FEDERAL POST CONVICTION HANDBOOK

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I. MESSAGE FROM THE AUTHOR

This handbook applies to people and corporations prosecuted by the federal government. If the prosecution took place in a State court, this handbook does not apply. A state handbook for Pennsylvania prisoners is available at www.cheryljsturm.com.

The information contained in this handbook is subject to change without notice. Post conviction law is an extremely complicated and volatile area of the law. This booklet is intended as a tool for people who want to understand the basics of federal post conviction criminal law. It is not an adequate substitute for legal advice by a skilled attorney who practices post- conviction criminal law.

II. CHARGING INSTRUMENT

The Fifth Amendment provides, in pertinent part, as follows: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury...nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law... “

"Because of this constitutional guarantee, a court cannot permit a defendant to be tried on charges that are not made in the indictment against him." ***United States v. Vosburgh***, 602 F3d 512, 531 (3d Cir. 2010).

The Fifth Amendment prohibits constructive amendment of the indictment to conform to the proof at trial. ***United States v. Centeno***, 793 F3d 378 (3d Cir. 2015), ***United States v. Daraio,*** 445 F3d 253, 259-60 (3d Cir. 2006).

A constructive amendment occurs when "evidence, arguments, or the district court's jury instructions effectively amends the indictment by broadening the possible bases for conviction from that which appeared in the indictment." ***United States v. McKee***, 506 F3d 225, 229 (3d Cir. 2007)

To determine whether the Government constructively amended the Indictment here, the Court considers whether: (1) through its summation, the Government effectively "modif[ied]

essential terms of" the aiding and abetting charges, ***Daraio***, 445 F3d at 259; and (2) in so doing, "broaden[ed] the possible bases for conviction from that which appeared in the [I]ndictment," ***McKee***, 506 F3d at 229.

One of the very first things you have to ask yourself is whether the facts set forth in the indictment match the facts proven at the trial. If the facts don't match, there's a chance the conviction can be overturned.

III. PRETRIAL MOTIONS

A. DISCOVERY

Before commencement of trial or before the entry of a guilty plea, there is a limited right to pretrial discovery and inspection pursuant to the Jencks Act, 18 U.S.C. 3500, Rule 16 F.R.Crim.P. and ***Brady v. Maryland***, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)["Brady"][Prosecution must produce evidence favorable to the defense] and ***Giglio v. United States***, 405 U.S. 150, 154-55, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972)[State must disclose promises or understandings made to its witnesses].The Government has a continuing obligation to disclose ***Brady/Giglio*** material, which includes information of any kind or description that could be used by a skilled defense attorney to put the case in a different light. This obligation includes production of any promise, understanding, or possible understanding made to any prosecution witness. This obligation cannot be forfeited or waived.

B. MIRANDA WARNINGS

Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) requires that, before custodial questioning, the suspect must be informed that he has the right to remain silent, that any statement he makes can be used against him, that he has the right to the presence of an attorney, either retained or appointed. ***Id.*** at 455. ***Miranda*** warnings are constitutionally required to counterbalance the compelling pressures inherent in a custodial police interrogation and to permit full opportunity to exercise the privilege against self-incrimination guaranteed by the Fifth Amendment. ***Miranda*** warnings are rights of constitutional magnitude. ***Dickerson v. United States***, 530 U.S. 428, 440, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000). Statements obtained in violation of ***Miranda*** are inadmissible at trial even if they are voluntary. ***Michigan v. Mosley***, 423 U.S. 96, 100, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975). If the accused files a motion to suppress alleging the statements were involuntary, the Government has the burden of proving, by a preponderance of the evidence, that the accused was properly advised of his ***Miranda*** rights, and that the accused knowingly, intelligently and voluntarily waived the ***Miranda*** rights. ***Colorado v. Connelly***, 479 U.S. 157, 169, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986). "A defendant may waive his ***Miranda*** rights if the waiver is made knowingly, intelligently and voluntarily." ***United States v. Pruden***, 398 F3d 241, 246 (3d Cir. 2005). To determine whether the waiver was knowing, intelligent and voluntary, the Government must prove two things:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than

intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. ***Moran v. Burbine***, 475 U.S. 412, 421, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986).

C. SEARCH AND SEIZURE

Searches and seizures accomplished through a search warrant are presumptively valid unless the warrant is so lacking in substance that no reasonable, rational law enforcement officer would rely on it.

If evidence was obtained as a result of the warrantless search of a home, motor vehicle or person, the defense usually files a motion to suppress physical evidence obtained in violation of the Fourth Amendment right not to be subjected to unreasonable searches and seizures. Searches and seizures conducted without a search warrant are presumptively unreasonable. There are, however, specific exceptions to the warrant requirement including "consent." The exceptions are evaluated on a case by case basis and are beyond the scope of this booklet.

In addition to suppression of the evidence obtained as a result of an unreasonable search, the defense can move for the suppression of the fruit of the poisonous tree. ***Wong Sun v. United States***, 371 U.S. 471, 9 L.Ed.2d 441, 83 S.Ct. 407 (1963). According to the majority opinion, derivative evidence, such as physical evidence, a confession, or the testimony of a witness must be suppressed as "fruit of the poisonous tree" if it was discovered by exploitation of an illegal search. See, for example, ***Oregon v. Elstad***, 470 U.S. 298, 305-06, 84 L.Ed.2d 222, 105 S.Ct. 1285 (1985)[explains that the "fruit of the poisonous tree" doctrine is drawn from ***Wong Sun***, where "the Court held that evidence and witnesses discovered as a result of a search in violation of the Fourth Amendment must be excluded from evidence."].

IV. THE TRIAL PROCESS

At trial, the Sixth Amendment guarantees the following rights: (1) the right to confront government witnesses against the accused, (2) the right to call witnesses for the defense, and (3) the right to reasonably effective assistance of counsel. The right to reasonably effective assistance of counsel does not attach until a charging instrument has been filed.

At trial, the Sixth Amendment guarantees the right to a fair and impartial jury consisting of twelve members of the community chosen at random. Conviction or acquittal requires a unanimous verdict of guilty or not guilty. If the jury does not reach a unanimous verdict, anything can happen. Sometimes, the case is dropped. Sometimes there is a retrial by a different jury. Sometimes the Government makes an offer that no reasonable person would refuse.

V. THE GUILTY PLEA

Most federal cases are resolved by a plea agreement. Pursuant to the plea agreement, the accused agrees to enter a guilty plea and the government offers something of value in exchange

("consideration"). A plea agreement is a special form of contract which means it is governed by contract law principles and must be supported by consideration. Sometimes, as consideration, the government agrees to reduce the charges. Sometimes, the government agrees to drop counts. Sometimes, the government agrees that a sentence will run concurrent with a State sentence. The plea agreement is a special form of contract because it involves a waiver of valuable constitutional rights. When the accused enters a guilty plea, it constitutes a knowing, intentional and voluntary admission of facts sufficient to establish the elements of the criminal offense(s) charged in the charging instrument, and it waives (gives up) all non-jurisdictional defenses including, but not limited to, claims that the evidence was obtained in violation of the Fourth Amendment right against unreasonable searches or seizures, the Fifth Amendment right against compulsory self-incrimination, and double jeopardy and the Sixth Amendment right to a speedy trial, and the right to call defense witnesses. The entry of a guilty plea waives (gives up) all pretrial defenses unless specifically preserved in a written plea agreement. The entry of a guilty plea does not waive the right to appeal or file a post conviction motion or petition unless the accused specifically waives those rights in a written plea agreement. The entry of a guilty plea does not waive the Sixth Amendment right to effective assistance of counsel in connection with the negotiation of the plea agreement. The entry of a guilty plea does not waive the claim that the plea was not knowing, intelligent, and voluntary. For example, an accused under the influence of drugs at the time of the plea cannot enter a knowing, intelligent and voluntary plea. An incompetent person cannot plead guilty knowingly, intelligently and voluntarily.

VI. SENTENCING PROCEDURES

Apprendi vs. New Jersey, 530 U.S. 466, 490,120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) held:

> other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.

A sentence above the statutory maximum is an illegal sentence, and can be corrected at any time.

Alleyne v. United States, 570 U.S.___, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013) held that the facts necessary to impose a mandatory minimum sentence must be alleged in the indictment, charged to the jury, and found by the jury beyond a reasonable doubt. For example, if the Government wants the judge to impose a mandatory minimum sentence of ten years for distribution of cocaine under 21 USC 841(a)(1)(A), the indictment must charge more than 5 kilograms of cocaine, the judge must charge the jury that it must find five kilograms, and the jury must return a verdict finding the offense involves 5 kilograms or more of cocaine.

At sentencing, the district court must compute the sentencing guideline range, consider all 18 U.S.C. 3553(a) factors including the rule of parsimony and the rule requiring that the sentence be consistent with sentences imposed nationally. ***Molino-Martinez v. United States***, 2016 U.S. Lexis 2800 (2016). The District Court must explain the reasons for the sentence even

if it is within the properly calculated guideline range. The sentence is reviewed by an appellate court for procedural and substantive reasonableness.

VII. THE APPELLATE PROCESS

After imposition of sentence, the accused has the right to appeal. The appeal is restricted to errors of law that appear in the trial record. Ordinarily, the appellate court will not consider an error of law not supported by the trial record. The deadline for filing the notice of appeal is ten days from the date of imposition of sentence. The deadline is jurisdictional, which means that if the deadline is missed, the right to appeal is lost unless the trial judge grants a motion for enlargement of time for good cause shown. If the notice of appeal is filed on time, the Clerk of the Court issues a briefing schedule. The accused, now called the "Appellant," files the initial brief which identifies the pertinent issues with supporting argument. Thirty days later, the government files a reply brief. Fourteen days later, the Appellant files a brief responding to the government's reply brief. After briefing, a panel consisting of three judges is assigned to the case. Each appellate court has its own system. Some appellate courts hold oral argument in every case. Some grant oral argument sparingly.

A criminal defendant is not entitled to a perfect trial. As such, few trials (if any) are free of error. The appellate court applies the following standards of review to an error of law presented on appeal. First, a legal error noticed and preserved by appropriate and timely objection is subject to de novo or plenary review, which means the appellate court will reverse the conviction and/or the sentence if the trial judge made an error of law, and the Government cannot show the error was harmless beyond a reasonable doubt. Second, a legal error not preserved by appropriate and timely objection is reviewed for plain error, which means the accused must show that the legal error was so significant that it resulted in an unfair trial or based on an inaccurate computation of the sentencing guidelines.

VIII. THE PETITION FOR CERTIORARI

If the appellate court affirms the judgment of conviction and sentence (denies the appeal), the accused has the right to file a petition for discretionary review with the United States Supreme Court. The deadline for filing the petition for certiorari is ninety (90) days from the date the appellate court affirmed the judgment of conviction and sentence.

IX. THE 2255 MOTION

An individual convicted in a federal court has the right to file a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. 2255. [hereinafter called "2255 motion"]. This motion is intended to afford federal prisoners a remedy identical in scope to federal habeas corpus. ***Davis v. United States***, 417 U.S. 333, 343-44, 41 L.Ed.2d 109, 94 S.Ct. 2298 (1974). "There can be no doubt that the grounds for relief under Section 2255 are equivalent to those encompassed by Section 2254, the general federal habeas corpus statute, under which relief is available on the ground that '[a person] is in custody in violation of the Constitution or laws or treaties of the United States'" ***Id***. The rationale for replacing habeas corpus with the 2255 motion was to reduce the burden on district courts where prisons were

located, and distribute the case load evenly by having the 2255 motion considered by the district court where the sentence was imposed.

The 2255 motion is **not** a substitute for an appeal. ***Sunai v. Large***, 332 U.S. 174, 67 S.Ct. 1588, 91 L.Ed.1982 (1947). In ***Sunai***, the Supreme Court held that an appeal is the procedure that must be used to correct routine trial errors. The failure to file a direct appeal can result in a catastrophic waiver of the right to challenge routine trial errors.

The 2255 motion is a statutory replacement for the common law writ of habeas corpus. What makes the 2255 so valuable is that it's the first opportunity to enlarge the trial record with new evidence, and make new arguments based on the enlarged record.

The 2255 motion is an exception to the principles of finality and it is a procedural device that allows the accused to relitigate previously decided issues based on the enlarged record. ***United States v. Woods***, 986 F2d 669, 676 (3d Cir.), cert. den. 126 L.Ed.2d 58, 114 S.Ct. 90 (1993). In ***Kauffman v. United States***, 394 U.S. 217, 222-23 note 7, 89 S.Ct. 1068, 22 L.Ed.2d 227 (1969), the Supreme Court criticized lower courts that denied review of constitutional claims without providing adequate reasons for the denial. In ***Sanders v. United States***, 373 U.S. 1, 83 S.Ct. 1068, 10 L.Ed.2d 148 (1963), the Supreme Court stated, "Conventional notions of finality have no place where life or liberty is at stake and infringement of constitutional rights is alleged."

CAUTION: The 2255 motion must allege violations of the constitution or laws of the United States, or it will be dismissed.

For example, the 2255 motion is used to present a claim of ineffective assistance of counsel ["IAC"] based on ***Strickland vs. Washington***, 466 U.S. 668, 685, 104 S.Ct. 2052, 2063, 80 L.Ed.2d 674 (1984)["Strickland"]. An IAC claim has two elements: (1) proof of objectively deficient performance, and (2) proof of a reasonable probability of a different outcome but for the deficient performance.

The 2255 motion is the first opportunity to allege IAC because it is the first opportunity to develop the record. The 2255 motion alleging IAC must show that counsel's performance was deficient. There is a presumption that counsel was competent, and 2255 movant has to overcome the presumption of competency with proof of objectively deficient performance. In addition, the 2255 movant has to show a reasonable probability that the outcome would have been different but for counsel's incompetence.

The 2255 motion is the first opportunity to claim prosecutorial misconduct which usually comes in all colors and sizes. Usually, it involves failure to disclose information material to the defense, or failing to disclose the benefits offered to one of its witnesses. A 2255 motion alleging a ***Brady*** claim must show non disclosure of information and a reasonable probability of a different outcome had the information been disclosed.

The 2255 motion also can raise a claim that the Government's evidence is not sufficient to support the verdict, or that the government interfered with the performance of defense counsel by suppressing evidence favorable to the defense.

The deadline for filing the 2255 motion is one year from the date the appeals process came to an end with the conclusion of direct review. Ordinarily, this is the date the United States Supreme Court denied the petition for certiorari but it would be ninety (90) days from the date the court of appeals affirmed the conviction if no petition for certiorari was filed. ***Clay vs. United States,*** 537 U.S. 522, 123 S.Ct. 1072, 155 L.Ed.2d 88 (2003). If no appeal was filed, the deadline is one year and ten (10) days from the date that the judgment of conviction and sentence was entered.

If the 2255 motion is not filed by the deadline, there might be grounds for "equitable tolling."

It is now settled that the AEDPA deadline is subject to "equitable tolling." ***Holland v. Florida***, 130 S.Ct. 2549, 177 L.Ed.2d 130 (6/14/2010) held that there is a rebuttable presumption in favor of equitable tolling. ***Id.*** at 2560. The strength of the presumption is reinforced by the fact that traditional equitable principles have always governed habeas corpus law. ***Id.*** at 2560. "AEDPA's subject matter, habeas corpus, pertains to an area of the law where equity finds a comfortable home." ***Id.*** at 2560. The Court stated that the courts should take a flexible approach to equitable tolling to "relieve hardships which, from time to time, arise from a hard and fast adherence" to more absolute rules, which, if strictly applied, threaten "the evils of archaic rigidity." ***Id.*** at 2560. The diligence required for equitable tolling is "reasonable diligence" for a prisoner not "maximum possible diligence."

Notwithstanding ***Holland, supra***, the federal courts grant equitable tolling sparingly. Failure to file by the deadline makes it less likely that the 2255 motion will be granted.

X. CERTIFICATE OF APPEALABILITY

If the 2255 motion is denied, the next step is to file a notice of appeal with the clerk of the district court, and an application for a certificate of appealability ("COA"). The deadline for filing the notice of appeal is sixty (60) days from the date the district court denied the 2255 motion. COA procedures are not the same in all circuits. In most places, the application for COA is filed in the Court of Appeals. The application for COA must allege the denial of a constitutional right. If the application is denied, the next step is to file a petition for certiorari with the United States Supreme Court. The petition must be filed within ninety (90) days of the date the court of appeals denied the COA.

If the COA is granted, the Clerk of the appellate court issues a briefing schedule. The appellant files the initial brief. Thirty days later, the government files a reply brief. Fourteen days later, the appellant responds to the government's brief. The court may or may not hold oral argument.

XI. SECTION 2241 PETITION FOR HABEAS CORPUS

If the 2255 motion is denied, and there is no other procedure available, the next step is to file a petition for habeas corpus under 28 U.S.C. 2241. The district court will not entertain a petition for habeas corpus unless the petitioner can demonstrate that the 2255 remedy is "inadequate or ineffective" to test the legality of the detention. Ordinarily, a 2241 habeas corpus is available to individuals who can prove that a change in substantive criminal law decriminalized his behavior. Ordinarily, the 2241 remedy is available to DC prisoners claiming ineffective assistance of appellate counsel or prosecutorial misconduct.

XII. 18 U.S.C. 3582(c)(2) MOTION FOR SENTENCE REDUCTION BASED ON A RETROACTIVE AMENDMENT TO THE SENTENCING GUIDELINES MANUAL

A federal court generally may not modify a term of imprisonment once it has been imposed. 18 U.S.C. 3582(c). Congress provided an exception to that rule in the case of an individual sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the United States Sentencing Commission. In those circumstances, the district court is authorized to reduce the term of imprisonment "if such a reduction is consistent with" applicable Commission policy statements. The policy statement governing 3582(c)(2) proceedings directs courts not to reduce the term of imprisonment below the minimum of an amended sentencing range except to the extent the original term of imprisonment was below the then applicable range. Guidelines Manual 1B1.10(b)(2)(November 2009).

As enacted, the Sentencing Reform Act of 1984 ("SRA") made the sentencing guidelines binding. Except in limited circumstances, district courts lacked authority to depart from the guideline range. Under the SRA, facts found by the sentencing judge by a preponderance of the evidence permitted the trial judge to increase the mandatory guideline range and permitted the judge to impose a sentence greater than that supported by the facts established by the jury verdict or the guilty plea. All of that changed with ***United States v. Booker***, 543 U.S. 220, 243-244, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), which held that the mandatory features of the SRA violated the Sixth Amendment right to be tried by a jury and have every element of an offense proven beyond a reasonable doubt. To correct the constitutional deficiency, the sentencing guidelines were made "advisory." ***Booker*** left intact the remainder of the SRA including the provisions giving the Sentencing Commission the authority to revise the guidelines. 28 U.S.C. 994(o) and determine when to what extent the revisions will be retroactive. 994(u).

Dillon v. United States, 130 S.Ct. 2683, 177 L.Ed.2d 271 (2010) held that ***Booker*** does not apply to motions for sentence modification filed under 18 U.S.C. 3582(c)(2) and USSG 1B1.10. ***Dillon*** held that USSG 1B1.10 is binding, and that the district court does not have the authority to disregard it, and impose a sentence below the amended guideline range.

XIII. LEGAL RECOURSE FOR ALIENS CONVICTED OF CERTAIN CRIMES

An alien is a person who is not a citizen or national of the United States. If an alien has been convicted of an aggravated felony, or crimes of moral turpitude, the Government will initiate removal proceedings. The alien will be given a hearing before an Immigration Judge who

works for the Department of Justice, Executive Office of Immigration Review. At the hearing, the alien has the right to an attorney at his own expense, and will be given the opportunity to present whatever defenses he might have to removal. Defenses include claims of derivative citizenship derived through a family member. Violations of the Convention Against Torture ("CAT"). Violations of the Convention Against Transnational Organized Crime ("CATOC"). All defenses must be presented to the Immigration Judge or they are waived. If the Immigration Judge enters an order of removal, the alien has a right to appeal to the Board of Immigration Appeals. If the appeal is denied, the person has the right to appeal to the Court of Appeals provided the appeal involves constitutional questions or questions of law. 8 U.S.C. 1252(a)(2)(D).

ABOUT THE AUTHOR

Ms. Sturm has been practicing post conviction criminal law since 1984. She is admitted to practice in Pennsylvania, numerous federal district courts, all courts of appeal and the United States Supreme Court. She successfully represented hundreds of people at federal parole hearings. The SRA eliminated parole for federal prisoners sentenced after November 1, 1987.

Ms. Sturm has successfully represented many people in State and Federal courts throughout the United States including doctors, lawyers, judges, politicians, organized crime figures. Published cases include, but are not limited to, the following: ***Harris v. Martin***, 834 F2d 361 (3d Cir. 1987), ***United States vs. Reshenberg***, 893 F2d 1333 (3d Cir. 1989), ***United States v. Calabrese***, 942 F2d 218 (3d Cir. 1991), ***United States vs. Cole***, 813 F2d 43 (3d Cir. 1987), ***United States v. Day***, 969 F2d 39 (3d Cir. 1992), ***Farese v. Luther***, 953 F2d 49 (3d Cir. 1992), ***Schiano v. Luther***, 954 F2d 910 (3d Cir. 1992), ***United States v. Mathews***, 11 F3d 583 (6th Cir. 1993), ***United States v. Nanfro***, 64 F3d 98 (2d Cir. 2005), ***United States v. Henson***, 948 F.Supp. 431 (MDPA 1996), ***United States v. Miller***, 849 F2d 896 (4th Cir. 1988), ***Phifer v. Warden***, 53 F3d 859 (7th Cir. 1995), ***Prioleau v. United States***, 828 F.Supp. 261 (SDNY 1993), ***United States v. Tiller***, 91 F3d 127 (3d Cir. 1996), ***United States v. Eyer***, 113 F3d 470 (3d Cir. 1997), ***United States v. Fields***, 113 F3d 313 (2d Cir. 1997), ***United States vs. DePace*****,** 120 F3d 233 (11th Cir. 1997), ***United States v. Derrick Williams***, 158 F3d 736 (3d Cir. 1998), ***Paters v. United States***, 159 F3d 1043 (7th Cir. 1998), ***United States v. Conhaim***, 160 F3d 893 (2d Cir. 1998), ***United States v. DiPina***, 178 F3d 68 (1st Cir. 1999), ***In re Weatherwax***, CTA3 No. 99-3550 [Hazel-Atlas independent action is not a second or successive 2255 motion], ***Cullen v. United States*****,** 194 F3d 401 (2d Cir. 1999), ***Dabelko v. United States***, 211 F3d 1268 (6th Cir. 2000), ***United States vs. Carmichael*****,** 216 F3d 224 (2d Cir. 2000*), **United States vs. Williams***, 247 F3d 353 (2d Cir. 2001), ***United States ex rel. Bryant v. Warden***, 50 Fed. Appx. 13 (2d Cir. 2002), ***United States v. Peyton***, 12 Fed. Appx 145 (4th Cir. 2001), ***United States vs. Smith***, 348 F3d 545 (6th Cir. 2003), ***Blount v. United States***, 330 F.Supp.2d 493 (EDPA 2004), ***Commonwealth v. Hanna***, 964 A2d 923 (PA Super. 2009). Important unpublished cases include: ***United States v. Lopez,*** 93-246-01 (EDPA, Hutton, J.)[2255 granted], ***United States v. Garcia-Cintron***, 93CV1771 (EDPA, Gawthrop)[2255 granted, sentence reduced], ***United States v. Fazekas***, C.A. No. 94-1542 [WDPA 1994][misclassification as career offender, sentence reduced from 30 years to 10 years], ***Henry Jones v. United States***, 2:90CV 4291 [DNJ, Sarokin, J.][2255 motion granted for ineffective assistance, prisoner released], ***Hearn v. United States***,

C.A. 93-464 [WDVA], [misclassification of methamphetamine, sentence reduced from 180 months to 90 months], ***United States v. Richard H. Wilson***, 90 CR169-01, 91 CIV 3326 [EDPA][2255 granted; actual innocence; immediate release], ***United States v. Gevares***, 961 F.Supp. 192 (NDOH, ED 1996)[2255 granted; firearms sentence vacated; government motion to resentence denied], ***United States vs. Cross,*** CTA6 No. 03-3562 (sentence vacated, and reduced on remand), ***United States vs. Alexander***, CTA3 No. 96-1696 [sentence reduced, and case remanded for hearing on distinction between cocaine base and crack cocaine], ***United States v. Kostrick***, 103 F3d 114 (3d Cir. 1996)[848 vacated], ***United States v. Michaels***, 2001 U.S. Dist. Lexis 19115 (EDPA, Fullam, J.)[term of supervised release reduced], ***United States v. Williams***, 146 Fed. Appx. 656 (2d. Cir. 2002)[sentence vacated and reduced], ***United States v. R. Thomas***, 273 Fed. Appx. 103 (2d Cir. 2008)[sentence vacated and reduced], ***United States v. Matos***, 92 Cr 39-A (EDVA, Ellis, J.)[2255 granted, sentence reduced], ***United States v. Diaz,*** Crim. No. 92-78-02 [EDPA][sentence reduced for miscalculation of criminal history category], ***United States v. Eberly***, 5 F3d 1491 (3d Cir. 1993)[2255 granted, sentence vacated], ***United States v. Forde***, 92-429-A [EDVA, Hilton][2255 granted, life sentence vacated; sentence reduced]; ***United States v. Cruz-Pagan***, 91-0063 [EDPA][2255 granted, life sentence vacated; sentence reduced], ***United States v. Ostreicher***, 91cv 3576 [EDNY, Weinstein, J.][2255 motion vacated, special parole term vacated]; ***United States vs. S. Jones***, 22 F3d 304 (3d Cir. 1994)[2255 granted, sentence vacated]; ***United States vs. S. Jones***, 47 F3d 1162 (3d Cir. 1995)[2255 granted, sentence vacated, sentence reduced]; ***United States ex rel. Maurice Roberts vs. Warden***, 93-CV-1064 [NDNY][Probation Department's imposition of restrictions on employment violated due process], ***Darryl Pierce v. United States***, 89CR176 (MDPA, Rambo, J.)[2255 granted in part, sentence reduced], ***Baron vs. United States***, 97CV290 [DUT][2255 granted, sentence reduced and prisoner released]; ***Simpkins vs. United States***, C.A. 5:01CV12 [NDWVA][2255 granted; failure to properly file 851 special information; sentence reduced]; ***United States vs. Vernon***, 92-340-01 [EDPA, Dalzell, J.] [2255 granted, restitution order vacated and modified]; ***United States vs. Cora Love,*** 92-504-16 [EDPA, Giles, C.J.][2255 granted, sentence reduced]; ***United States vs. Rosa***, 90-38 [DNJ][2255 granted; sentence reduced]; ***United States vs. Arevalo***, 94CR702, 97 CV 946 [SDFLA, Moreno, J.][2255 granted, sentence reduced]; ***United States vs. H. Cruz***, 93CR341 [SDFLA, Highsmith, J.][2255 granted, sentence reduced]; ***Stocker* vs. *Warden*,** 2004 U.S. Dist. Lexis 5395 [EDPA, Giles, C.J.][Habeas corpus granted based on actual innocence, sentence vacated], ***Stovall v. Warden***, 2005 U.S. Dist. Lexis 6758 (EDPA Diamond)[2254 habeas granted in part restoring right to appeal]; ***Pedretti v. United States***, 1996 U.S. Dist. Lexis 6315 (NDNY, McAvoy C.J.)[2255 granted, sentence reduced]; ***United States v. Boggi***, 1997 U.S. Dist. Lexis 14165 (EDPA 1997)[2255 granted, sentence reduced]; ***United States ex rel. Shriner v. Warden***, 1:CV03-0481 (MDPA, Rambo, J.) [[2241 habeas granted, sentence reduced], ***Commonwealth v. Keeman Copeland***, [CP 9607-1215 1/3 Greenspan, J.] [PCRA granted based on ineffective assistance of trial and appellate counsel. Conviction for first degree murder vacated. Life sentence vacated], ***Boyd v. Nish et al.,*** 2007 U.S. Dist. Lexis 7176 (EDPA 2007, Tucker, J.)[Section 2254 habeas corpus granted to state prisoner based on ineffective assistance of trial counsel], ***Dockery v. DiGuglielmo, et al.,*** Civil No. 04-6025 (EDPA 2007, Buckwalter, J.)[2254 granted, sentence reduced], ***Jones v. Piazza***, CTA3 No. 07-1868 (3d Cir. 2007)[reversed order denying habeas corpus under 28 U. S.C. 2254; remanded for resentencing, sentence reduced on remand], ***McKeever v. Warden***, 2005 U.S. Dist. Lexis 4714 (EDPA, Diamond, J.)[2254 habeas granted, remanded to state for resentencing], ***United States v. Futch***, CR. 402-232 [SDGA, Savannah Div.][2255 granted, sentence reduced], ***United States v. Danon***, Cr. 90-43 [DNJ,

Lifland][treaty transfer to Israel prior to completion of term of imprisonment], ***Commonwealth v. Maurice Jones,*** October Term, 1989, No. 0185-0187 [The Third Circuit Court of Appeals granted habeas corpus. Subsequently, the sentencing judge reduced the sentence], ***United States v. Coleman***, 206 Fed. Appx. 80 (2d Cir. 2006) [remanded for resentencing, sentence reduced], ***United States v. Fermin***, 277 Fed. Appx. 28 (2d Cir. 2008)[Sentence vacated and reduced], ***United States v. Manigault***, 2010 U.S. App. Lexis 20350 (3d Cir. 2010)[sentence reduced pursuant to 18 USC 3582(c)(2) despite career offender classification], ***Commonwealth v. Hanna***, 2009 PA Super. 3 (PA Super. 2009). [Vacated and remanded order denying expungement of criminal record], ***In re: Fredrick Pereira*** A 027 489 318: Removal order voided and petitioner allowed to remain in the United States, ***United States v. Omar Mendoza***, 2009 U.S. Dist. Lexis 48720, 2:05 CV 294 (NDTX, Amarillo) [2255 motion granted based on claim of ineffective assistance of trial counsel, sentence reduced to time served], ***United States v. Johnson***, 2011 U.S. App. Lexis 15677 (3d Cir. 2011)[sentence reduced from 360 months to 222 months as a result of a 2255 motion].

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