

December 27, 2005

Dear Client:

As we reach the end of 2005, we want to bring you up to date on recent developments in the law and at the firm.

Three recent cases decided by the Court of Appeals of Maryland may have caught your attention. In *Massey v. Secretary, DPSCS*, No. 142, Sept. Term, 2004, filed November 21, 2005, the Court ruled that the Department of Public Safety and the Division of Corrections must use procedures under the Maryland Administrative Procedure Act to adopt regulations affecting inmate discipline. The Court ruled that the “directives” used in the past are ineffective. The Court, however, stayed the decision to give DPSCS 120 days to adopt the regulations properly. Therefore, it does not appear that any relief is available at this time.

The second case, *Benson v. State*, No. 7, Sept. Term, 2005, filed December 7, 2005, deals with the regulations governing collect telephone call services in State correctional facilities. The lawsuit, filed by two women who had received and accepted collect calls from inmate relatives, claimed that the collect call contract was “anti-competitive” and illegal under various statutes and constitutional provisions. The Court ruled in favor of the State, and thus upheld the contract in effect at the time of the lawsuit and now. The current rates, thus, will remain in effect.

A more helpful case, also decided on December 7, 2005, is *Gilmer v. State*, No. 14, Sept. Term, 2005. In that case, the Court of Appeals ruled that inmates are entitled to credit for time served on charges that are not pressed, if some other charge resulting in a conviction was filed during the period of custody on the case that was not pressed. The Court ruled that the Legislature’s purpose in enacting Section 6-218 of the Criminal Procedure Article was to make sure that defendants “receive as much credit as possible for time spent in custody,” and thus avoid “banked time” and “dead time.” Thus, if you did not receive credit for such time served, a motion to correct illegal sentence could be filed in your case.

In our last letter, we discussed other recent decisions of the United States Supreme Court, the Maryland Court of Appeals, and the Maryland Court of Special Appeals may have an impact on your case as well as some recent legislative developments may apply to you or someone you know. See *Bradshaw v. Stumpf*, 125 S. Ct. 2398 (2005) (guilty plea is invalid if the defendant enters the plea without knowledge of the crime’s elements); *Matthews v. State*, 161 Md. App. 248, 868 A.2d 895 (2005) (trial counsel’s failure to file a motion for reconsideration of sentence constitutes ineffective assistance of counsel without the necessity of showing that such a motion would have

been granted); *Wilkins v. State*, 162 Md. App. 512, 875 A.2d 231 (2005) (failure of a sentencing judge to exercise discretion to consider suspending a portion of a life sentence renders the sentence illegal); *Gorge v. State*, 386 Md. 600, 873 A.2d 1171 (2005)(a court may not impose a sentence of life without the possibility of parole unless the record very clearly reveals that the defendant was served with a written notice of the State's intent to seek the penalty).

The legislature enacted a law this past session that affects certain defendants sentenced to 25 years without the possibility of parole for the crime of burglary or housebreaking. House Bill 596, effective October 1, 2005, provides that a person serving such a mandatory minimum sentence that was imposed before October 1, 1994, may apply for a review of sentence by a three-judge panel on or before September 30, 2006. The panel may strike the no parole provision, but may not reduce the length of the sentence.

You should also be aware that a new post conviction statute of limitations took effect on October 1, 2005. Anyone sentenced on or after October 1, 1995, is now subject to a ten-year statute of limitations on the filing of a post conviction petition. This change in the law does not apply to persons sentenced before October 1, 1995, who are not subject to any time limitation on filing post conviction petitions. Note, however, that everyone is now subject to a one petition limit, with a provision only for a motion to reopen post conviction.

The firm continues to represent hundreds of clients in the state and federal courts, both at trial and on appeal. We have obtained relief in coram nobis cases based on faulty guilty pleas, had new trials granted at post conviction based on faulty jury instructions, and had sentences reduced on belated motions for reconsideration and motions to correct illegal sentences. Several appeals are pending in the Court of Special Appeals, the Court of Appeals, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court. We are currently handling trials, post conviction petitions, and motions to reopen post conviction throughout the State.

If you or someone you know has any questions about any of these matters, please feel free to contact us, in writing or by calling collect at 301-220-1570.

Sincerely,

THE LAW FIRM OF BENNETT & BAIR, LLP