EFFECTIVE ASSISTANCE

Newsletter for CJA Panel Attorneys
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To Have And Have Not

BY CARLOS WILLIAMS

To a defendant who has little likelihood of success at trial, a plea agreement which promises to reduce her sentence modestly or substantially is a bird in hand. However, when the plea offer is tied to a waiver of appeal, the promise is ephemeral. That is the dilemma facing some criminal defendants and their attorneys who are presumably offered a "deal" on the condition that they drop the right to appeal and the right to collaterally attack the conviction and/or sentence. More often than not, the waiver of appeal should be left off the table. If you cannot protect the integrity of the agreement made from a conviction or sentence imposed contrary to law, then you really don't have an agreement. At minimum, the plea agreement should protect the defendant from an illegal conviction or sentence.

In our first issue we echoed a warning against appeal waivers sounded by Larry Kupers & John T. Phillipsborn in their article "Mephistophelian Deals: The Newest Standard in Plea Agreements. The Champion August 1999. We repeat the warning here because we have seen instances where the plea agreement turns to dust with little hope to rectify what we honestly believe to be an illegal sentence. As if to underscore the problem, the newly amended federal criminal rules require the trial court to inform and determine that the defendant understands, "the terms of any provision in a plea agreement waiving the right to appeal or to collaterally attack the sentence."

Kupers and Phillipsborn warned against plea agreements in which the government sought (1) Brady waivers: waivers of claims that could be presented in any pre- or post-trial motion, (2) waiver of direct appeal and (3) waiver of the right to collaterally attack the conviction or sentence. They urged us to "think long and hard about whether it is legally permissible on the one hand, and ethical, on the other, to subject a client to any or all of them."

Heeding that admonition is easier said than done. The

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Brown Bag Seminar

Free!

June 14 @ 12:00pm - Bring your lunch!

Topic of the Month:
Arraignment/Detention Hearing

* First of two handouts will be given

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U.S. Probation office
201 St. Michael Street, Suite 200
Mobile, Alabama 36602

choices presented to defendants have little meaning in the abstract. Take for instance the following scenarios taken from "Mephistophelian Deals:"

(1) In some cases the only viable option for our client is a plea offer that includes charge bargaining. For example, the client is prosecuted for trafficking one kilogram of heroin. That charge carries a 10-year mandatory minimum. The client, however, has a prior felony conviction for drug trafficking. Therefore, the charge, if the government pleads the prior conviction, carries a 20-year mandatory minimum. If your risk/benefit analysis precludes a trial, then you must obtain for your client a deal in which the government promises not to plead the prior drug felony. The government agrees, as long as your client signs a plea agreement with the Brady waiver terms. The government says, "Take it or leave it;"

(2) A multi-count armed bank robbery, [or carjacking], case in which the result of the government adding each robbery count a using or carrying a gun count unuder 18 U.S.C. § 924 (c) would be a sentence increment of 60, 80 or more years; (3) A bank embezzlement case that could be charged as misdemeanor, thus preserving a young client's option to pursue a professional career; or

(3) a false document case that can be disposed in such a way as to compel your client's deportation.

In the above scenarios the government has all the cards. There is little room to maneuver. In some instances the government has been willing to accept a limited waiver of appellate rights. That is, the defendant retains the right to appeal sentences:

1) imposed above guideline range,

2) imposed in violation of law, or

3) involving ineffective assistance of counsel. The rationale for the limited appeal waiver is that the parties entered the plea agreement in good faith and neither side would agree to a conviction or sentence which exceeds the limits imposed by law. At minimum, the limited waiver protects the integrity of the bargain made. Without, however, the bargained for grounds listed above, the waiver of appeal is generally not warranted.

A BASIC CIVICS LESSON

BY KRISTEN GARTMAN ROGERS

Since I began doing appellate work in the Federal Defenders Office about six months ago, I have interviewed approximately 20 clients. Although each of those clients had a general awareness of their right to appeal their conviction or sentence, not one of them could identify the court in which the appeal would be made. I have not met a single client who knew that Alabama is located in the Eleventh Federal Judicial Circuit or knew that the Eleventh Circuit Court of Appeals sits in Atlanta, Georgia. In fact, very few of our clients know why they are being prosecuted in federal court, as opposed to state court, or can even distinguish between the two systems.

These facts are not entirely surprising. A May 23 editorial in the Mobile Press Register entitled "If Our Politics Is Broken, Public Apathy Is to Blame" reveals disappointing truths about the general public's knowledge of our federal system of government. A survey conducted as part of the National Assessment of Educational Progress in 1998 found that more than 75% of highschool seniors were less than proficient in civics. Thirty-five percent showed an understanding of American government that was below basic. Only 6% of eighth graders were able to describe two ways that countries benefit from having a constitution. Charles Quigley, executive director of the Center for Civic Education, worries that "[t]he vast majority of U.S. students are either not

being taught civics and government at all or they are being taught too little, too late, and inadequately."

Our clients are certainly among that "vast majority" and are likely less knowledgeable than the average student. Federal appellate defenders cannot take it for granted that our clients know anything at all about the process of which they are part. As a result, I have begun sending to my appellate clients, as part of my initial correspondence to them concerning their appeals, a sheet which explains in very basic and general terms the structure of the federal court system and the appellate process. Much of the information is borrowed directly from the Federal Judiciary's official website located at http://www.uscourts.gov. This information has been attached as the final page of this newsletter for use by panel attorneys. Please copy it and distribute it to your own clients whose cases are on appeal.

FEDERAL DEFENDER TRAINING GROUP

Presents

Advanced Trial Skills Workshop September 8 -10, 2000 Atlanta, GA

The Federal Judicial Center is holding an advanced trial skills workshop for federal defenders and panel attorneys at the Ritz-Carlton Hotel (Downtown) in Atlanta, Georgia. This new program is being developed in conjunction with an advisory group of defenders and the AO Defender Services Division. This program is designed for the ***truly experienced trial lawyer*** who wants to push the envelope and try new ideas for trying cases. Lawyers who should consider this program are those who have already attended the NCDC program in Macon (or a similar week long trial skills program), or other trial skills programs like the NCDC Advanced Cross Examination Workshop or Theories and Themes, and who are looking for a really advanced program. Lawyers who regularly teach trial practice are encouraged to attend this workshop. Workshop facilitators (faculty) will be selected from the attendees, and not brought in from the outside.

Participants will be required to prepare a case file (including relevant documents) from one of their current cases by mid-August for use in the program. Attendance will be limited and the spaces will be filled on a first-come, first-served basis. Please contact Carlos Williams @ 433-0910 or carlos_williams@fd.org for more information.

Additional upcoming seminars

August 2-8: Santa Clara Death Penalty Conference, Santa Clara (Linda McGrew)

August 17-20: National Habeas Conference, Nashville, Tenn.

September 8-10: Advanced Trial Skills (A New Program - for Federal Defender attys and limited invitation CJA Panel attorneys), Atlanta, Georgia (Chuck Arberg)

September 14-17: National Program on Forensics (TBA) (Linda McGrew)

REVERSED AND REMANDED

BY CHRISTOPHER KNIGHT

The opinions cited below were reversed either in whole or in part for the reasons stated. These opinions are contained in the Federal Reporter and Supreme Court Reporter Advance Sheets. They are published opinions, including significant habeas decisions, with official citations. Opinions of the United States Court of Appeals for the Eleventh Circuit are listed in **bold face type** for your convenience. The opinions themselves should be consulted for detailed rationale and supporting authority. The official reporters consulted are 197 F.3d through 205 F.3d and 120 S. Ct.

United States Supreme Court

Smith v. Robbins, 120 S. Ct. 746 (2000)(states are free to

adopt procedures different from those in Anders v. California, 386 U.S. 738 (1967), so long as those procedures protect indigent defendant's right to appellate counsel; arguable issues, though wholly frivolous, need not be raised; but arguable issues in the normal sense require merits brief; California's Wende procedure, under which counsel remains silent on the merits of the case and offers to brief issues at the court's direction, comports with the requirements of due process and equal protection under the Fourteenth Amendment).

Roe v. Flores-Ortega, 120 S. Ct. 1029 (2000)(defendant did not consent to attorney's failure to file notice of appeal: held not deficient performance on its face).

Florida v. J.L., 120 S. Ct. 1375 (2000)(anonymous tip lacked sufficient indicia of reliability to establish reasonable suspicion for *Terry* investigative stop).

United States Courts of Appeals

United States v. Barnett, 197 F.3d 138 (5th Cir. 1999)(insufficient evidence of intent in murder conspiracy prosecution).

United States v. Rodriguez, 197 F.3d 156 (5th Cir. 1999)(trial judge improperly participated in plea negotiations–error not harmless).

United States v. Messer, 197 F.3d 330 (9th Cir. 1999)(delay unreasonable in violation of Speedy Trial Act; evidence insufficient as to one defendant in money laundering prosecution).

Dubria v. Smith, 197 F.3d 390 (9th Cir. 1999)(inflammatory statements in pre-trial interview required redaction; deficient performance by counsel in not objecting to characterization of defendant by prosecutor as "piece of garbage" and in suggesting that evidence not presented to jury supported murder charges).

United States v. Spears, 197 F.3d 465 (10th Cir. 1999)(insufficient evidence that defendant was organizer or leader).

United States v. McSwain, 197 F.3d 472 (10th Cir. 1999)(conspiracy charge was lesser included offense of CCE charge for which defendant was convicted and required vacation of conspiracy conviction).

United States v. Breedlove, 197 F.3d 524 (D.C. Cir. 1999)(improper supervised release term of 5 years for Class C felony).

United States v. Miller, 197 F.3d 644 (3rd Cir. 1999)(district court improperly characterized two post-conviction motions as one, effectively barring defendant from filing later full-fledged collateral attack on his conviction).

United States v. Pigee, 197 F.3d 879 (7th Cir. 1999)(constructive amendment by instruction to jury that government had to prove defendant made building available for unlawful purpose deprived defendant of Fifth Amendment right to indictment by grand jury).

Henry v. Kernan, 197 F.3d 1021 (9th Cir. 1999)(admission of involuntary confession not harmless).

United States v. Hunerlach, 197 F.3d 1059 (11th Cir. 1999)(insufficient evidence to support conviction for filing false statement; interest and penalties improperly included in "tax loss" for sentencing purposes).

United States v. Ward, 197 F.3d 1076 (11th Cir. 1999)(insufficient evidence of making false oaths in bankruptcy fraud prosecution, but sufficient evidence to sustain conviction for money laundering).

United States v. Williams, 197 F.3d 1091 (11th Cir. 1999)(20 day period for filing motions not to be excluded from Speedy Trial Act calculations; defendant entitled to jury charge instruction on lesser included offense of simple assault).

United States v. Stevens, 197 F.3d 1263 (9th Cir. 1999)(district court relied on impermissible factors in determining that defendant did not fall within the heartland of offenders sentenced for possessing child pornography and in downwardly departing; district court erred as a matter of law in relying on absence of

other crimes as a matter of mitigation; it was erroneous as a matter of law for court to downwardly depart based on factors inherent in use of a computer).

Hogan v. Gibson, 197 F.3d 1298 (10th Cir. 1999)(evidence in capital murder case warranted instruction on lesser-included offense of first degree manslaughter).

United States v. Miranda, 197 F.3d 1357 (11th Cir. 1999)(conspiracy to launder money violated ex post facto clause; sentence enhancement based on amount of funds laundered could not include transactions which predated enactment of statutes prohibiting money laundering).

United States v. Myers, 198 F.3d 160 (5th Cir. 1999)(plain error to require defendant to make immediate payment of $40,000 in restitution when he was unable to do so).

United States v. Farrow, 198 F.3d 179 (6th Cir. 1999)(impermissible double counting by relying on same conduct, use of car as dangerous weapon, in determining that defendant committed aggravated assault and in applying 4-level enhancement for otherwise using a dangerous weapon).

Bell v. Jarvis, 198 F.3d 432 (4th Cir. 1999)(violation of right to public trial in closing courtroom simply because young victim of sex crime will testify; appellate counsel ineffective in not raising the issue).

Johnson v. Karnes, 198 F.3d 589 (6th Cir. 1999)(declaration of manifest necessity in declaring mistrial an abuse of discretion after defense counsel introduced evidence of prior acquittal of defendant on related charge).

Conde v. Henry, 198 F.3d 734 (9th Cir. 1999)(right to counsel denied by precluding attorney from arguing theory of defense; requested jury instruction on simple kidnapping should have been given; error to modify California pattern jury instruction to remove immediate presence requirement for robbery).

United States v. Rodriguez-Lopez, 198 F.3d 773 (9th Cir. 1999)(absence of government consent did not necessarily preclude downward departure on basis of defendant's stipulation of deportation).

United States v. Castillo-Casiano, 198 F.3d 787)(plain error for district court not to consider nature of aggravated felony which resulted in increased base offense level in deciding whether downward departure appropriate).

United States v. Williams, 198 F.3d 988 (7th Cir. 1999)(remanded for proper sentence of 10 years, the maximum, under False Information counts).

United States v. Waites, 198 F.3d 1123 (9th Cir. 2000)(homeless defendant charged with trespassing on federal facility for sleeping in post office did not violate postal regulation prohibiting disorderly conduct).

United States v. Daas, 198 F.3d 1167 (9th Cir. 1999)(abuse of discretion to deny downward departure due to sentencing disparity with co-defendants).

United States v. Palafox-Mazon, 198 F.3d 1183 (9th Cir. 2000)(not clear error for district court to conclude that defendants did not engage in joint criminal activity and in sentencing defendants to amount of marijuana each personally carried).

United States v. Bartsma, 198 F.3d 1191 (10th Cir. 1999)(failure to justify degree of upward departure; reasonable presentence notice necessary to impose special condition of release requiring registration as sex offender).

United States v. Magluta, 198 F.3d 1265 (11th Cir. 1999)(improper reliance on same conduct to depart for "loss of confidence in an important institution" and for "significant disruption of a governmental function;" error to enhance base level by nine levels for bail jumping).

United States v. Chastain, 198 F.3d 1338 (11th Cir. 1999)(improper enhancement based on use of private airplane in drug importation case).

Prou v. United States, 199 F.3d 37 (1st Cir. 1999)(information seeking enhanced sentence due to prior drug conviction must be given prior to trial; failure of counsel to object on this ground was procedural default; failure of counsel to object on this ground was ineffective assistance).

Bennett v. Artuz, 199 F.3d 116 (2nd Cir. 1999)(since petitioner's motion to vacate was "pending" in state court when he filed his federal habeas petition, even though it was considered successive petition under New York rules, state-petition tolling provision applied, and petition was not time-barred under AEDPA).

United States v. Morley, 199 F.3d 129 (3rd Cir. 1999)(prior bad acts evidence of obtaining improper notarization of signatures on bonds was not relevant to issue of defendant's knowledge or intent in bank fraud/mail fraud prosecution).

United States v. Hassouneh, 199 F.3d 175 (4th Cir. 2000)(error in instructing jury on term "maliciously" and error to exclude evidence that defendant was a prankster in prosecution for falsely stating there was bomb in bag he sought to place aboard civil aircraft).

United Sates v. Dortch, 199 F.3d 193 (5th Cir. 1999)(continued detention after legitimate justification for traffic stop had ended was unreasonable seizure; evidence discovered as result of unreasonable seizure was fruit of poisonous tree, and consent was invalid).

United States v. Owusu, 199 F.3d 329 (6th Cir. 2000)(insufficient evidence of distribution of heroin).

United States v. Blackwell, 199 F.3d 623 (2nd Cir. 1999)(where district court did not draw attention to appeal waiver and did not discuss with defendant elements of charged crime, plea was not knowing, intelligent and voluntary).

United States v. Zwick, 199 F.3d 672 (3rd Cir. 1999)(fact that government had to prepare for trial did not foreclose defendant from receiving one point reduction in offense level for acceptance of responsibility).

United States v. Olaniyi-Oke, 199 F.3d 767 (5th Cir. 1999)(insufficient evidence of money laundering in unauthorized use of credit card to purchase computers only for personal use).

United States v. Hartsel, 199 F.3d 812 (6th Cir. 1999)(receipt of mailed bank statements by defendant did not constitute "use of the mails" in mail fraud prosecution).

United States v. Shafer, 199 F.3d 826 (6th Cir. 1999)(failure to pay overtime wages by defendant in violation of Fair Labor Standards Act should not have been included as relevant conduct in false statements prosecution).

Barker v. Yukins, 199 F.3d 867 (6th Cir. 19999)(Michigan Supreme Court's finding of harmless error in trial court's failure to instruct jury that petitioner would have been justified in using deadly force to stop imminent rape was unreasonable application of federal law and was improper invasion of jury's province and prevented petitioner from presenting full defense).

United States v. Johnston, 199 F.3d 1015 (9th Cir. 1999)(district court was required to determine there was no duplication of restitution, including moneys forfeited to the government and those paid by co-defendants).

United States v. Kubick, 199 F.3d 1051 (9th Cir. 1999)(Remanded for restitution under MRVA; amount could not exceed fine about which defendant advised at Rule 11 colloquy).

United States v. Guidry, 199 F.3d 1150 (10th Cir. 1999)(enhancement for abuse of position of trust improper).

Haro-Arteaga v. United States, 199 F.3d 1195 (10th Cir. 1999)(motion to vacate was not successive under AEDPA where previous two motions had been voluntarily dismissed).

United States v. Figueroa, 199 F.3d 1281 (11th Cir. 2000)(defendant must make a complete and truthful disclosure of her knowledge of the crime in order to qualify for the safety valve).

United States v. Cover, 199 F.3d 1270 (11th Cir. 2000)(evidence in robbery prosecution showed firearms were "otherwise used" and not merely "brandished," requiring remand to apply the six-level enhancement and not the five-level enhancement for brandishing).

United States v. Brewer, 199 F.3d 1287 (11th Cir. 2000)(conviction under 21 U.S.C. § 841(a)(1) for possession with intent to distribute was lesser included offense of violation of 21 U.S.C. § 861(a)(1), using minor to distribute cocaine base, requiring reversal on double jeopardy grounds).

United States v. Tocco, 200 F.3d 401 (6th Cir. 2000)(no specific factual findings on what underlying racketeering activity used to determine base offense level; community involvement invalid basis for downward departure if substantially financial).

United States v. Tank, 200 F.3d 627 (9th Cir. 2000)(insufficient evidence that defendant was organizer or leader).

United States v. Dice, 200 F.3d 978 (6th Cir. 2000)(violation of knock-and-announce rule during execution of valid search warrant warranted suppression of evidence).

Hernandez v. Cowan, 200 F.3d 995 (7th Cir. 2000)(ineffective cross-examination of government witness violated Sixth Amendment).

United States v. Cunningham, 201 F.3d 20 (1st Cir. 2000)(defendant did not have to admit facts of forfeiture in order to be eligible for reduction for acceptance of responsibility).

United States v. Joyner, 201 F.3d 61 (2nd Cir. 2000)(district court did not properly consider 18 U.S.C. § 3664 factors in setting restitution).

United States v. Rivera, 201 F.3d 99 (2nd Cir. 2000)(five level increase for refusal to cooperate with government following conviction violated defendant's Fifth Amendment rights).

United States v. Faulks, 201 F.3d 208 (3rd Cir. 2000)(Defendant's absence at resentencing required reversal for violation of Confrontation Clause and Rule 43).

United States v. Thayer, 201 F.3d 214 (3rd Cir. 2000)(merely committing bankruptcy fraud did not warrant enhancement for violation of a judicial process).

Rios v. Wiley, 201 F.3d 257 (3rd Cir. 2000)(petitioner entitled to habeas relief under U.S.S.G. § 5G1.3(c) and to credit for time spent while awaiting writ of habeas corpus ad prosequendum).

United States v. Gormley, 201 F.3d 290 (4th Cir. 2000)(enhancement due to alleged "special skill" of tax preparation did not warrant upward adjustment).

Boyle v. Million, 201 F.3d 711 (6th Cir. 2000)(flagrant prosecutorial misconduct during cross examination warranted habeas relief).

White v. Schotten, 201 F.3d 743 (6th Cir. 2000)(petitioner had constitutional right to effective assistance of counsel with respect to filing application to reopen direct appeal).

United States v. Vandenberg, 201 F.3d 805 (6th Cir. 2000)(enhancement for managerial role not warranted).

United States v. Polichemi, 201 F.3d 858 (7th Cir. 2000)(error not to excuse for cause prospective juror who worked for U.S. Attorney who prosecuted case).

United States v. Santos, 201 F.3d 953 (7th Cir. 2000)(denial of motion to continue due to counsel's scheduling conflict was abuse of discretion; numerous evidentiary errors not harmless).

United States v. Anderson, 201 F.3d 1145 (9th Cir. 2000)(failure to give instruction on involuntary manslaughter in voluntary manslaughter prosecution).

Lajoie v. Thompson, 201 F.3d 1166 (9th Cir. 2000)(preclusion of relevant evidence of past abuse of victim by third parties violated Confrontation Clause and right to compulsory process).

United States v. Dixon, 201 F.3d 1223 (9th Cir. 2000)(clear error for imposing enhanced sentence for creating substantial risk of death or serious bodily injury where illegal aliens were put in trunk of vehicle).

United States v. Rowe, 202 F.3d 37 (1st Cir. 2000)("intended loss" calculation clearly erroneous).

United States v. Rosario-Diaz, 202 F.3d 54 (1st Cir. 2000)(insufficient evidence in carjacking prosecution).

United States v. Walker, 202 F.3d 181 (3rd Cir. 2000)(official victim enhancement not warranted where prison cook supervisor who was attacked did not spend significant time guarding prisoners).

United States v. Abreu, 202 F.3d 386 (1st Cir. 2000)(application of indigent defendant for government funding of expert services must be heard ex parte).

Wray v. Johnson, 202 F.3d 515 (2nd Cir. 2000)(unreliable showup identification violated due process-error not harmless).

United States v. Ahmad, 202 F.3d 588 (2nd Cir. 2000)(counting seven legal firearms improper in sentencing on conviction for possession of illegal firearms).

Gaines v. Kelly, 202 F.3d 598 (2nd Cir. 2000)(jury instruction defining reasonable doubt seven different ways was constitutionally defective).

United States v. Brown, 202 F.3d 691 (4th Cir. 2000)(erroneous instruction on CCE charge not harmless; special assessment could not be applied for both CCE and conspiracy charges; single unitary sentence for CCE and conspiracy charges improper).

United States v. Dawkins, 202 F.3d 717 (4th Cir. 2000)(economic loss calculated in error).

United States v. Cheska, 202 F.3d 947 (7th Cir. 2000)(prosecutor's remark that witness "convicted 23 other people" was improper because inadequate basis in record to support it).

Park v. California, 202 F.3d 1146 (9th Cir. 2000)(*Brady* and speedy trial claims not procedurally defaulted).

Bowen v. Hood, 202 F.3d 1211 (9th Cir. 2000)(Armed felons could be barred from eligibility for sentence reduction based on completion of treatment program; but restriction could not be retroactively applied).

United States v. Burch, 202 F.3d 1274 (10th Cir. 2000)(one year limitation period for filing petition
for postconviction relief begins to run under AEDPA after time for seeking certiorari has expired; time period is not extended to account for possibility that defendant could file petition for rehearing of denial of petition for certiorari).

United States v. Jamieson, 202 F.3d 1293 (11th Cir. 2000)(defendant's sentence erroneously enhanced based on his possession of a semiautomatic weapon which was not one of the nine weapons specifically banned by the Violent Crime Control Act).

United States v. Tait, 202 F.3d 1320 (11th Cir. 2000)(defendant who had civil rights restored not subject to prosecution under felon-in-possession statute; defendant had license to carry firearm and was, therefore, not subject to conviction for possessing firearm in school zone).

United States v. McKelvey, 203 F.3d 66 (1st Cir. 2000)(single negative film strip containing three images which allegedly depicted minor engaged in sexually explicit conduct did not constitute "3 or more" matters required for conviction under 18 U.S.C. § 2252(a)).

United States v. Leon-Delfis, 203 F.3d 103 (1st Cir. 2000)(erroneous admission of confession not harmless).

United States v. Carter, 203 F.3d 187 (2nd Cir. 2000)(past misdemeanor conviction for harassment could not be counted in calculating criminal history score).

United States v. Clark, 203 F.3d 358 (5th Cir. 2000)(petitioner exhausted state remedies and was in custody; hence, petition should not have been dismissed).

United States v. Swiney, 203 F.3d 397 (6th Cir. 2000)(Sentencing Guidelines reasonable foreseeability analysis, not theory of co-conspirator vicarious liability, determines whether defendant is subject to 20-year minimum sentence based on fact that death resulted from use of heroin distributed by members of conspiracy).

United States v. Hernandez. 203 F.3d 614 (9th Cir. 2000)(denial of self-representation violated Sixth Amendment and rendered defendant's guilty plea involuntary).

United States v. Principe, 203 F.3d 849 (5th Cir. 2000)(guideline dealing with fraudulent acquisition of immigration documents applied, not guideline dealing with trafficking in such documents).

Hughes v. Booker, 203 F.3d 894 (5th Cir. 2000)(presumption of prejudice from constructive denial of appellate counsel).

United States v. Tasy, 203 F.3d 1060 (8th Cir. 2000)(insufficient nexus to interstate commerce to form basis for federal jurisdiction).

United States v. Bad Wound, 203 F.3d 1079 (8th Cir. 2000)(time at which defendant joined conspiracy was not determined so that amount of loss could be determined).

United States v. Guess, 203 F.3d 1143 (9th Cir. 2000)(government waived potential procedural default by defendant, and record did not support guilty plea).

United States v. Carboni, 204 F.3d 39 (2nd Cir. 2000)(resentencing required as to restitution).

United States v. Breedlove, 204 F.3d 267 (D.C. Cir. 2000)(term of supervised release exceeded statutory maximum).

Morgan v. Bennett, 204 F.3d 360 (2nd Cir. 2000)(Confrontation Clause claims were properly exhausted by habeas petitioner).

Swartz v. Meyers, 204 F.3d 417 (3rd Cir. 2000)(habeas limitations period tolled until expiration of time in which petitioner could seek appeal from denial of postconviction relief).

United States v. Jones, 204 F.3d 541 (4th Cir. 2000)(conviction of possession of cocaine merged into conviction for possession with intent to distribute for sentencing purposes).

Hernandez v. Campbell, 204 F.3d 861 (9th Cir. 2000)(error in transferring venue of habeas claim).

United States v. Romines, 204 F.3d 1067 (11th Cir. 2000)(defendant could not be required to pay restitution to theft victims since crime of conviction was escape and government was victim).

United States v. Morrison, 204 F.3d 1091 (11th Cir. 2000)(court lacked jurisdiction to correct sentence after 7 days).

United States v. Colvin, 204 F.3d 1221 (9th Cir. 2000)(limitations period for filing motion to vacate does not begin to run on case which was remanded until amended judgment is entered and time in which to appeal amended judgment has expired).

United States v. Brownlee, 204 F.3d 1302 (11th Cir. 2000)(defendant entitled to safety valve even if he failed to truthfully disclose information related to his offenses).

United States v. Thayer, 204 F.3d 1352 (11th Cir. 2000)(amount of restitution ordered was abuse of discretion).

Combs v. Coyle, 205 F.3d 269 (6th Cir. 2000)(prosecutor's use of statement at scene of crime where defendant told officer to talk to his lawyer violated right against self-incrimination; failure of counsel to object on that ground was ineffective assistance; failure to investigate expert witness was ineffective assistance).

United States v. Sanders, 205 F.3d 549 (2nd Cir. 2000)(prior minor offense of "fare-beating" should not have been included in criminal history score calculation).

United States v. Wilson, 205 F.3d 720 (4th Cir. 2000)(Fourth Amendment does not allow traffic stop merely for temporary tags, and firearm seized as fruit of the unlawful stop should have been excluded).

Perillo v. Johnson, 205 F.3d 775 (5th Cir. 2000)(attorney's actual conflict of interest affected his performance at trial).

United States v. Maloof, 205 F. 3d 819 (5th Cir. 2000)(conclusion that three other employees were participants in criminal activity, without first determining that each was responsible for the commission of an offense, was error).

United States v. Lanzotti, 205 F.3d 951 (7th Cir. 2000)(no factual predicate to support district court's conclusion that defendant acted as manager or supervisor).

United States v. Fernandez, 205 F.3d 1020 (7th Cir. 2000)(defendant was not sufficiently aware of conspiracy crime to which he pleaded guilty and not aware of minimum mandatory sentence).

Smith v. Groose, 205 F.3d 1045 (8th Cir. 2000)(use of one of codefendant's two factually contradictory versions of events to convict defendant coupled with use of other version to convict another codefendant at later trial warranted habeas relief).

Roney v. United States, 205 F.3d 1061 (8th Cir. 2000)(violation of rule entitling petitioner to appointed counsel on his motion to vacate sentence was not harmless error).

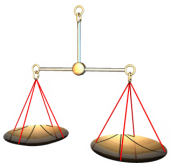
United States v. Miller, 205 F.3d 1098 (9th Cir. 2000)(district court had authority to modify portion of defendant's fine that was expressly made a condition of supervised release).

United States v. Lopez-Soto, 205 F.3d 1101 (9th Cir. 2000)(officer violated defendant's Fourth Amendment rights in stopping his vehicle based on mistaken belief that the absence of a registration sticker visible from the rear provided a reasonable basis for suspicion of a Baja California, Mexico, vehicle code violation).

United States v. Takahashi, 205 F.3d 1161 (9th Cir. 2000)(erroneous reliance on U.S.S.G. § 2D1.1 to calculate base offense level).

United States v. Johnson, 205 F.3d 1197 (9th Cir. 2000)(district court erred by adding four criminal history points to account for two prior juvenile convictions).

Untied States v. Prather, 205 F.3d 1265 (11th Cir. 2000)(violation of ex post facto clause in levying special assessment of $100 per count).



Effective Assistance published by:
Carlos A. Williams
Executive Director

Edited by:
K. Lyn Hillman Campbell
Assistant Federal Defender

Southern District of Alabama
Federal Defenders Organization
2 South Water Street, 2nd floor
Mobile, Alabama 36602
(334) 433-0910 / 433-0686 Fax
E-mail: pubdef@awireless.net

I. Structure of the Federal Courts

The Supreme Court is the highest court in the federal judiciary. Congress has established two levels of federal courts under the Supreme Court: the trial courts and the appellate courts.

A. Trial Courts

The United States district courts are the trial courts of the federal court system. Within limits set by Congress and the Constitution, the district courts have jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters. There are 94 federal judicial districts, including at least one district in each state, the District of Columbia and Puerto Rico.

The trial court that handled your case was the United States District Court for the Southern District of Alabama.

B. Appellate Courts

The 94 judicial districts are organized into 12 regional circuits, each of which has a United States court of appeals. A court of appeals hears appeals from the district courts located within its circuit.

Your case will be appealed to the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit is made up of three states - Alabama, Georgia and Florida. Although the court hears appeals from the district courts in all three of these states, the court itself sits in Atlanta, Georgia.

C. United States Supreme Court

The United States Supreme Court consists of the Chief Justice of the United States and eight associate justices. At its discretion, and within certain guidelines established by Congress, the Supreme Court each year hears a limited number of the cases it is asked to decide. Those cases usually involve important questions about the Constitution or federal law.

II. The Appeals Process

The losing party in a decision by a trial court in the federal system normally is entitled to appeal the decision to a federal court of appeals.

In a criminal case involving a trial, the defendant may appeal a guilty verdict, but the government may not appeal if a defendant is found not guilty. In the appeal, the defendant will ask the court of appeals to reverse his or her conviction and grant a new trial.

In a criminal case involving a guilty plea, the court of appeals may order the district to allow the defendant to withdraw his or her plea. Successful appeals from guilty pleas are rare.

Either side in a criminal case may appeal with respect to the sentence that is imposed after a guilty verdict or guilty plea.

A party who files an appeal, known as an "appellant," must show that the trial court made a legal error that affected the decision in the case. The court of appeals makes its decision based on the record of the case established by the trial court. It does not receive additional evidence or hear witnesses. The court of appeals may also review the factual findings of the trial court, but typically may only overturn a decision on factual grounds if the findings were "clearly erroneous."

Appeals are decided by panels of three judges working together. The appellant presents legal arguments to the panel, in writing, in a document called a "brief." In the brief, the appellant tries to persuade the judges that the trial court made an error, and that its decision should be reversed. On the other hand, the party defending against the appeal, known as the "appellee," tries in its brief to show why the trial court decision was correct, or why any error made by the trial court was not significant enough to affect the outcome of the case.

In your case, you are the "appellant," and the government is the "appellee."

Although most cases are decided on the basis of written briefs alone, some cases are selected for an "oral argument" before the court. Oral argument in the court of appeals is a structured discussion between the appellate lawyers and the panel of judges focusing on the legal principles in dispute. Each side is given a short time - 15 minutes - to present arguments to the court.

If oral argument is granted, it will likely be held either in Atlanta or Montgomery. You will not need to appear before the court. Only the lawyers are present.

The court of appeals decision will usually be the final word in the case, unless it sends the case back to the trial court for additional proceedings, or the parties ask the U.S. Supreme Court to review the case. In some cases, the decision may be reviewed "en banc," that is, by a larger group of judges (usually all) of the court of appeals for the circuit. That usually only happens when the three-judge panel that decides your case disagrees with a decision made by another three-judge panel in another case.

A litigant who loses in a federal court of appeals may file a petition for a "writ of certiorari," which is a document asking the Supreme Court to review the case. The Supreme Court, however, does not have to grant review. The Court typically will agree to hear a case only when it involves an unusually important legal principle, or when two or more federal courts of appeal have interpreted a law differently. When the Supreme Court hears a case, the parties are required to file written briefs and the Court may hear oral argument.

You should not expect that your case will automatically be reviewed by the appeals court "en banc" or by the U.S. Supreme Court. Most cases are not. Therefore, your appeal to the Eleventh Circuit will likely be the last step in the appeals process in your case.