

In *United States v. Grayson*,¹¹⁷⁰ a noncapital case, the Court relied heavily on *Williams* in holding that a sentencing judge may properly consider his *belief* that the defendant was untruthful in his trial testimony in deciding to impose a more severe sentence than he would otherwise have imposed. the Court declared that, under the current scheme of individualized indeterminate sentencing, the judge must be free to consider the broadest range of information in assessing the defendant's prospects for rehabilitation; defendant's truthfulness, as assessed by the trial judge from his own observations, is relevant information.¹¹⁷¹

There are various sentencing proceedings, however, that so implicate substantial rights that additional procedural protections are required.¹¹⁷² Thus, in *Specht v. Patterson*,¹¹⁷³ the Court considered a defendant who had been convicted of taking indecent liberties, which carried a maximum sentence of ten years, but was sentenced under a sex offenders statute to an indefinite term of one day to life. The sex offenders law, the Court observed, did not make the commission of the particular offense the basis for sentencing. Instead, by triggering a new hearing to determine whether the convicted person was a public threat, a habitual offender, or mentally ill, the law in effect constituted a new charge that must be accompanied by procedural safeguards. And in *Mempa v. Rhay*,¹¹⁷⁴ the Court held that, when sentencing is deferred subject to probation and the terms of probation are allegedly violated so that the convicted defendant is returned for sentencing, he must then be represented by counsel, inasmuch as it is a point in the process where substantial rights of the defendant may be affected.

thought the result was compelled by due process, *id.* at 364, while Justices White and Blackmun thought the result was necessitated by the Eighth Amendment, *id.* at 362, 364, as did Justice Marshall in a different manner. *Id.* at 365. Chief Justice Burger concurred only in the result, *id.* at 362, and Justice Rehnquist dissented. *Id.* at 371. *See also* *Lankford v. Idaho*, 500 U.S. 110 (1991) (due process denied where judge sentenced defendant to death after judge's and prosecutor's actions misled defendant and counsel into believing that death penalty would not be at issue in sentencing hearing).

¹¹⁷⁰ 438 U.S. 41 (1978).

¹¹⁷¹ 438 U.S. at 49–52. *See also* *United States v. Tucker*, 404 U.S. 443, 446 (1972); *Chaffin v. Stynchcombe*, 412 U.S. 17, 32 (1973). *Cf.* 18 U.S.C. § 3577.

¹¹⁷² *See, e.g.*, *Kent v. United States*, 383 U.S. 541, 554, 561, 563 (1966), where the Court required that before a juvenile court decided to waive jurisdiction and transfer a juvenile to an adult court it must hold a hearing and permit defense counsel to examine the probation officer's report which formed the basis for the court's decision. *Kent* was ambiguous whether it was based on statutory interpretation or constitutional analysis. *In re Gault*, 387 U.S. 1 (1967), however, appears to have constitutionalized the language.

¹¹⁷³ 386 U.S. 605 (1967).

¹¹⁷⁴ 389 U.S. 128 (1967).