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**United States District Court
Central District Of California
Western Division**

UNITED STATES OF AMERICA
Plaintiff,
v.
TAC TRAN and HARSON CHONG
Defendants.

CASE NO.
2:19CV-04025-ODW
2:19CV-04028-ODW
2:12CR-01016-ODW-1
2:12CR-01016-ODW-2

**ORDER DENYING MOTION TO
VACATE, SET ASIDE OR CORRECT
SENTENCE UNDER 28 U.S.C. § 2255**

I. INTRODUCTION

On December 4, 2014 Tac Tran and Harson Chong, co-defendants in case number 15CR-01016, were found guilty following a jury trial of trafficking in controlled substances and possession of firearms in furtherance of drug trafficking crimes. [DE-135]. They were sentenced to a total of 420 months and 180 months respectively. [DE-178, 163.] On December 3, 2017 the judgments were affirmed on the consolidated appeals. (DE-203). On May 2, 2019 Tran and Chong filed a Notice of Motion and Motion to Vacate, Set Aside Sentence by a Person in Federal Custody Pursuant to 28 U.S.C. § 2255. [DE-207 & 209.]

1 The thrust of the 2255 motions is that respective counsel for each defendant
2 failed to argue in the suppression motion: (1) on behalf of Chong, that one of the officers
3 was standing in the curtilage of Chong's home when he observed drug related activity,
4 thus violating his 4th Amendment rights. (2) on behalf of Tran, it is argued that his
5 attorney did not argue aggressively enough that Tran had standing to raise the same 4th
6 Amendment argument regarding the driveway of the residence as being curtilage of the
7 home. Tran was in something of a Catch-22 in arguing standing to raise an argument of
8 an expectation of privacy in someone else's (Chong's) residence without as the same
9 time risking that the contraband found in various rooms of the house would be
10 attributed to him. Initially law enforcement was of the view that Tran was living at the
11 location because he was observed arriving at the location around 9:00 p.m. and
12 appeared to let himself in with a key.

13 Later, Tran filed a motion to suppress citing *United States v. Grandberry*, 730 Fed
14 3d 968 (9th Cir. 2013) challenging the "parole sweep" search. The curtilage argument was
15 not made in the trial court and therefore was not entertained on appeal.

16 The argument, on behalf of both Chung and Tran, is that the curtilage issue had
17 sufficient merit and the legal basis was sufficiently sound that it was "below an objective
18 standard of reasonableness" and "there is a reasonable probability that, but for
19 counsel's unprofessional errors, the result of the proceeding would have been
20 different." (*Strickland v. Washington*, 466 U.S. 668, 697 (1984)). The Court disagrees. In
21 fact, the Court will dispose of this motion without the need to address *Strickland*. Since
22 this entire motion rests on whether the driveway was curtilage and therefore entitled
23 to 4th Amendment protection, resolution of that single question will be dispositive of
24 these motions.

25 **A. SALIENT FACTS**

26 Law enforcement was surveilling a residence located at 2514 Abonado Place, in
27 Rowland Heights where Chong resided and where it was believed that Tran may have
28 been staying. While watching the residence, Tran was seen arriving on a motorcycle. It

1 appeared that he let himself into the front door apparently by using a key. Chong
2 disputes that Tran used a key to enter the residence. Officers climbed a low wall
3 separating the Chong residence from the house next door. One officer standing in the
4 driveway of the house, looking into the open garage door, observed Tran, now inside the
5 garage, holding a baggie containing a white crystalline substance which the officer
6 believed to be methamphetamine. When Tran saw that he was being observed, he tossed
7 the baggie onto a coffee table. (L.A. Sheriff's Dept narrative report # 912-04874-2932-
8 151, DE-29-2) In the suppression motions no mention was made of the fact that one of
9 the officers in the driveway constituted impermissible presence in the home's curtilage
10 and therefore under 4th Amendment protection. The arguments both focused on the
11 propriety of the parole compliance search.

12 **B. CURTILAGE DEFINED**

13 As can be seen from the photographs taken of the front of the residence from the
14 street, (12-cr-1016, DE-79-15) it appears that the driveway leading to the two-car garage
15 is barely 1-1/2 car lengths. The interior of the garage is visible from the sidewalk when
16 the overhead garage door is open.

17 In *United States vs. Dunn*, the Supreme Court reaffirmed its holding in *Oliver v.*
18 *United States*, 466 U.S. 170, 104 S.Ct. 1735 (1984). There, the Court recognized that the
19 Fourth Amendment protects the curtilage of a house and that the extent of the curtilage
20 is determined by factors that bear upon whether an individual reasonably may expect that
21 the area in question should be treated as the home itself. 466 U.S., at 180, 104 S.Ct., at
22 1742. In *Oliver* the Court identified "the central component of this inquiry as whether the
23 area harbors the 'intimate activity associated with the sanctity of a man's home and the
24 privacies of life.' " Ibid. (quoting *Boyd v. United States*, 116 U.S. 616, 630, 6 S.Ct. 524,
25 532, 29 L.Ed. 746 (1886)).

26
27 "Drawing upon the Court's own cases and the cumulative experience of the lower
28 courts that have grappled with the task of defining the extent of a home's curtilage, we

1 believe that curtilage questions should be resolved with particular reference to four
2 factors: the proximity of the area claimed to be curtilage to the home, whether the area
3 is included within an enclosure surrounding the home, the nature of the uses to which the
4 area is put, and the steps taken by the resident to protect the area from observation by
5 people passing by. See *California v. Ciraolo*, 476 U.S. 207, 221, 106 S.Ct. 1809, 1817,
6 90 L.Ed.2d 210 (1986) (POWELL, J., dissenting) (citing *Care v. United States*, 231 F.2d
7 22, 25 (CA10), cert. denied, 351 U.S. 932, 76 S.Ct. 788, 100 L.Ed. 1461 (1956); *United*
8 *States v. Van Dyke*, 643 F.2d 992, 993–994 (CA4 1981)). We do not suggest that
9 combining these factors produces a finely tuned formula that, when mechanically applied,
10 yields a ‘correct’ answer to all extent-of-curtilage questions. Rather, these factors are
11 useful analytical tools only to the degree that, in any given case, they bear upon the
12 centrally relevant consideration—whether the area in question is so intimately tied to the
13 home itself that it should be placed under the home's ‘umbrella’ of Fourth Amendment
14 protection.” *Dunn*, 104 S.Ct at 1140.

15 Applying those factors here, it is beyond serious debate that there was no
16 expectation of privacy with respect to the interior of the garage or the driveway leading
17 to the garage, when the garage doors were open. There was no effort to shield either the
18 driveway or the garage from view of passers-by or for that matter, motorists. The area
19 could not be more open to public view. Indeed, as can be seen from Document 79-15 in
20 case 12-cr-1016, the entire front of the house, not just the driveway, was paved. It would
21 appear that the area was used to park vehicles. It also appears that a portion of the area
22 which could be characterized as “driveway” was also used as access to the front door.
23 There is no fencing to limit access from the sidewalk to the property known as 2514
24 Abonado Place. See also DE-6-2 filed in Case 19-CV-4025, the government’s opposition
25 to the instant motion. It is difficult to imagine a way in which the area in question could
26 be made more open to public view than it already is. Absolutely no steps were taken by
27 the homeowner to shield the area from public view. While the Supreme Court cautions
28 against establishing a check-list to determine the extent of curtilage, here no check list

1 or formula is required. By any reasonable measurement, the area of and adjacent to the
2 driveway are not within the ambit of constitutional protection afforded
3 residential structures and could not reasonably be expected to fall within 4th Amendment
4 protection. This is not a close question and to argue that an attorney was remiss in not
5 arguing that the area is entitled to protection as curtilage to the residence has no merit
6 whatever.

7 8 **II. CONCLUSION**

9 A defense attorney cannot be criticized for his forbearance in making a specious
10 argument. It is not required that an attorney argue every conceivable issue on appeal,
11 especially when some may be without merit. Indeed, it is his professional duty to choose
12 among potential issues, according to his judgment as to their merit and his tactical
13 approach. See *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308 (1983). Consequently,
14 defense counsel, in their professional judgment, viewed the more promising issue
15 supporting suppression as the parole compliance sweep. That was a reasonable judgment.
16 The curtilage argument, under the circumstances, had no merit whatsoever. Therefore,
17 Chong's attorney was not remiss in not raising it and Tran's attorney cannot be criticized
18 for not aggressively arguing his standing to chase that loser down a rabbit hole. Had they
19 each done what they are now being criticized for not having done, the outcome would
20 have been the same. The Motions to Vacate, Set Aside or Correct the sentences of both
21 Tac Tran and Harson Chong are therefore DENIED.

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23 IT IS SO ORDERED.

24 DATE: October 08, 2019



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27 OTIS D. WRIGHT, II
28 UNITED STATES DISTRICT JUDGE