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“The pursuit of justice is a team effort.”

Newsletter

Legal News Briefs for Law Libraries

NLPA – ON THE FOREFRONT WITH ANOTHER VICTORY FOR JUSTICE!

As many of you know, National Legal Professional Associates has been on the cutting edge of criminal appellate and post-conviction research for nearly two decades. Over those years of service to

defendants and their attorneys, NLPA’s research has aided in many victories for the defense. Just recently, NLPA’s research helped another defendant and his attorney reverse a conviction for first degree murder and related weapon charges.

him, so Mr. Bates retaliated by shooting first. The defense had a witness who testified to seeing Miller with a gun, corroborating Mr. Bates’ self defense theory. Despite this testimony, the jury returned a verdict of guilty and Mr. Bates was sentenced to 45 years to LIFE in prison.

Aaron Bates stood convicted of First Degree Murder and related weapon charges when he first contacted NLPA. His conviction stemmed from an altercation he had with an individual named Miller outside a local nightclub that resulted in the shooting and killing of Miller. The defense theory at trial was self defense. Mr. Bates believed Miller was about to shoot

After trial, it was discovered that one of the jurors in the trial knew the key witness for the defense and had been in a dispute with that witness. A motion for new trial was filed and a hearing was held to see if the juror was bias and whether that affected the jury’s verdict. It was discovered that the witness had blamed the juror for abusing her

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child and that the witness had vandalized the juror's car in retaliation. The juror had told other members of the jury about these events. Despite this, the juror claimed that she was not biased against the witness and that it did not affect her impartiality when rendering a verdict. Amazingly, the court upheld the jury's guilty verdict and denied the motion for new trial.

After sentencing Mr. Bates hired NLPA and new counsel, Charles Murray, in order to appeal his conviction to the District of Columbia Court of Appeals. *Bates v. United States*, 2003 D.C. App. LEXIS 624 (2003) NLPA's research attorneys worked closely with Mr. Bates' new attorney, Charles Murray, in the preparation of the appeal brief, raising several issues to the court of appeals. One of those issues involved juror bias and that the court erred in denying Mr. Bates' motion for a new trial. It was argued that the juror was biased against the witness, and he could have conveyed his hostility against her to the other jurors. That could have led to the jury disbelieving the witness' testimony suggesting that Miller had a gun. This was critical because the witness' testimony was the only evidence presented that corroborated Bate's claim that he acted in self-defense because he was afraid that Miller had a gun and was going to shoot him. Thus, the witness' testimony, if believed, was vital to appellant's claim that he acted in self-defense and Mr. Bates should have received a new trial. Fortunately, for Mr. Bates, the court of appeals agreed and determined that the court erred in denying the motion for new trial vacated his conviction.

In his letter congratulating NLPA, Charles Murray, the attorney for Mr. Bates stated, "National Legal Professional Associates did an outstanding job in helping me with both the Appellant's brief and reply brief. This success would not have happened without NLPA's help."

Of course, every case is different and spectacular victories such as this do not always occur. However, aggressive and caring attorney representation coupled with NLPA's cutting edge research and drafting skills can make a difference between victory and defeat. Look to future newsletters for more NLPA victories.

USA V. NLPA - AN UPDATE ON NLPA'S FIGHT FOR DUE PROCESS

Many of those reading this newsletter have been following NLPA's case from the Seventh Circuit, *United States v. Willard Johnson*, 327 F.3d 554 (7th Cir. 2003). In that case, NLPA was fined several thousand dollars by a district court judge in the Southern District of Illinois for allegedly engaging in the unauthorized practice of law. Because of the unfairness in the district court, NLPA appealed to the Seventh Circuit. The court of appeals upheld the lower court's actions, but also determined that the lower court exceeded its authority and ordered the court to return a significant portion of the fine back to NLPA. That money has finally been returned to NLPA from the Southern District of Illinois.

However, the return of money was

not enough because the court of appeals upheld the lower court's actions in acting as the only complaining party, prosecutor, judge and jury in its action against NLPA. Incredibly, the court of appeals held that an old NLPA informational brochure which criticized the federal justice system and gave suggestions on how to select an attorney constituted the "unauthorized practice of law." The court stated that for NLPA to provide critical information to a defendant or family member about the pitfalls of the criminal justice system and how to go about the business of finding a qualified, caring attorney to represent them somehow interfered with the attorney-client relationship.

Because the Seventh Circuit's decision sets dangerous precedent that not only affects NLPA, but all criminal defendants, NLPA is now in the process of appealing to the United States Supreme Court. One of the issues NLPA is presenting to the Supreme Court is whether the Seventh Circuit's decision results in a chilling affect on the Sixth Amendment right to effective assistance of counsel on countless defendants everywhere. The opinion is terrible legal precedent. It appears to hold that criminal defendants cannot receive information from organizations and professionals other than attorneys about how they can assist in the defense. If the Seventh Circuit's decision is upheld, criminal defendants could be precluded from directly inquiring into the services of jury consultants, accountants, private investigators, forensic experts, psychologists, and other professionals. Therefore, defendants will never be able to discern the full spectrum of

assistance available to their defense, depriving them of access to a meaningful defense. This results in a chilling adverse effect on countless defendants' First Amendment right to information, and consequently, on those defendants' Sixth Amendment right to effective assistance of counsel.

Of course, NLPA is addressing other issues in its petition to the Supreme Court and we will continue to keep the public informed of these court proceedings. Hopefully soon we will be able to report another NLPA victory.

RESULT OF THE WAR ON DRUGS--MORE AMERICANS IMPRISONED THAN EVER

The Bureau of Justice Statistics recently released a report titled "Prevalence of Imprisonment in the U.S. Population 1974-2001." Copies of this report can be obtained on the Internet at www.ojp.usdoj.gov

The report verifies what many already know - that more Americans are being imprisoned than ever before. As of the year 2000, the report indicated that over 6.5 million Americans were currently serving time in state or federal prison. That total represents 3.1 percent of the total adult population in the country, and things are getting worse. Amazingly the report estimates that 6.6 percent of all persons born in the United States in 2001 will serve time in a federal or state prison during their lifetime. Put a different way, nearly one out of every fourteen babies born in 2001

will go to jail during their lifetime - a terrifying statistic for a supposedly free society.

The growth in the federal prison system is, also alarming. From 1995 to 2002 the federal prison population skyrocketed nearly 70 percent from 89,000 to nearly 152,000. According to the Department of Justice, this drastic increase is largely due to the increase in nonviolent drug offenders. In fact, more than 50 percent of federal inmates are serving time for a nonviolent drug offense.

If you are a minority, things are even worse. As of December 31, 2002, black males from 20 to 39 years old accounted for about a third of all sentenced prison inmates under state or federal jurisdiction. In fact, one out of every ten black males between the ages of 25 to 29 was in prison at the end of 2002. Clearly a large portion of black fathers, are absent from the home and incarcerated.

Obviously, these statistics indicate what many already know. The "war on drugs" is a booming business for the state and federal governments. More nonviolent drug offenders are being locked up than ever before and for longer periods of time than most violent offenders. This increase is harming everyone, especially minorities. We at NLPA recognize the great injustice that is occurring in our country and we continue to stand vigilant against the overzealous state and federal authorities.

THE IMPORTANCE OF FILING DEADLINES

According to popular television and conservative critics, prison inmates have an unlimited ability to tie up the judicial system with frivolous and unproductive claims. Reality, however, reveals a much different picture. The ability of inmates to attack a wrongfully obtained sentence is limited. Factors such as the type of argument that can be raised and the type of evidence that can be used limits an inmate's ability to obtain relief. Most important, however, strict filing deadlines serve to limit the opportunities of inmates to obtain relief in a system that is hostile to the claims of individuals who have been convicted.

Generally, an individual convicted in the federal system (i.e., in a United States District Court) has only two options to attack his conviction, a direct appeal and a writ of habeas corpus. A notice of appeal must generally be filed within 10 days, thereby signifying the intent of the individual to file a direct appeal. Following the end of the direct appeal process, the individual will have, in most instances, one year from the end of the direct appeal process in which to file a federal writ of habeas corpus. After these processes have been utilized, an incarcerated individual has little recourse but to file a successive writ of habeas corpus or a motion pursuant to 28 U.S.C. § 2241. However, neither a successive writ nor a § 2241 motion stands much chance of success unless new evidence has been discovered. Motions pursuant to § 2241 (which is a last chance procedure in many cases) have, as yet, not met with much success when previous actions were denied

for being filed untimely.

Given the few avenues available to correct an erroneous conviction and/or sentence, it is vital that individuals file any legal proceeding in a timely manner. It is rare that a federal court will even listen to a legal proceeding following conviction if it is filed in an untimely manner. The courts have little tolerance for individuals who cannot follow the filing deadlines. While individuals may have viable arguments, such arguments will often not even be heard if an action is not timely filed.

While the state court systems often offer more methods to attack a conviction or sentence than the federal judicial system, the state courts are often as stringent as the federal courts in adhering to filing deadlines. Of course, several states, such as Ohio, offer individuals the right to file post conviction motions at any time following the conviction. However, claims underlying such motions will generally have to have been unavailable in those proceedings that were limited by a time deadline, such as a direct appeal. In other words, new evidence or an extreme case of ineffective assistance of counsel will generally have to be presented to succeed upon in a proceeding that is without a filing deadline.

As success in the justice system will only occur when an individual meets the filing deadlines of a particular action, the importance of these deadlines cannot be over emphasized. NLPA urges all those who feel that they have been convicted or sentenced in an

improper manner to contact a legal professional as soon as possible. Furthermore, such legal assistance is best obtained from those with experience in the field of criminal law. Experts in probate, divorce, real estate, or other areas of legal concentration are often unaware of the available procedures for those convicted, or the time deadlines on which such procedures work. Most important, individuals should be wary of "jailhouse" attorneys. Often, such legal novices only know "half the story" when it comes to available procedures and time lines. It is important to remember that the courts do not look kindly upon those whose excuse for filing an untimely brief was ignorance of the deadlines.

What's New Around The Circuits

Eighth Circuit

U.S. v. Houston, 338 F. 3d 876 (8th Cir. 2003)

The Eighth Circuit Court of Appeals says the government did not prove the drug was actual methamphetamine rather than mixture.

The penalties for methamphetamine contained in the sentencing guidelines can be based upon either the weight of a methamphetamine mixture, or the weight of the actual methamphetamine contained in the mixture. The commentary to the Drug Quantity Table directs the court to use the one that results in the greatest offense level. The Eighth Circuit held that the government did not prove that the quantity of methamphetamine that

defendant admitted to helping manufacture was actual methamphetamine as opposed to a mixture containing methamphetamine. At no point did the government counsel ask the drug agent who testified about these admissions whether the defendant ever referred to actual or pure methamphetamine. Counsel did not ask the agent whether he understood defendant to be referring to actual methamphetamine. The panel rejected the government's argument that methamphetamine cooks attempted to produce a pure methamphetamine. The guideline's distinction between actual methamphetamine and a methamphetamine mixture would be obliterated if the total quantity of every batch was deemed to be actual methamphetamine because the cook hoped or attempted to produce the drug in its pure form.

Tenth Circuit

U.S. v. Marquez, 337 F. 3d 1203 (10th Cir. 2003)

The Court of Appeals for the Tenth Circuit held that notifying court of intent to plead guilty on same day suppression motion was denied was timely.

Under § 3E1.1(b)(2), a defendant can earn one-point acceptance of responsibility reduction by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial. The Tenth Circuit ruled that the district court erred in relying on the fact that the defendant did not enter a guilty plea until after a "lengthy

suppression hearing” in ruling that defendant did not timely provide notice of his intent to plead guilty. Where a defendant has filed a non-frivolous motion to suppress, and there is no evidence that the government engaged in preparation beyond that which was required for the motion, a district court may not rely on the fact that the defendant filed a motion to suppress to justify a denial of the third-level reduction. Defendant’s notification of his intent to plead guilty occurred promptly after the court orally denied his motion to suppress. Although this was only eight days before trial, a defendant is not required to give conditional notification of intent to plead guilty in order to preserve his eligibility for the § 3E1.1(b)(2) reduction.

Fifth Circuit

U.S. v. Brigham, 2003 WL 21958026 (5th Cir. 2003)

The Fifth Circuit held Trooper’s questioning of driver for eight minutes before running computer check unreasonable

A trooper who made a traffic stop after observing the defendant following the vehicle in front of him too closely unreasonably prolong the detention in violation of defendant’s Fourth Amendment rights by questioning the defendant about matters unrelated to the traffic violation for eight minutes before commencing a computer

check, the Fifth Circuit held. The trooper failed to use the least intrusive means, s he could have and should have started the computer check before beginning his extensive questioning.

Fifth Circuit

U.S. v. Washington, ___ F.3d ___ (Fifth Cir. July 24, 2003) No. 02-20972

Fifth Circuit rules that motion to suppress evidence did not disqualify defendant from receiving acceptance reduction.

Defendant signed a confession after his arrest and admitted to possession the firearms. Further, he stipulated to all of the evidence necessary for the conviction prior to the bench trial. The guidelines allowed for “rare situations” where the defendant accepts responsibility even though he precedes to trial, such as where he goes to trial to assert and preserve issues unrelated to factual guilt. The district court found that defendant did not accept responsibility since he moved to suppress “evidence that was critical to the offense itself, that is, the possession of the firearms that he was convicted.” The Fifth Circuit held that the mere fact that defendant moved to suppress the evidence against him did not disqualify him from receiving an acceptance of responsibility reduction.

The guidelines create a distinction between a defendant’s denial of factual and denial of legal guilt, allowing acceptance of responsibility for the latter. To permit a reduction when a defendant challenges the constitutionality of a statute but deny it when a defendant admits his conduct and only challenges the way the police obtained the evidence is counterintuitive.

THIS NEWSLETTER IS DESIGNED TO INTRODUCE YOU TO NLPA. AS NLPA IS NOT A LAW FIRM, PROFESSIONAL SERVICES ARE ONLY PROVIDED TO LICENSED COUNSEL IN ALL AREAS THAT INVOLVE THE PRACTICE OF LAW. NLPA HAS CREATED THIS PUBLICATION TO PROVIDE YOU WITH AUTHORITATIVE AND ACCURATE INFORMATION CONCERNING THE SUBJECT MATTER COVERED. HOWEVER, THIS PUBLICATION WAS NOT NECESSARILY PREPARED BY PERSONS LICENSED TO PRACTICE LAW IN A PARTICULAR JURISDICTION.

THIS PUBLICATION IS NOT MEANT TO BE A SUBSTITUTE FOR LEGAL OR OTHER PROFESSIONAL ADVICE, WHICH NLPA IS NOT RENDERING HEREIN.

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THE PURSUIT OF JUSTICE IS A TEAM EFFORT

NLPA: WE LISTEN, WE CARE, WE GET RESULTS!

About NLPA -

NLPA is a technical consulting firm, owned and staffed by attorneys, and dedicated to the professional mission of providing counsel, research, and related work product to members of the Bar. Our ownership structure includes attorneys licensed to practice before many local, state, and federal courts; however, NLPA is not a law firm and provides no “front line” legal services.

On the other hand, we are much more than your typical paralegal service as our work is prepared by attorneys. Our sole purpose is to provide research and consulting assistance by lawyers, for lawyers . . . and their clients. With cutting-edge computer research capabilities, an experienced and top quality staff, and more than sixteen years' experience, NLPA is well-positioned to provide the types of assistance members of the Bar need.

You are important to us and we hope we can commence and maintain a long-term relationship with you. Please know that we are here to assist in all your needs.

If you would like to know more about the services we offer, please contact us at:

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