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NEWSLETTER
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I. INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO INVESTIGATE AND INTERVIEW POTENTIAL ALIBI WITNESSES

An alibi witness is a person who can place an accused at a location other than the crime scene. Alibi testimony from a family member has significantly less value than the testimony of a neutral, objective witness. ***Romero v. Tansy***, 46 F3d 1024, 1030 (10th Cir. 1995). A trial attorney has an obligation to investigate and interview alibi witnesses. ***United States v. Gray***, 878 F2d 702, 711 (3d Cir. 1989). Even so, the obligation is not absolute and the decision not to investigate is assessed for reasonableness. On the one hand, strategic choices made after a thorough investigation of the law and the facts relevant to plausible options is not deficient performance. On the other hand, ineffectiveness is generally clear in the context of a complete failure to investigate. A failure to investigate and interview potential alibi witnesses presumptively unreasonable. In ***McGahee v. United States***, 570 F.Supp2d 723 (EDPA 2008), the district court judge identified five factors that provide a useful guide for the analysis of a failure to investigate and interview an alibi witness. First, the failure to investigate an alibi witness raises more concerns than a failure to interview a character witness. Second, the amount of knowledge the attorney has about the evidence against the client before he decides not to investigate. Third, the client's role in the decision not to investigate. Fourth is the difficulty in locating the witness. Fifth, the strategy employed by the defense. As a general rule, a failure to investigate and interview a potential alibi witness constitutes ineffective assistance of counsel and reversible error. ***Bigelow v. Haviland***, 582 F3d 670 (6th Cir. 2009).

II. RECENT VICTORIES

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]. Government's appeal dismissed by order of Fifth Circuit Court of Appeals.

III. 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.