

CHERYL J. STURM
Attorney-At-Law
387 Ring Road
Chadds Ford, PA 19317
484-771-2000

NEWSLETTER: FEDERAL AND STATE
JULY, 2017

I. NEW THIRD CIRCUIT CASE DEFINING TESTIMONIAL HEARSAY AS INCLUDING STATEMENTS BY THE NON-TESTIFYING CO-DEFENDANT TO A PSYCHIATRIST

In *Lambert v. Warden, Greene SCI*, ___ F3d ___, 2017 U.S. App. Lexis 11493 (3d Cir. 2017), the Third Circuit held that the non-testifying co-defendant's redacted statements to a psychiatrist used by the prosecution during closing argument to prove that Lambert had foreknowledge of the burglary and homicide committed by the co-defendant fall within the definition of "testimonial hearsay" covered by the Sixth Amendment Confrontation Clause. As such, trial counsel was ineffective for failing to request a limiting instruction informing the jury that the co-defendant's statements could not be used against Lambert. Furthermore, PCRA counsel was ineffective for failing to recognize the violation of the Sixth Amendment Confrontation Clause and include this issue in Lambert's PCRA petition. The combination of ineffective assistance of trial counsel and PCRA counsel excused the procedural defaults argued by the Commonwealth.

II. STATE AND FEDERAL POST CONVICTION HANDBOOK

My state and federal post-conviction handbooks are now available online only. The handbooks cover the fundamentals of state and federal post conviction law. The handbooks are available at www.cheryljsturm.com.

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, presidential pardons and commutations, state 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. Amerman*, 2255 granted, sentence reduced (EDPA 92-498-02) affirmed 14 F3d 49 (2000); *United States v. Eyer*, 113 F3d 470 (3d Cir. 1997), *United States v. Fields*, 113 F3d 313 (2d Cir. 1997), *United States v. 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), *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 v. Carmichael*, 216 F3d 224 (2d Cir. 2000), *United States v. 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 v. 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 resentencing denied], *United States v. 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 v. S. Jones*, 22 F3d 304 (3d Cir. 1994) [2255 granted, sentence vacated]; *United States v. S. Jones*, 47 F3d 1162 (3d Cir. 1995) [2255 granted, sentence vacated, sentence reduced]; *United States ex rel. Maurice Roberts v. 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 v. United States*, 97CV290 [DUT] [2255 granted, sentence reduced and prisoner released]; *Simpkins v. United States*, C.A. 5:01CV112 [NDWVA] [2255 granted; failure

to properly file 851 special information; sentence reduced]; *United States v. Vernon*, 92-340-01 [EDPA, Dalzell, J.] [2255 granted, restitution order vacated and modified]; *United States v. 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 v. H. Cruz*, 93CR341 [SDFLA, Highsmith, J.] [2255 granted, sentence reduced]; *Stocker v. 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], *Lambert v. SCI Warden, Greene*, ___F3d ___, 2017 U.S. App. Lexis 11493 (3d Cir. 6/28/17).

For information about representation, please call or write at the phone number or address above, or email to sturmlaw@aol.com.