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NEWSLETTER
FEDERAL AND STATE
NOVEMBER, 2009

I. USE OF E-MAIL

The Bureau of Prisons has established a system of communication by E-Mail, which is an excellent medium for communications with friends and family members, but not when it comes to attorney-client communications which are, by definition, confidential. Frank and open discussion of the facts is essential to the attorney-client relationship. Monitoring of the E-Mail eliminates confidentiality. Prisoners have the right to make unmonitored legal calls and send unmonitored attorney-client correspondence. Prisoners fought long and hard for these rights, and you should not give them up for the convenience. Even if you have no need to communicate in confidence now, there may come a time when you have a need, and the government could assert that you waived the right to confidential attorney-client communications by using the E-Mail to communicate with your lawyer. When you are corresponding with me, please make an unmonitored legal call or write a letter and mark the envelope confidential attorney-client communications. This will ensure that this important right others have fought for is preserved.

II. NEGATIVE OR INCONCLUSIVE LAB RESULTS CONSIDERED BRADY MATERIAL

In ***Simmons v. Beard***, 581 F3d 158 (3d Cir. 2009), the petitioner was granted federal habeas corpus based on the Commonwealth's suppression of evidence favorable to the defense. The Commonwealth failed to disclose four items regarded as material to the determination of guilt or innocence "***Brady*** material"]. What makes the case remarkable is the appellate court's statement that "[N]eutral forensic evidence 'may, because of its neutrality, tend to be favorable to the accused. While it does not by any means establish his absence from the scene of the crime, it does demonstrate that a number of factors which could link the defendant to the crime do not.'" The appellate decision cites ***Patler v. Slayton***, 503 F2d 472 (4th Cir. 1974), and ***Commonwealth v. Hawk***, 551 PA 71, 709 A2d 373, 377 (1998) as authorities for the decision.

III. RECENT VICTORIES

United States v. Manigault. CTA3 08-4511. A panel of the Court of Appeals for the Third Circuit granted a certificate of appealability on our claim that reckless endangerment, as defined by Pennsylvania law is not a crime of violence for purposes of the career offender

guidelines because it is not the type of intentional, violent, aggressive conduct similar to robbery, burglary.

IV. SCOPE OF PRACTICE

My practice encompasses plea negotiations, sentencing consultation, sentencing, preparation of sentencing memoranda, disciplinary problems, parole representation, parole appeals, 2241 habeas corpus petitions, and 2254 habeas corpus petitions, and 2255 motions, direct appeals in all Circuits, 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. 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], ***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], ***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], ***Commonwealth v. Hanna***, 2009 PA Super. 3 (PA Super. 2009). [Vacated and remanded order denying expungement of criminal record], ***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]

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.