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## **NEWSLETTER: FEDERAL AND STATE JANUARY 2015**

### **I. IMPOSITION OF SENTENCE BASED ON FACTS NOT FOUND BY A JURY VIOLATES SIXTH AND FOURTEENTH AMENDMENTS**

*Taylor v. Cate*, 772 F3d 842 (9th Cir. 2014) held that a criminal defendant has the constitutional right to have the jury determine what conduct he committed. In *Taylor*, the defendant was convicted of felony murder and sentenced to life without parole. The jury found that the defendant was the shooter. Later, it surfaced that the defendant was not the shooter. The prosecutor claimed the defendant was guilty on a theory of aiding and abetting. The defendant was resentenced to life with parole. The appellate court found this unconstitutional because it conflicted with the jury's findings of fact. The appellate court held that the right to a jury trial includes the right to have the jury decide what conduct the defendant committed. It held that resentencing on the basis of facts that the jury did not find, and indeed that conflicted with what the jury did find, violated the Sixth Amendment.

### **II. RECENT VICTORIES**

*Gant v. Pennsylvania Board of Probation and Parole*, 611 MD 2010. Mr. Gant was released following the petition for review/mandamus. The case was mooted by the release.

*United States v. Young*, CTA3 No. 13-4398. Reversed and remanded for evidentiary hearing on claim of ineffective assistance of counsel.

### **III. AMENDMENTS TO SENTENCING GUIDELINES FOR FEDERAL DRUG CRIMES**

Federal sentencing guidelines for drug trafficking crimes have been reduced but the effective date has been changed to November 1, 2015. The reduction is retroactive. The reduction is not guaranteed. The district court judge makes the decision whether or not to reduce the sentence. The 3582(c)(2) submission should be prepared professionally to get the best outcome.

### **IV. 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, presidential pardons and commutations, 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 v. Reshenberg*, 893 F2d 1333 (3d Cir. 1989), *United States v. Calabrese*, 942 F2d 218 (3d Cir. 1991), *United States v. 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 (7<sup>th</sup> Cir. 1998), *United States v. Conhaim*, 160 F3d 893 (2d Cir. 1998), *United States v. DiPina*, 178 F3d 68 (1<sup>st</sup> 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), *United States v. Almodovar*, 100 F.Supp. 2d 301 (EDPA 2000, Ludwig, J.) *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. Kostrick*, 103 F3d 114 (3d Cir. 1996)[848 vacated], *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. 5:01CV112 [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 v. Rosa*, 90-38 [DNJ][2255 granted; sentence reduced]; *United States v. Broadus*, 91CR209, 97CV965 [MDNC, Tilley, J.][2255 granted in part, sentence reduced by 20 years]; *United States v. 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. Wayne*, 2008 U.S. Dist Lexis 52133 (WDPA 2008)[3582(c)(2) motion granted 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], *United States v. Johnson*, 2011 U.S. App. Lexis 15677 (3d Cir. 2011)[sentence reduced from 360 months to 222 months as a result of a 2255 motion], *United States v. Bruce Wayne Mohammed*, 94CR17 [WDPA, Cohill, J.][Two 3582(c)(2) motions granted, sentence reduced twice].

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