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“The pursuit of justice is a team effort.”

Newsletter

Legal News Briefs for Law Libraries

THE BEST AVAILABLE TEAM FOR SENTENCING: YOU, COUNSEL, AND NLPA

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Over the years, NLPA is often contacted to assist counsel after a defendant has been convicted and is awaiting sentencing. During this time, the Probation Office generally prepares a Presentence Investigation Report (PSI) that details the defendant's relevant

conduct and provides a calculation of a defendant's potential sentence. This report is critical as it is relied heavily upon by the Judge in deciding what sentence to impose upon the defendant. Typically, in preparing this report, the Probation Office relies on information

provided by the U.S. Attorney's Office. Therefore, the calculations are based almost exclusively on conduct alleged by the government. We have found that Mr. Comadore's family came to NLPA after he pleaded guilty to violations of 21 U.S.C. § 841(a)(1) and 846 for conspiracy to possess with intent to distribute, and possession with intent to distribute, marijuana. When Mr. Comadore received his PSI, he was shocked to see that the government was attempting to hold him accountable under U.S.S.G. § 2D1.1 for 247 kilograms of marijuana. When combined with a career offender enhancement under U.S.S.G. § 4B1.1 and a criminal history level category of VI, this resulted in a guideline range of imprisonment of 188 to 235 months!

NLPA provided to Mr. Comadore's attorney, at his request and direction, research including arguments combating the breach of a plea agreement by the government, an error in the calculation of Mr. Comadore's criminal history category (including the wrongful inclusion of two prior possessions with intent to distribute convictions), and advancing the fact that Mr. Comadore aided in the facilitation of justice. Further, NLPA argued to counsel that Mr. Comadore should receive a downward departure due to his facilitation of justice. These facts also led NLPA to argue in its research to counsel that Mr. Comadore should not be sentenced as a career offender. Once again, the district court agreed with many of the arguments prepared by NLPA and presented by counsel of record, with the end result being that Mr. Comadore received a sentence of only 70 months, well

it is at this stage that NLPA's research and writing assistance is most beneficial. The case of *United States v. Comadore*, C-02-238 (USDC, ED La), is another current below the potential 188 minimum sentence as dictated by the guidelines - a reduction of almost 10 years!

Dramatic results such as what Mr. Comadore received cannot be expected in every case. However, the combination of a diligent attorney and NLPA's research and writing assistance is one of the best ways to minimize a defendant's exposure at sentencing. If you or your clients are facing sentencing in federal court and would like NLPA's experienced team of attorneys on your side, please contact us.

NLPA AND APPEALS OF POST CONVICTION MOTIONS

No legal consulting organization knows the ins and outs of post-conviction litigation better than NLPA. A lot of people may try and tell you that appealing the denial of a post-conviction motion or attempting to file a successive post-conviction motion is a waste of time and resources, but that simply is not true. A recent example is the case of *United States v. Douglas*, Docket No. 97-CR-5, in the United States District Court for the Middle District of Louisiana, Baton Rouge Division.

In *Douglas*, the Defendant was convicted of Interstate Domestic Violence, in violation of 18 U.S.C. § 261. Mr. Douglas received a Life sentence, the maximum sentence possible under the law, despite the

example of how NLPA's assistance can pay major dividends.

fact that the U.S. Sentencing Guidelines called for a much shorter sentence. Following the denial of his appeal to the Fifth Circuit Court of Appeals, Mr. Douglas contacted NLPA, and its experienced team of legal researchers began preparing a petition for post-conviction relief pursuant to 28 U.S.C. § 2255, for counsel's review. Ultimately, that petition was denied, but Mr. Douglas did not give up the fight. He retained nationally renowned defense attorney Robert A. Ratliff of Mobile, Alabama.

With NLPA's assistance, Robert Ratliff was able to obtain permission from the Fifth Circuit Court of Appeals for Mr. Douglas to file a successive petition for relief pursuant to 28 U.S.C. § 2255! A decision on the successive 2255 is still pending in the U.S. District Court, but a major victory has already been won. Mr. Douglas will again have his day in court, thanks to the tireless efforts of Robert Ratliff and NLPA.

NLPA continues to be at the forefront of developing criminal law. If you or your clients need assistance with an application for permission to file a successive 2255 petition, or any other area of developing law, NLPA's resources and experience can provide you with the most up to the minute research and arguments available.

Legal Resource Guide to the Bureau of Prisons, a handbook issued this year by the guardians of our Federal inmate population, the Federal Bureau of Prisons, is now available from NLPA. If you would like a copy for your law office or institution library, please drop us a note requesting a complimentary copy.

Dear NLPA:

I heard that the BOP has more inmates than any other penal system. Is that true?

Dear Friend:

Well, we are not sure if the population of inmates in the Bureau of Prisons is the largest penal system around, but it is very big. As of last week, the number of inmates under the custody of the BOP totaled 171,606. These individuals were placed in 103 facilities throughout the nation, including contract facilities, home detention, and halfway houses.

Overall, 93% of the population is male, and yes, 7% is then female. Just over 56% of the population is white, and surprisingly, only 70% are U.S. citizens (the next largest groups coming from Mexico and Columbia).

Finally, it is interesting to note that the average age of a federal inmate is 37 and the percentage breakdown of sentences are:

Less than 1 year: 2.4%
1-3 years: 14.9%
3-5 years: 16.1%

Q & A

Dear NLPA:

I am a Florida inmate. Is it true that I can vote when I leave prison?

Dear Friend:

We at NLPA urge you to read the

5-10 years:	29.0%
10-15 years:	17.1%
15-20 years:	8.3%
20 years+:	8.8%
Life:	3.3%

Death: 24 inmates

If any additional information is needed about the BOP and its constituent groups, please feel free to let us know.

Dear NLPA:

I realize that the country's ~~economy is affecting a lot of~~ programs. Has it stopped the rush to build more prisons?

Dear Friend:

Though many states have been hit with financial worries, the building of new prisons does not seem to end. This pattern is also true for the Federal government. These facilities are currently under construction and anticipate opening within the next two years:

FCI/FPC Bennettsville, South Carolina
USP Canaan, Pennsylvania
USP Coleman II, Florida

article on page 4 concerning the recent announcement by the American Civil Liberties Union concerning the restoration of rights for Florida felons. Also, keep an eye out for NLPA's newest book addressing the rights of felons once they leave prison. It should be available to your institution by the Fall.

FCIM Forrest City, Arkansas
USP Hazelton, West Virginia
FCI Herlong, California
USP Terre Haute II, Indiana
USP/FPC Tucson, Arizona
FCI Victorville, California
FCI Williamsburg, South Carolina
FCIM Yazoo, Mississippi

Quote of the Day:

The minute you read something you don't understand, you can almost sure it was drawn up by a lawyer.

-Will Rogers

What's New Around The Circuits

Fifth Circuit

Egerton v. Cockrell, 2003 U.S. App. LEXIS 11766 (5th Cir. June 13, 2003)

This matter involves a 2254 filing for post conviction relief which was denied for being time barred. The

defendant, convicted for aggravated robbery after pleading, was sentenced to twenty years imprisonment. He did not file a direct appeal, but he did file a state habeas corpus application alleging an involuntary confession, insufficient evidence, erroneous sentencing enhancement and The appeals court partially agreed with the Defendant. The court held that the one year time period can be tolled for equitable reasons if the defendant was prevented from filing by the state in violation of the Constitution or federal law. Claiming that he was unaware of his deadlines because of the inadequacies of the law libraries, the Defendant supported the equitable tolling argument. The court remanded the matter for a lower court factual determination as to whether the defendant truly was aware of the AEDPA time deadlines. If he was not, then tolling should apply.

Sixth Circuit

United States v. Darwich, 2003 U.S. App. LEXIS 14750 (6th Cir. July 24, 2003)

For many sentencing hearings, NLPA is asked by counsel to provide arguments addressing the standard of proof used to establish drug quantity, as well as the arguments against sentencing enhancements for roles in the offense and other specific offense characteristics. The Sixth Circuit recently reviewed several of these factors in the *Darwich* case.

After receiving an 88-month sentence for his conviction of conspiring to distribute marijuana in violation of 21 U.S.C. 846, the defendant challenged on appeal the

ineffective assistance of counsel. This application was denied by the state Court of Criminal Appeals.

The federal government sought to have the defendant's 2254 application dismissed for being untimely. The defendant for his part argued the opposite since he standard of proof used to establish the drug quantity for sentencing purposes, the sufficiency of the evidence used to prove drug quantity, and the propriety of firearm and leadership role enhancements.

Based on the factors articulated in *Apprendi*, the parties agreed that the statutory maximum of sixty months should apply at sentencing and so stipulated to the court. The trial court, though, declined to consider the parties' stipulation and determined that the conspiracy involved a high level of quantity, basing sentencing on that level. The Sixth Circuit reversed, holding that the government's failure to allege any specific drug quantity in the indictment required the court to rely on the statutory maximum of sixty months and no more.

Further, as the defendant disputed the enhancements argued at sentencing, and since the trial court failed to rule on disputed matters affecting those enhancements, the sentencing had to be vacated.

Florida

MIAMI -- As many as 30,000 ex-felons are likely to regain their voting and civil rights within the next year, the ACLU of Florida announced on July 24. The organization released a proposed final judgment in a lawsuit against

was not allowed access to legal activities and was denied access to a law library. He believes that since he did not have access to federal materials and the environment was not conducive to legal research, his petition should be accepted.

the Florida Department of Corrections that mandates assistance to ex-felons who did not receive help in the application process from the state -- as required by law.

"As a result of this lawsuit, thousands of ex-felons in Florida are well on their way to regaining their rights, having a voice in their local communities, being able to qualify for work, pay their taxes and support their families," said Howard Simon, Executive Director of the ACLU of Florida.

The expected final judgment, which is likely to be approved by Leon County Circuit Court Judge P. Kevin Davey, comes in a lawsuit filed by the ACLU of Florida, the Florida Justice Institute and Florida Legal Services on behalf of black lawmakers, three Miami-based organizations that work with ex-felons and several individuals with past felony convictions. The ACLU contended in its lawsuit that the state failed to comply with its statutory obligation to assist offenders -- prior to their release from supervision -- with the application process to restore voting and civil rights.

During the course of the lawsuit, the Department of Corrections acknowledged that 124,769 offenders who were released between 1992 and 2001 did not receive assistance pursuant to

Florida Statute §944.293, which requires that the Department assist inmates who are about to be released from custody or supervision with the application for restoration of civil rights. In August 2002, Judge Davey directed the parties in the lawsuit to submit a plan to assist the former felons with the application process. The expected judgment instructs the Department to assist the Office of Executive Clemency in screening all The screening process to determine who is eligible for restoration without a hearing could take up to 12 months. In the meantime, the state will send letters to people who do not qualify for civil rights restoration without a hearing and place public service announcements on local media outlets to announce a new toll-free number and web site for people to call to inquire about the process.

Florida is one of only six states that impose a lifetime civil and voting rights ban upon a felony conviction. Loss of civil rights takes away not only the right to vote, but also the right to hold public office, serve on a jury and qualify for certain types of state occupational licenses necessary for many jobs.

Florida's voting and civil rights' ban affects more than 500,000 people who have lost the right to vote and hold, some state occupational licenses. Disenfranchisement is a lifetime ban, unless rights are restored by the Board of Executive Clemency. Approximately 47% of Florida's disenfranchised felons are African American men. Nearly one in three African American men in Florida are disenfranchised as a result of a felony conviction.

The rights restoration application

those ex-felons and process the rights of those who qualify for rights restoration without a hearing before the Board of Executive Clemency. The Department also has agreed to assist the Office of Executive Clemency in mailing them notices informing them that their rights have been restored.

Since up to 83 percent of the nearly 125,000 ex-felons who were identified by the state do not process is complex and onerous. According to the Florida Department of Corrections, only 927 individuals had their rights restored in 2000. More than 30,000 applications await review at the Office of Executive Clemency. Many ex-felons are not even aware that a process exists by which they can apply to regain the right to vote.

Arising out of the ACLU's Rights Restoration Project, the case was filed in Leon County Circuit Court in Tallahassee in 2001 on behalf of organizational plaintiffs: Florida Conference of Black State Legislators, People United to Lead the Struggle for Equality (PULSE), Brothers of the Same Mind, Inner City Grass Roots Civic Coalition, and these individual plaintiffs with past felony convictions: Reginald Greenlee, Joseph Brown, Milton Mccloud and Hollis Horton.

Dell Computer and the BOP

This past month, Dell Computer

qualify for rights restoration without a hearing, the Department also agreed to assist the Office of Executive Clemency in mailing the necessary application forms to request a hearing for the restoration of rights. The process of applying for restoration of civil rights with a hearing often takes several years. Even then, there is no guarantee that applicants will have their rights restored.

Corp. announced that it would stop using a contractor that relied on prison labor to dismantle and recycle computers. Since late June, Dell had been under intense pressure to sever all ties with UNICOR, the entity that uses Federal prison labor for a variety of moneymaking ventures.

The Silicon Valley Toxics Coalition, a California-based environmental group, accused Dell of running a "primitive" recycling system that exposed inmates to dangerous chemicals as those inmates took apart computers and salvaged reusable parts.

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
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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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