosecutor at the time he pled guilty. The court determined, based on this description, that his conduct involved unlawful entry, and sentenced him to a prison term more than double what he would have received otherwise.

The Supreme Court rejected this approach. It held that Descampss Sixth Amendment right to trial by jury was violated when the lower court decided whether he *could* have been convicted, had the California statute required unlawful entry. This approach, it held, involved judicial fact-finding that exposed the defendant to a higher penalty, something which is not permissible under the Sixth Amendment. Although Supreme Court precedent says that a court may look at a very limited set of documents to determine precisely what *charges* a past conviction relates to, it is a misuse of this authority for a court to reopen a conviction and determine what *facts* it derived from. In other words, for the purpose of federal sentence enhancements, it doesnt matter what the defendant *did*; all that matters are the charges on which he was *convicted*. Reconstructing a different conviction, based on the facts, triggers a Sixth Amendment violation.

*Descamps* follows the Supreme Courts decisions this term in *Alleyne* and *Peugh* in again asserting the importance of procedural protections in the sentencing phase, as well as at trial. All three share a similar consequence, namely, a narrowing of the scope for federal courts to enhance penalties under federal law, and provide a refreshing injection of fairness into a sentencing system which frequently allows for elevated sentences to arise from matters external to the charges before the court.

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