

Federal Criminal Law Center

Services Offered

FOREWORD

After a conviction is handed down and the sentencing hearing is concluded, there may be a sense of finality and hopelessness as to the results of the preliminary proceedings. However, there is an opportunity to change this situation around. Enter the Appellate and Post-Conviction Specialist. Through experience with the system and expertise in thoroughly examining trial motions and transcripts, the Appellate and Post-Conviction Specialist may provide valuable assistance in matters which arise either after trial or after sentencing or both.

After trial and sentencing, the defendant can be represented by an attorney who can take a fresh look at their case. In some instances, for this to occur, trial counsel should not handle appeals, or at least not do so alone. Some lawyers object to this proposition, claiming that trial counsel's familiarity with the case makes them most capable of handling the appeal. This objection is baseless. Unless supported by the record, trial counsel's strategies cannot form a basis for an appeal. Post-conviction proceedings must be instituted in the trial court, frequently making the trial attorney a witness. More importantly, trial counsel's thoughts and opinions will and must be solicited, but only after the Appellate and Post-conviction Specialist has taken a fresh look at the file, perhaps developing winning strategies that were previously overlooked. See Billy-Eko v. United States, 8 F.3d 111 (2nd Cir. 1993).

The Appellate and Post-conviction Specialist examines the whole case, from indictment to trial to sentencing, searching for pertinent issues that could substantiate a different outcome. This includes, but is not limited to, rulings on pretrial motions, the pertinent criminal code sections, search and seizure issues, defective indictments, illegal sentences, and a wide array of constitutional issues. For example, in Duhart v. U.S., 476 F.2d 597 (6th Cir. 1973), the court found that a motion to vacate sentence could be properly raised based on the claim that ★ Petitioner was illegally arrested, and therefore the evidence found in his car was also illegal. Also, in U.S. v. Donaldson, 978 F.2d 381 (7th Cir. 1992), the court held that convictions tainted by constitutional errors must be reversed unless the errors are harmless. And finally, searches conducted outside proper judicial process, without prior approval of judge or magistrate, are generally per se unreasonable. United States v. Morris, 977 F.2d 677 (1st Cir. 1992).

STANDARDS ON APPEAL

Court of Appeals reviews challenges to sufficiency of evidence by assessing sufficiency of evidence as a whole, including all reasonable inferences, in light most favorable to verdict, with view to whether rational trier of fact could have found defendant guilty beyond a reasonable doubt. -- U.S. v. Figueroa, 976 F.2d 1446.

District court abused its discretion in not holding evidentiary hearing on defendant's motion for new trial following defendant's discovery, after conviction but before sentencing, that one of the jurors was a felon, where there was no evidence that juror's motivation to lie about felon status was unrelated to bias in case. -- United States v. Boney, 977 F.2d 624.

Neither due process clause nor double jeopardy clause requires that defendant convicted on multiple counts under same statute receive different sentence from defendant convicted on only one count. -- **United States v. Boney**, 977 F.2d 624.

Jencks Act requires the government to produce any written statements by government witness that relate to subject matter of any direct testimony by witness. 18 U.S.C. §3500(b).-- **U.S. v. Brumel-Alvarez**, 976 F.2d 1235.

When defendant is represented by counsel during plea process and enters plea on counsel's advice, voluntariness of plea depends on whether counsel's advice was within range of competence demanded of attorneys in criminal cases. -- **Bialock v. Lockhart**, 977 F.2d 1255.

Appellate panel may consider new Sentencing Commission commentary text regarding ambiguous guideline though another panel has already resolved ambiguity, and second panel is entitled to defer to new commentary even when it mandates result different from that of prior panel. 28 U.S.C. §994(o); U.S.S.G. §1B1.1 et. seq. -- **United States v. Joshua**, 976 F.2d 844.

Pretrial threat of district judge to impose maximum sentence in event the judge concluded that defendant went to trial without "a good defense" was inappropriate and warranted remand for resentencing; judge's remarks created an unacceptable risk that sentence was impermissibly enhanced above an otherwise appropriate sentencing norm to penalize defendant for exercising his constitutional right to stand trial. -- **United States v. Cruz**, 977 F.2d 732.

Ineffective assistance of counsel claim requires two-part showing that: counsel's performance was deficient, meaning that

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Promise made by prosecution in connection with plea must be fulfilled, if plea rests in any significant degree thereon so that promise can be said to be part of inducement or consideration. -- **United States v. Van Horn**, 976 F.2d 1180.

Defendant pleaded guilty to conspiracy to distribute cocaine base and he appealed. The Court of Appeals held that trial judge's participation plea negotiations was plain error requiring vacation of plea and reassignment to another judge. **United States v. Corbitt**, 91-3317 (8/4/93).

Standard of review for sentencing court's departure from criminal history category under guideline allowing for departure if criminal history category does not adequately reflect seriousness of defendant's past criminal conduct is one of reasonableness. U.S.S.G. §4A1.3 -- **United States v. Huang**, 977 F.2d 540.

Principle that defendant in felony case is entitled not only to appointment of counsel but to effective assistance of counsel is general in scope and effect, and applies to counsel's behavior at all critical stages of case, including entry of plea. U.S.C.A. Const. Amends. 6, 14. -- **Jones v. Lockhart**, 977 F.2d 444.

*U.S. v. Figueroa
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counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed defendant by Sixth Amendment; and deficient performance prejudiced defendant by depriving him or her of fair trial, a trial whose result is reliable. -- Loyd v. Whitley, 977 F.2d 149.

EXAMPLES OF REVERSIBLE ERROR

The following is a list of examples of reversible error on appeal.

- Errors Involving the Constitution;
- Errors Involving Jurisdiction;
- Errors Involving Venue;
- Errors Involving Time Limitations;
- Errors Associated with the Grand Jury;
- Errors Involving Indictments;
- Errors Associated with Judges;
- Errors Associated with Prosecutors and/or Police;
- Errors Involving Defendant and/or Defense Attorney;
- Errors Involving Dismissal;
- Errors Involving Guilty Pleas;
- Errors Involving Publicity;
- Errors Involving Continuances;
- Errors Involving Discovery;
- Errors Involving Severance;
- Errors Involving Double Jeopardy;
- Errors Involving Identification;
- Errors Involving Defendant's Statements;
- Errors Involving Search and Seizure;
- Errors Involving Juries;
- Errors Involving Witnesses;
- Errors Involving Hearsay;
- Errors Involving Documents/Other Physical Evidence;
- Errors Involving Extraneous Offenses;
- Errors Involving Insufficient Evidence;
- Errors Involving Particular Defenses;
- Errors Involving Jury Instructions;
- Errors Involving Final Summation;
- Errors Involving Judgment or Sentences;
- Errors Involving Guidelines.