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NEWSLETTER
FEDERAL AND STATE
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I. EXPANSION OF ROLE FOR LAWSUITS UNDER 42 U.S.C. 1983 ALLEGING VIOLATIONS OF PROCEDURAL DUE PROCESS

In ***Skinner v. Switzer***, 2011 U.S. Lexis 1905 (3/7/11), the Supreme Court expanded the role of 42 U.S.C. 1983 as a remedy for discovery of information used to support a post conviction motion or petition based on newly discovered evidence. The Supreme Court drew a bright line between a motion or petition seeking immediate or speedier release from confinement, which must be brought as a habeas corpus petition and a civil rights action seeking access to new evidence under 42 U.S.C. § 1983. The test is outcome determinative. Specifically, the Court held that a post-conviction claim for DNA testing may be brought in a lawsuit under 42 U.S.C. § 1983 action because a successful suit would not necessarily result in speedier release from confinement but rather would result in access to the DNA evidence, which might prove exculpatory, inculpatory, or inconclusive.

This case appears to provide a gateway for a lot of people whose claims would be dismissed as time barred or procedurally barred if filed under the PCRA or the federal habeas corpus statutes.

II. PAROLE REPRESENTATION

Pennsylvania and a few other states prohibit in-person legal representation in connection with the decision to grant or deny parole. Even so, a person eligible for parole consideration owes it to himself to have a lawyer prepare a memorandum making a balanced presentation of the offense behavior, the history and characteristics of the offender, and a reasoned argument explaining why early parole will not endanger public safety. Clients interested in this service should get in touch with me.

III. SCOPE OF PRACTICE

My practice encompasses plea negotiations, sentencing consultation, sentencing, preparation of sentencing memoranda, disciplinary problems, parole representation, parole appeals, parole memoranda, 2241 habeas corpus petitions, and 2254 habeas corpus petitions, and 2255 motions, direct appeals in all Circuits, U.S. Supreme Court practice, treaty transfers,

convention transfers, derivative citizenship claims, removal (deportation) proceedings, civil commitments, and other immigration matters. Published cases include but are not limited to the following: ***Harris v. Martin***, 834 F2d 361 (3d Cir. 1987), ***United States vs. Reshenberg***, 893 F2d 1333 (3d Cir. 1989), ***United States v. Calabrese***, 942 F2d 218 (3d Cir. 1991), ***United States vs. Cole***, 813 F2d 43 (3d Cir. 1987), ***United States v. Day***, 969 F2d 39 (3d Cir. 1992), ***Farese v. Luther***, 953 F2d 49 (3d Cir. 1992), ***Schiano v. Luther***, 954 F2d 910 (3d Cir. 1992), ***United States v. Mathews***, 11 F3d 583 (6th Cir. 1993), ***United States v. Nanfro***, 64 F3d 98 (2d Cir. 2005), ***United States v. Henson***, 948 F.Supp. 431 (MDPA 1996), ***United States v. Miller***, 849 F2d 896 (4th Cir. 1988), ***Phifer v. Warden***, 53 F3d 859 (7th Cir. 1995), ***Prioleau v. United States***, 828 F.Supp. 261 (SDNY 1993), ***United States v. Tiller***, 91 F3d 127 (3d Cir. 1996), ***United States v. Eyer***, 113 F3d 470 (3d Cir. 1997), ***United States v. Fields***, 113 F3d 313 (2d Cir. 1997), ***United States vs. DePace***, 120 F3d 233 (11th Cir. 1997), ***United States v. Derrick Williams***, 158 F3d 736 (3d Cir. 1998), ***Paters v. United States***, 159 F3d 1043 (7th Cir. 1998), ***United States v. Conhaim***, 160 F3d 893 (2d Cir. 1998), ***United States v. DiPina***, 178 F3d 68 (1st Cir. 1999), ***In re Weatherwax***, CTA3 No. 99-3550 [Hazel-Atlas independent action is not a second or successive 2255 motion], ***Cullen v. United States***, 194 F3d 401 (2d Cir. 1999), ***Dabelko v. United States***, 211 F3d 1268 (6th Cir. 2000), ***United States vs. Carmichael***, 216 F3d 224 (2d Cir. 2000), ***United States vs. Williams***, 247 F3d 353 (2d Cir. 2001), ***United States ex rel. Bryant v. Warden***, 50 Fed. Appx. 13 (2d Cir. 2002), ***United States v. Peyton***, 12 Fed. Appx 145 (4th Cir. 2001), ***United States vs. Smith***, 348 F3d 545 (6th Cir. 2003), ***Blount v. United States***, 330 F.Supp.2d 493 (EDPA 2004), ***Commonwealth v. Hanna***, 964 A2d 923 (PA Super. 2009). Important unpublished cases include: ***United States v. Lopez***, 93-246-01 (EDPA, Hutton, J.)[2255 granted], ***United States v. Garcia-Cintron***, 93CV1771 (EDPA, Gawthrop)[2255 granted, sentence reduced], ***United States v. Fazekas***, C.A. No. 94-1542 [WDPA 1994][misclassification as career offender, sentence reduced from 30 years to 10 years], ***Henry Jones v. United States***, 2:90CV 4291 [DNJ, Sarokin, J.][2255 motion granted for ineffective assistance, prisoner released], ***Hearn v. United States***, C.A. 93-464 [WDVA], [misclassification of methamphetamine, sentence reduced from 180 months to 90 months], ***United States v. Richard H. Wilson***, 90 CR169-01, 91 CIV 3326 [EDPA][2255 granted; actual innocence; immediate release], ***United States v. Gevares***, 961 F.Supp. 192 (NDOH, ED 1996)[2255 granted; firearms sentence vacated; government motion to resentence denied], ***United States vs. Cross***, CTA6 No. 03-3562 (sentence vacated, and reduced on remand), ***United States vs. Alexander***, CTA3 No. 96-1696 [sentence reduced, and case remanded for hearing on distinction between cocaine base and crack cocaine], ***United States v. Michaels***, 2001 U.S. Dist. Lexis 19115 (EDPA, Fullam, J.)[term of supervised release reduced], ***United States v. Williams***, 146 Fed. Appx. 656 (2d. Cir. 2002)[sentence vacated and reduced], ***United States v. R. Thomas***, 273 Fed. Appx. 103 (2d Cir. 2008)[sentence vacated and reduced], ***United States v. Matos***, 92 Cr 39-A (EDVA, Ellis, J.)[2255 granted, sentence reduced], ***United States v. Diaz***, Crim. No. 92-78-02 [EDPA][sentence reduced for miscalculation of criminal history category], ***United States v. Eberly***, 5 F3d 1491 (3d Cir. 1993)[2255 granted, sentence vacated], ***United States v. Forde***, 92-429-A [EDVA, Hilton][2255 granted, life sentence vacated; sentence reduced]; ***United States v. Cruz-Pagan***, 91-0063 [EDPA][2255 granted, life sentence vacated; sentence reduced], ***United States v. Ostreicher***, 91cv 3576 [EDNY, Weinstein, J.][2255 motion vacated, special parole term vacated]; ***United States vs. S. Jones***, 22 F3d 304 (3d Cir. 1994)[2255 granted, sentence vacated]; ***United States vs. S. Jones***, 47 F3d 1162 (3d Cir. 1995)[2255 granted, sentence vacated, sentence reduced]; ***United States ex rel. Maurice Roberts vs. Warden***, 93-CV-1064 [NDNY][Probation

Department's imposition of restrictions on employment violated due process], ***Darryl Pierce v. United States***, 89CR176 (MDPA, Rambo, J.)[2255 granted in part, sentence reduced], ***Baron vs. United States***, 97CV290 [DUT][2255 granted, sentence reduced and prisoner released]; ***Simpkins vs. United States***, C.A. 5:01CV12 [NDWVA][2255 granted; failure to properly file 851 special information; sentence reduced]; ***United States vs. Vernon***, 92-340-01 [EDPA, Dalzell,J.] [2255 granted, restitution order vacated and modified]; ***United States vs. Cora Love,*** 92-504-16 [EDPA, Giles, C.J.][2255 granted, sentence reduced]; ***United States vs. Rosa***, 90-38 [DNJ][2255 granted; sentence reduced]; ***United States vs. Arevalo***, 94CR702, 97 CV 946 [SDFLA, Moreno, J.][2255 granted, sentence reduced]; ***United States vs. H. Cruz***, 93CR341 [SDFLA, Highsmith, J.][2255 granted, sentence reduced]; ***Stocker* vs. *Warden***, 2004 U.S. Dist. Lexis 5395 [EDPA, Giles, C.J.][Habeas corpus granted based on actual innocence, sentence vacated], ***Stovall v. Warden***, 2005 U.S. Dist. Lexis 6758 (EDPA Diamond)[2254 habeas granted in part restoring right to appeal]; ***Pedretti v. United States***, 1996 U.S. Dist. Lexis 6315 (NDNY, McAvoy C.J.)[2255 granted, sentence reduced]; ***United States v. Boggi***, 1997 U.S. Dist. Lexis 14165 (EDPA 1997)[2255 granted, sentence reduced]; ***United States ex rel Shriner v. Warden***, 1:CV03-0481 (MDPA, Rambo, J.) [[2241 habeas granted, sentence reduced], ***Commonwealth v. Keeman Copeland***, [CP 9607-1215 1/3 Greenspan, J.] [PCRA granted based on ineffective assistance of trial and appellate counsel. Conviction for first degree murder vacated. Life sentence vacated], ***Boyd v. Nish et al.,*** 2007 U.S. Dist. Lexis 7176 (EDPA 2007, Tucker, J.)[Section 2254 habeas corpus granted to state prisoner based on ineffective assistance of trial counsel], ***Dockery v. DiGuglielmo, et al.,*** Civil No. 04-6025 (EDPA 2007, Buckwalter, J.)[2254 granted, sentence reduced], ***Jones v. Piazza***, CTA3 No. 07-1868 (3d Cir. 2007)[reversed order denying habeas corpus under 28 U. S.C. 2254; remanded for resentencing, sentence reduced on remand], ***McKeever v. Warden***, 2005 U.S. Dist. Lexis 4714 (EDPA, Diamond, J.)[2254 habeas granted, remanded to state for resentencing], ***United States v. Futch***, CR. 402-232 [SDGA, Savannah Div.][2255 granted, sentence reduced], ***United States v. Danon***, Cr. 90-43 [DNJ, Lifland][treaty transfer to Israel prior to completion of term of imprisonment], ***Commonwealth v. Maurice Jones,*** October Term, 1989, No. 0185-0187 [The Third Circuit Court of Appeals granted habeas corpus. Subsequently, the sentencing judge reduced the sentence], ***United States v. Coleman***, 206 Fed. Appx. 80 (2d Cir. 2006) [remanded for resentencing, sentence reduced], ***United States v. Fermin***, 277 Fed. Appx. 28 (2d Cir. 2008)[Sentence vacated and reduced], ***United States v. Manigault***, 2010 U.S. App. Lexis 20350 (3d Cir. 2010)[sentence reduced pursuant to 18 USC 3582(c)(2) despite career offender classification], ***Commonwealth v. Hanna***, 2009 PA Super. 3 (PA Super. 2009). [Vacated and remanded order denying expungement of criminal record], ***In re: Fredrick Pereira*** A 027 489 318: Removal order voided and petitioner allowed to remain in the United States, ***United States v. Omar Mendoza***, 2009 U.S. Dist. Lexis 48720, 2:05 CV 294 (NDTX, Amarillo) [2255 motion granted based on claim of ineffective assistance of trial counsel, sentence reduced to time served]

For more information about representation, please call or write. To find out more information about Cheryl Sturm please visit www.cheryljsturm.com.

The information contained in this newsletter is news you can use but it is not an adequate substitute for legal advice by a well-qualified criminal defense lawyer familiar with the facts and circumstances of a given case.