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GEORGE SMITH, Warden, Petitioner
vs.
LEE ROBBINS

528 US 259, 145 L Ed 2d 756, 120 S Ct 746

[No. 98-1037]

Argued October 5, 1999.

Decided January 19, 2000.

DECISION

States held free to adopt procedures for determining whether indigent's direct appeal is frivolous, other than procedures set forth in Anders v California (1967) 386 US 738, 18 L Ed 2d 493, 87 S Ct 1396, so long as procedures adequately safeguard defendant's Fourteenth Amendment right to appellate counsel.

SUMMARY

In Anders v California (1967) 386 US 738, 18 L Ed 2d 493, 87 S Ct 1396, the United States Supreme Court, in holding that California's then existing procedure for handling potentially frivolous criminal appeals by convicted indigents violated the Federal Constitution's Fourteenth Amendment, set out what would be an acceptable procedure for treating such appeals, under which procedure (1) counsel who finds an appeal to be frivolous should so advise the appellate court and request permission to withdraw, (2) counsel's request must be accompanied by a brief referring to anything in the record that might arguably support the appeal, and (3) the court then decided whether the case is frivolous. Subsequently, the California Supreme Court adopted a new procedure, under which (1) counsel (a) upon concluding that an appeal would be frivolous, filed a brief with the appellate court that summarized the procedural and factual history of the case, (b) attests that counsel has reviewed the record, explained counsel's evaluation of the case to the client, provided the client with a copy of the brief, and informed the client of the client's

(22)

UNITED STATES, Petitioner
vs.
HARRISON P. CRONIC

466 US 648, 80 L Ed 2d 657, 104 S Ct 2039

[No. 82-660]

Argued January 10, 1984.

Decided May 14, 1984.

DECISION

Circumstances surrounding defendant's representation held not to justify inference that defendant was denied constitutional right to effective assistance of counsel.

SUMMARY

When the retained counsel of a defendant under indictment on mail fraud charges withdrew shortly before the scheduled trial date, the United States District Court appointed a young lawyer with a real-estate practice who had never conducted a jury trial to represent the defendant, but allowed the lawyer only 25 days for pretrial preparation, even though it had taken the government over four and one-half years to investigate the case and it had reviewed thousands of documents during that investigation. The defendant was convicted on 11 of the 13 counts in the indictment and received a 25-year sentence. The Court of Appeals reversed the conviction because it inferred that the defendant's constitutional right to the effective assistance of counsel had been violated. The court based this inference on five criteria: (1) the time afforded for investigation and preparation (2) the experience of counsel; (3) the gravity of the charge; (4) the complexity of possible defenses; and (5) the accessibility of witnesses to counsel (675 F.2d 1126).

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by Stevens, J., in which Burger, Ch. J., and Brennan, White, Blackmun, Powell, Rehnquist, and

(23)

CHARLES E. STRICKLAND, Superintendent, Florida State Prison, et al., Petitioners

vs.

DAVID LEROY WASHINGTON

466 US 668, 80 L Ed 2d 674, 104 S Ct 2052

[No. 82-1554]

Argued January 10, 1984.

Decided May 14, 1984.

DECISION

Two-part test of effective assistance of defense counsel held (1) reasonably effective assistance and (2) reasonable probability of different result with effective assistance.

SUMMARY

After having been sentenced to death by a Florida state court on each of three counts of murder, to which he had pleaded guilty, after the Florida Supreme Court affirmed the convictions and sentences, after his application for state-court collateral relief was denied, and after the Florida Supreme Court affirmed the denial of relief, the prisoner petitioned for a writ of habeas corpus in the United States District Court for the Southern District of Florida, asserting ineffective assistance of counsel at and before his sentencing hearing. The District Court denied relief, but the United States Court of Appeals for the Eleventh Circuit reversed and remanded for new factfinding under newly announced standards for analyzing ineffective assistance claims (693 F.2d 1243).

On certiorari, the United States Supreme Court reversed. In an opinion by O'Connor, J., expressing the views of Burger, Ch. J., and White, Blackmun, Powell, Rehnquist, and Stevens, JJ., it was held that (1) a convicted defendant alleging ineffective assistance of counsel must show not only that counsel was not functioning as the counsel guaranteed by the Sixth

(24)

116 LED2D 385, 502 US 62 ESTELLE v McGUIRE

WAYNE ESTELLE, Warden, Petitioner

vs.

MARK OWEN McGUIRE

502 US 62, 116 L Ed 2d 385, 112 S Ct 475

[No. 90-1074]

Argued October 9, 1991.

Decided December 4, 1991.

DECISION

Introduction of evidence to prove "battered child syndrome" at California murder trial for allegedly killing infant, and jury instruction as to evidence's use, held not to violate due process.

SUMMARY

At the California trial of an accused who was charged with second-degree murder for allegedly killing his infant daughter, the trial court allowed the introduction of evidence of prior rib and rectal injuries of the daughter to prove "battered child syndrome," which syndrome is said to indicate that a child found with serious, repeated injuries has not suffered those injuries by accidental means. The trial court's jury instructions as to the evidence's use included an instruction that the evidence was received and might be considered only for the limited purpose of determining if the evidence tended to show matters including a clear connection between the other two "offenses" and the one of which the accused was charged, so that it might logically be concluded that if the accused committed other offenses, the accused also committed the crime charged. The accused was found guilty. On direct review, the California Court of Appeal, in affirming the accused's conviction, concluded that proof of the daughter's prior injuries to establish battered child syndrome was proper under California law. The California Supreme Court denied review. The accused then filed a habeas corpus petition in the United States District Court for the Northern District of California, which denied relief. On appeal, the United

(257)

WILLIE JASPER DARDEN, Petitioner

vs.

LOUIE L. WAINWRIGHT, Secretary, Florida Department of Corrections

477 US 168, 91 L Ed 2d 144, 106 S Ct 2464

[No. 85-5319]

Argued January 13, 1986.

Decided June 23, 1986.

DECISION

Improper remarks in prosecution's summation held not to deprive defendant of fair trial or violate 8th Amendment, and exclusion of juror opposed in principle to death penalty held proper.

SUMMARY

In the Circuit Court for Citrus County, Florida, the accused was tried for murder, robbery, and assault with intent to kill. In the course of voir dire, the court asked a prospective juror, "Do you have any moral or religious, conscientious moral or religious principles in opposition to the death penalty so strong that you would be unable without violating your own principles to vote to recommend a death penalty regardless of the facts?" The prospective juror responded, "Yes, I have," and the court excluded him. In its closing argument at the end of the guilt-innocence phase of the bifurcated trial, the prosecution made comments (1) attempting to place some of the blame for the crime on the Division of Corrections, because the accused had been on furlough from prison when the crime occurred, (2) implying that the death penalty would be the only guaranty against a future similar act, (3) referring to the accused as an "animal," and (4) otherwise reflecting an emotional reaction to the case. The jury found the accused guilty of the offenses charged. In the sentencing phase of the trial, the jury recommended a death sentence and the trial judge followed that recommendation. On direct appeal, the Florida Supreme Court affirmed the conviction and the sentence, rejecting the accused's challenge to the juror exclusion

(76)

CALIFORNIA, Petitioner
vs.
ALBERT WALTER TROMBETTA et al.

467 US 479, 81 L Ed 2d 413, 104 S Ct 2528

[No. 83-305]

Argued April 18, 1984.

Decided June 11, 1984.

DECISION

Law enforcement agencies held not required by due process clause to preserve breath samples in order to introduce at trial breath-analysis tests of suspected drunk drivers.

SUMMARY

Drivers, who had been stopped on suspicion of drunk driving on California highways, had submitted to a breath-analysis test, had registered blood-alcohol concentrations substantially higher than the concentration which gives rise to a presumption of intoxication under California law, and had been charged with driving while intoxicated under California law, filed motions to suppress the breath-analysis test results on the ground that the arresting officers had failed to preserve samples of the drivers' breath. All of the motions to suppress were denied by the trial court. Two of the drivers were subsequently convicted, and petitioned the California Court of Appeal for writs of habeas corpus, while two other drivers did not submit to trial but sought direct appeal from the trial court orders, and their appeals were eventually transferred to the Court of Appeal to be consolidated with the other drivers' habeas corpus petitions. The California Court of Appeal ruled in favor of the drivers. After implicitly accepting that breath samples would be useful to the drivers' defenses, and determining that the arresting officers had the capacity to preserve breath samples for the drivers, the California Court of Appeal concluded that due process demands simply that where evidence is collected by the state, as it is with the

(27)

JOHN L. BRADY, Petitioner,
vs.
STATE OF MARYLAND

373 US 83, 10 L Ed 2d 215, 83 S Ct 1194

[No. 490]

Argued March 18 and 19, 1963.

Decided May 13, 1963.

SUMMARY

After the petitioner had been convicted in a Maryland state court on a charge of murder in the first degree (committed in the course of a robbery) and had been sentenced to death, he learned of an extrajudicial confession of his accomplice, tried separately, admitting the actual homicide. This confession had been suppressed by the prosecution notwithstanding a request by the petitioner's counsel to allow him to examine the accomplice's extrajudicial statements. Upon appeal from the trial court's dismissal of his petition for postconviction relief, the Maryland Court of Appeals held that suppression of the evidence by the prosecution denied petitioner due process of law, and remanded the case for a retrial of the question of punishment only. (226 Md 422, 174 A2d 167.)

On certiorari, the United States Supreme Court affirmed. In an opinion by Douglas, J., expressing the views of six members of the Court, it was held that (1) the prosecution's suppression of the accomplice's confession violated the due process clause of the Fourteenth Amendment, but (2) neither that clause nor the equal protection clause of that amendment was violated by restricting the new trial to the question of punishment.

White, J., concurred in a separate opinion, expressing the view that the Court should not have reached the due process question which it decided. He concurred in the Court's disposition of petitioner's equal protection argument.

79 LED 1314, 295 US 78 BERGER v. UNITED STATES.

HARRY BERGER, Petitioner,
vs.
UNITED STATES OF AMERICA.

[79 L Ed 1314] (295 US 78-89.)

[No. 544.]

Argued and submitted March 7, 1935. Decided April 15, 1935.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Evidence, § 1068 - variance - failure of proof that some of alleged conspirators were such.

1. Variance between an indictment charging a conspiracy involving several persons and proof establishing the conspiracy against some of them only is not material.

Evidence, § 1068 - variance - allegation of single conspiracy and proof of several conspiracies.

2. Variance between an indictment charging a single conspiracy and proof of several conspiracies is material only where it has substantially injured the defendant.

Appeal, § 1572 - ground for reversal - variance.

3. Variance between an indictment charging defendant with having conspired with certain others knowingly to utter counterfeit bank notes purporting to be issued by certain banks, and proof that defendant conspired with one of the persons named to pass such notes for a certain purpose, and that such one had conspired with the others to pass such notes for another purpose, does not constitute ground for reversing a conviction.

Evidence, § 1068 - basis of requirement of correspondence between allegations and proofs in criminal case.

4. The rule that allegations of an indictment and the proof must correspond is based upon the requirements that the accused shall be definitely informed as to the charges against him, and that

(29)

SAMUEL JAMES JOHNSON, Petitioner v. UNITED STATES
SUPREME COURT OF THE UNITED STATES
135 S. Ct. 2551; 192 L. Ed. 2d 569; 2015 U.S. LEXIS 4251; 83 U.S.L.W. 4576; 25 Fla. L. Weekly Fed. S 459
No. 13-7120
November 5, 2014, Argued, Reargued April 20, 2015
June 26, 2015, Decided

Notice:

The LEXIS pagination of this document is subject to change pending release of the final published version.

Editorial Information: Prior History

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUITUnited States v. Johnson, 526 Fed. Appx. 708, 2013 U.S. App. LEXIS 15618 (8th Cir. Minn., 2013)

Disposition:

Reversed and remanded.

DECISION

{192 L. Ed. 2d 569} Imposing increased sentence under residual clause of 18 U.S.C.S. § 924(e)(2)(B), Armed Career Criminal Act of 1984, held to violate Fifth Amendment's guarantee of due process because residual clause denied fair notice to defendants and invited arbitrary enforcement by judges.

CASE SUMMARY Where defendant pled guilty to being felon in possession of firearm and received prison term under ACCA, imposing increased sentence under 18 U.S.C.S. § 924(e)(2)(B)'s residual clause violated Fifth Amendment's guarantee of due process because residual clause did not survive prohibition of vague criminal laws.

OVERVIEW: HOLDINGS: [1]-Where defendant pled guilty to being a felon in possession of a firearm in violation of 18 U.S.C.S. § 922(g) and received a 15-year prison term under the Armed Career Criminal Act, remand was warranted because imposing an increased sentence under 18 U.S.C.S. § 924(e)(2)(B)'s residual clause violated the Fifth Amendment's guarantee of due process since the indeterminacy of the wide-ranging inquiry required by the residual clause both denied fair notice to defendants and invited arbitrary enforcement by judges; [2]-The residual clause did not survive the prohibition of vague criminal laws, because the residual clause left grave uncertainty about how to estimate the risk posed by a crime and left uncertainty about how much risk it took for a crime to qualify as a violent felony; [3]-Standing by prior decisions would undermine the goals that stare decisis was meant to serve.

OUTCOME: Judgment reversed and case remanded. 6-3 decision; 2 concurrences; 1 dissent.

LAWYERS EDITION HEADNOTES:

(30)

61 LED2D 560, 443 US 307 JACKSON v VIRGINIA

JAMES A. JACKSON, Petitioner,

vs.

COMMONWEALTH OF VIRGINIA et al.

443 US 307, 61 L Ed 2d 560, 99 S Ct 2781, reh den (US) 62 L Ed 2d 126, 100 S Ct 195

[No. 78-5283]

Argued March 21, 1979.

Decided June 28, 1979.

DECISION

Appropriate standard of review in federal habeas corpus proceedings resulting from claim of insufficient evidence to support state criminal conviction, held to be proof of guilt beyond reasonable doubt as determined by rational trier of fact.

SUMMARY

A criminal defendant was convicted after a bench trial in the Circuit Court of Chesterfield County, Virginia, of first-degree murder. The defendant did not dispute at trial that he had in fact shot and killed the victim, but rather argued that he had been too intoxicated at the time to form the specific intent necessary to sustain a conviction of murder in the first-degree. Under Virginia law, premeditation, or specific intent to kill, is a necessary element of the first-degree murder offense, with the burden of proof being on the prosecution to prove such element. After his contention was rejected by the trial judge and a conviction resulted, the defendant ultimately commenced a habeas corpus proceeding in the United States District Court of the Eastern District of Virginia. The District Court, applying the "no evidence" criterion announced in Thompson v Louisville, 362 US 199, 4 L Ed 2d 654, 80 S Ct 624, which held that a conviction based upon a record wholly devoid of any relevant evidence of an element of the offense charged is

(31)

BOBBY LEE HOLMES, Petitioner

vs.

SOUTH CAROLINA

547 US 319, 126 S Ct 1727, 164 L Ed 2d 503, 2006 US LEXIS 3454

[No. 04-1327]

Argued February 22, 2006.

Decided May 1, 2006.

DECISION

Criminal defendant's federal constitutional rights held violated by state court's rule permitting exclusion of defendant's proffered evidence of third party's guilt where there was strong forensic evidence of defendant's guilt.

SUMMARY

At a murder trial in a South Carolina court, the prosecution relied heavily on various items of forensic evidence. The defendant sought to introduce evidence that another person had committed the murder. The trial court, in excluding this proffered evidence, cited a Supreme Court of South Carolina holding that evidence of third-party guilt was inadmissible if such evidence merely cast a bare suspicion or raised a conjectural inference as to another's guilt. The defendant was convicted and received a death sentence.

In affirming on appeal, the South Carolina Supreme Court applied a rule to the effect that where there was strong evidence of a defendant's guilt-especially where there was strong forensic evidence-the defendant's proffered evidence about a third party's alleged guilt did not raise a reasonable inference as to the defendant's own innocence (361 S.C. 333, 605 S.E.2d 19).

On certiorari, the United States Supreme Court vacated and remanded. In an opinion by

(32)

KEVIN WIGGINS, Petitioner
vs.
SEWALL SMITH, WARDEN, et al.

539 US 510, 156 L Ed 2d 471, 123 S Ct 2527

[No. 02-311]

Argued March 24, 2003.

Decided June 26, 2003.

DECISION

Federal habeas corpus court held to have erred in upholding Maryland court's rejection of accused's claim of violation of Sixth Amendment right to effective assistance of counsel with respect to capital-sentencing proceedings.

SUMMARY

An accused, who had been convicted of capital murder by a judge in the Baltimore County Circuit Court of Maryland, elected to be sentenced by a jury. The two attorneys who were acting as the accused's defense counsel at the trial moved to bifurcate the sentencing, on the basis of counsel's purported desire (1) to prove that the accused had not killed the victim by the accused's own hand, and (2) then, if necessary, to present a mitigation case. The state court denied the bifurcation motion. During the sentencing proceedings, one defense attorney, in her opening statement, told the jurors that they would hear about the accused's difficult life. However, defense counsel never introduced evidence about the accused's life history during the sentencing proceedings. Before closing arguments and outside the presence of the jury, the second attorney, in proffering to the court to preserve the bifurcation issue for appeal, (1) detailed the mitigation case that counsel would have presented, but (2) never mentioned the accused's life history or family background. The jury sentenced the accused to death, and the Maryland Court of Appeals affirmed (324 Md 551, 597 A2d 1359).

(33)

NORA D. LENDEKEN
ATTORNEY AT LAW
P.O. BOX 24327
SAN JOSE, CALIFORNIA 95154-0327
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May 22, 2014

Calvin Sharp
AN-0369 3C01 - 147
Corcoran State Prison
P.O. Box 3471
Corcoran, California 93212

Re. *People v. Sharp*
2d Crim. No. B245525
Ventura S.C. Case No. 2008014430

Dear Mr. Sharp:

Enclosed please find one copy of the opinion of the Court of Appeal in your case, dated May 21, 2014. Unfortunately, the Court affirmed your conviction in full, although it made minor changes to your sentencing hearing that are probably inconsequential to you.

Because there are no issues decided adversely to you that raise federal constitutional issues, I will not be filing a petition for review in the California Supreme Court. However, you are free to do so on your own if you so wish. You may also file a petition for writ of habeas corpus on your own in state court if you so desire. In either of those cases, you are free to use any attorney you wish or do so representing yourself.

I do want to let you know that you will have approximately 15 months to file a petition for writ of habeas corpus in federal court. If you do not do so within that time, you will be forever barred from doing so. However, at this time, you have no issues to pursue to federal court.

I will also be sending you the transcript from your case, probably early next week. Be prepared to receive three boxes of transcripts.

Finally, in your letter of May 15, 2014, you asked some questions. Let me try and answer them.

First, it is now too late to raise any new issues because the opinion has been filed. As you noted, you were replying to my letter sent in August of last year; if you wanted to talk about issues, that was the time to do it, not now. The law does not allow you to sit back and do nothing, and then expect something for doing so.

MARK D. LENENBERG
ATTORNEY AT LAW
P.O. BOX 940327
SIMI VALLEY, CALIFORNIA 93094-0327
TELEPHONE: (805) 217-5746
E-MAIL: MDL@CALATTORNEY.COM

August 28, 2013

Calvin Sharp
AN-0369 A-2-104
Mule Creek State Prison
P.O. Box 409020
Ione, California 95640

Re: *People v. Sharp*
2d Crim. No. B245525
Ventura S.C. Case No. 2008014330

Dear Mr. Sharp:

I am in receipt of your letter dated August 22, 2013. I can understand why you want to tell me so much about what happened, but please understand that it does me no good as all I can litigate on appeal are errors in the rulings made by the judge. With that in mind, I can do nothing about premeditation because you pled guilty to the charges and the special circumstance with an intent to litigate the sole issue of sanity.

Personally, I think the judge's ruling was a travesty of justice. However, please understand that his long written opinion was drafted with the intent to cut off all appellate issues and it did just that. While I spewed numerous good issues while reading the transcripts, his opinion either said he reversed his position on the error or he didn't consider the evidence that was erroneously permitted. This effectively cut off all the issues.

What I am left with is very little. The clerk erroneously entered different aspects of your sentence than what the judge ordered. I know that does you no good and I wish I could do more, but I am limited to what is in the transcripts.

Very truly yours,

Mark D. Lenenberg

MDL:ddb

(35)

With respect to the issues that the judge foreclosed, I would have to resurrect my thinking almost a year after the fact. I don't wish to do that now. However, I can tell you that I believed the judge made numerous errors both in the evidence he admitted and in how he proposed using it for making his decision. However, in his long written opinion, as to each issue I originally spotted, the judge stated that: (1) he was reconsidering his original ruling and reversing it, explaining why, thus negating the error; (2) in the event it was found to be error anyway, he explained why he did not consider the evidence, and (3) in the event that it was believed he considered the evidence, he explained why it did not impact his decision. Hence, the judge eliminated both all of the errors and prejudice coming from them. And both error and prejudice must be shown as necessary to an appeal. You will find the opinion in the transcripts when you receive them and I believe it will be obvious to you what the judge did.

As far as your plea of guilty plea and approval of a court trial, you might want to try filing a state habeas corpus petition: you can probably find the forms in the law library at your prison. It is unlikely to succeed, but you don't stand a chance if you don't file it. If you plan to do so, you should do it as soon as possible. Don't wait another year after you receive this letter.

I don't know what to tell you about assisting yourself in the law library. As an attorney, we spend three years in law school learning that skill, then years in practice trying to perfect it.

Good luck with your future endeavors in this matter.

Very truly yours,

Mark D. Dennenberg

MDL:ddb
Enclosure

2.2.16

In Re: Case# 2008014330 FA
A-Sup Ct# B245525

TO: Todd Howeth
Assistant Public Defender
Office of the Public Defender
C/O Reception Desk
800 S. Victoria Avenue
Ventura, CA. 93009

Dear Todd,

I have continued to contemplate, research, and seek advice in regards to the legal process and my options, and would like to request your assistance in providing me with copies of the Trial Cansel File, other relevant court papers and legal reports pursuant to Penal Code section 1054.9 to aid me in properly preparing and drafting a post-conviction Writ of Habeas Corpus.

Report's of particular interest are:

1) The origenal report by Dr. LeChabrier and her notes on the Miranda interrogation.
2) All of the note's taken by the Mental Health Experts used to write their final reports.
3) All email corespondence between Maeve Fox of the prosecutors office, yourself, and Judge DeNoce.
4) The forms I signed at the hospital, particularly the form consenting to my release into police custody against doctor's advice
5) Ventura County Sheriff incidental reports, supplemental reports and any forms related to the statement's given to the police while under stressful circumstances, in Shock, emotionally distroyed, and floridly psychotic.

If I had a copy of the Trial Cansel File, investigation file, and other reports concerning the events that relate to my case, it would aid me in properly preparing a meritorious Habeas Corpus petetion to collaterally attack the illegal judgement and conviction that resulted from my case.

Persuant to Penal Code Section 1054.9 (a)(B)(C) I am required to informally request the above mentioned discovery material from trial cansel (P.C. 1054.9 (a)) to help adequetly demonstrait and develope the factual basis of "prima facie" for the reviewing courts attention to gain relief sought.

Thank you for yor time and consideration of this request. I look faward to your prompt reply in this important matter.

Calvin Sharp
AN0369

OFFICE OF THE PUBLIC DEFENDER

COUNTY OF VENTURA

STEPHEN P. LIPSON

PUBLIC DEFENDER

TODD HOWETH
Assistant Public Defender

ANN M. FAVOR
Chief Investigator

LEGAL MAIL

February 4, 2016

Calvin Sharp AN0369
CSATF/Cororan E 5 233
POB 5242
Corcoran, CA 93212

RE: 2008014330/B245525

Dear Mr. Sharp:

I am in receipt of your February 4, 2016 letter requesting various paperwork from your file that you requested to assist you in filing a habeas corpus writ in the matter captioned above. You requested various specific documents, e.g., original report by Dr. Le Chabrier as well as "the Trial Counsel File" (see a copy of you're attached letter).

I just wanted to clarify your request.

The file at the Ventura County Public Defender's office on your case belongs to you. So, I want you to know that *if* you are certain that you want the entire file we will, of course, get you our entire file. But, as you may know, your file is contained in roughly 23 boxes, containing many more documents than the ones you specifically requested. Before I am permitted to send you a copy of your entire file, I must have a clerical person, first go through the box and redact out any witness contact information and then I must thereafter personally review every page to the file to ensure, as required by law, that all witness contact is redacted from the file. After that process is completed we would then ship to you 23 boxes of materials.

All of this material was available to your appellate counsel. Perhaps you might want to consult with your appellate counsel to decide if you still has an appellate remedy.

But, the reason I am telling you about the procedure to get you the entire file is:

1. It may take several months to complete the redaction process;
2. I have consulted with our writs and appeals attorney, Mr. McMahon and it appears that habeas petition has certain time limitations that may have expired in your case; and
3. The 23 boxes contain very sensitive materials including, autopsy photographs, victim descriptions, mental health reports, victim impact material etc. that could, possibly compromise your safety if the material was lost or stolen.

Therefore, before we went through the process of copying and redacting 23 boxes of material which make up your entire case file, I wanted to invite you to decide whether or not you, in fact, wanted all 23 boxes sent to you in prison, or, if you want something specific from the file that you believe might assist you.

If, however, understanding all the above concerns, you still want your ***entire file***, we will accommodate you and send you all 23 boxes, but, please understand, it will take several months to complete the task. If on the other hand, you want specific documents from your file, rather than all 23 boxes, please let me know what you need and I will make sure the documents from your file are sent to you.

Please write me back and let me know how you wish to proceed.

Respectfully,

Todd W. Howeth
Assistant Public Defender

Hall of Justice 800 South Victoria Avenue, Room #207 Ventura, California 93009
Telephone (805) Facsimile (805) 648-9220

OFFICE OF THE PUBLIC DEFENDER

COUNTY OF VENTURA

STEPHEN P. LIPSON

PUBLIC DEFENDER

Appellate Department

Todd W. Howeth
Asst. Public Defender

Ann Favor
Chief Investigator

February 4, 2016

LEGAL MAIL

Calvin Sharp AN0369
CSATF/Corcoran E 5 233
POB 5242
Corcoran, CA 93212

RE: 2008014330/B245525

Dear Mr. Sharp.

I work with Assistant Public Defender Todd Howeth. Pursuant to your recent letter, Mr. Howeth has begun the process of locating your case file, which is in storage, and will provide the file to you as requested.

My purpose in writing separately is to discuss considerations for filing habeas corpus petitions. Habeas is an extraordinary, limited remedy against a presumptively fair and valid final judgment. On habeas, courts presume the correctness of a criminal judgment.

A court may summarily dismiss a petition for failure to allege sufficient facts indicating the claims in the petition are timely, or fall within an exception to the rule requiring timely presentation of claims. (*In re Robbins* (1998) 18 Cal.4th 770, 780-781.)

Therefore, a petitioner must allege, with specificity, facts showing when information offered in support of the claim was obtained, and that the information neither was known, nor reasonably should have been known, at any earlier time. It is not sufficient simply to allege the claim was recently discovered.

Further, a petitioner bears the burden of establishing, through his or her specific allegations - which may be supported by any relevant exhibits - the absence of substantial delay. Because the judgment in your case was

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michael.mcmahon@ventura.org

(41)

affirmed on appeal. you will have difficulty showing the absence of substantial delay in filing of your petition. Petitions should generally be filed while the appeal is still pending.

Respectfully.

Michael C. McMahon
Chief Deputy

C: Todd Howeth. Asst. Public Defender

Hall of Justice 800 South Victoria Avenue. Room #207 Ventura. CA 93009
Telephone (805) 477-7114 - Facsimile (805) 648-9220
michael.mcmahon@ventura.org

Equal Justice Initiative
122 Commerce Street
Montgomery, Alabama 36104
334.269.1803

February 16, 2016

Mr. Calvin Sharp, #AN0369
CSATF/ State Prison at Corcoran
P.O. Box 5242
E-5-233
Corcoran, CA 93212

Dear Mr. Sharp:

Thank you for contacting the Equal Justice Initiative (EJI). We get many requests for legal assistance from people who are incarcerated. We have very limited resources and will not be able to provide direct assistance to most people. However, we want you to know that we have received your letter, and if there is anything we can do to provide assistance, we will get in touch with you as soon as we can. We regret that our ability to take on new cases is so limited because we recognize that your rights may have been violated and you are dealing with a difficult situation. However, we appreciate your taking the time to contact us and we hope that you find the assistance you need.

Thank you again for your letter.

Sincerely,

Nia Holston

Nia Holston
Intake Department

Exoneration Project Intake Application

Intake, Exoneration Project, 311 North Aberdeen St., Ste. 2E, Chicago, IL 60607

The Exoneration Project (EP) works with a team of legal students, interns, and staff members in Chicago, Illinois to evaluate potential cases around the country. Due to the high number of requests that the EP receives, we are unable to respond to every applicant. We review cases based on the order that we receive written requests and applications. If we have questions about your case or application, we will contact you directly via legal mail. It is our goal to help find representation for as many innocent victims of wrongful conviction as we can.

Please enter your information to the best of your ability in the space provided. Write clearly and include **all** relevant facts of your case. Additional space is provided on the last page of the application. **We will not accept or review any other legal documents.**

Section A: Background Information

1. Last Name: _____ First Name: _____
2. Date of Birth: _____
3. Inmate Identification Number (if applicable): _____
4. What is your preferred language? **English** **Spanish** **Other:**_____
5. What is your race or ethnicity? _____
6. What is the highest grade you completed in school? _____
7. Is this your first letter or application to the Exoneration Project? **YES** **NO**

Section B: Basic Crime Information

8. What conviction(s) are you currently incarcerated for?

_____ Sentence: _____

_____ Sentence: _____

9. What is the date of your conviction? _____
10. What is your projected release date? _____
11. Please list the case number of the crime you are writing us about:

_____

January 27, 2017

Calvin L. Sharp, Jr.
AN0369
E-5-233
CSATF/State Prison at Corcoran
P.O. 5242
Corcoran, CA 93212

Dear Mr. Sharp:

I recently received your letters postmarked January 6, 2017.

I certainly remember you and some of the circumstances of your situation from the events of August 12, 2007. As you know, I testified I believed you were legally insane at the time of those events, as did the other defense experts.

That said, I don't believe there is anything more I can do on your behalf now. I am not familiar with any organizations, Mental Health or otherwise, that might be able to help you. There could certainly be such organizations, but I don't know who they are. All of my work is done pre-sentencing and I don't get involved in appeals or post-conviction issues.

I wish you well and hope that your family is doing well also.

Sincerely,

Patrick C. Barker

Patrick C. Barker, Ph.D.
P.O. # 6628
41 South Wake Forest Avenue
Ventura, CA 93006

SUMMARIES OF SUCCESSFUL
INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS
POST-*WIGGINS V. SMITH* INVOLVING
ONE DEFICIENCY AT TRIAL

JUSTICE

ELITE PARALEGAL & PRISONER SERVICES
PO BOX 1717
APPLETON, WI 54912-1717

FEDERAL
HABEAS CORPUS REVIEW
Challenging State Court Criminal Convictions

(47)

WAS YOUR LAWYER ANY DAMN GOOD?

INEFFECTIVE ASSISTANCE OF COUNSEL

Vs.

LEGAL MALPRACTICE

CALIFORNIA HABEAS HANDBOOK

5TH EDITION

[Winter, 2008]

A PRACTICAL GUIDE TO STATE AND FEDERAL HABEAS CORPUS UNDER "AEDPA"

- Completely revised and updated from the 4th Ed.
- 40% more text than the 4th Ed.
- Includes "Habeas Hints" and case law through 2008.
- Habeas Grounds Table re-designed for easier drafting and updated.
- Appendix contains excerpts from actual Russell and Russell documents.

Written by

[illegible] RUSSELL [illegible]

(Experienced Criminal [illegible]

Practicing Criminal [illegible]