

July 24, 2006

Dear Client:

As we pass the mid point of 2006, we want to bring you up to date on recent developments in the law and at the firm. First, we are pleased to announce the addition to our firm of Daniel H. Ginsburg, an honors graduate of the University of Maryland School of Law, with ten years of legal experience. Most recently, Mr. Ginsburg has worked as an Assistant Public Defender in Prince George's County in the Felony Trials Division. Earlier in his legal career, Mr. Ginsburg worked in the Collateral Review Division of the Office of the Public Defender. Mr. Ginsburg will begin working at the firm on September 25, 2006.

On the legal developments front, a recent case decided by the Court of Special Appeals of Maryland may be of help to you or someone you know. In *State v. McClellan*, \_\_\_ Md. App. \_\_\_, 2006 WL 1805976 (No. 1647, Sept. Term, 2005, filed July 3, 2006), the Court issued an important post conviction ruling. First, the Court held that the 10-year limitations period on post conviction petitions that went into effect on October 1, 1995, only applies to persons sentenced on or after that date. Thus, even though the petitioner filed his petition over 12 years after he was sentenced, the 10-year period did not apply to his case. Second, the Court ruled that petitioner's trial counsel was ineffective for failing to object to an erroneous reasonable doubt instruction, even though the case under which the instruction was deemed defective was not decided until more than two years after petitioner's trial.

Two other cases issued by the Maryland appellate courts last month are not so helpful. In *State v. Wilkins*, \_\_\_ Md. \_\_\_, 2006 WL 1563927 (No. 65, Sept. Term, 2005, filed June 9, 2006), the Court of Appeals ruled "that a sentencing judge's failure to recognize his or her right to exercise discretion in the imposition of a sentence does not render the sentence illegal within the meaning of Md. Rule 4-345(a)." Thus, where a defendant is arguing that the trial judge imposed a life sentence, but failed to realize that a portion of the sentence could be suspended, a motion to correct an illegal sentence is not available. Rather, the issue must be raised on direct appeal of the conviction or raised in the context of a post conviction petition alleging ineffective counsel for failing to bring the matter to the trial judge's attention.

In *Fuller v. State*, \_\_\_ Md. App. \_\_\_, 2006 WL 1549664 (No. 147, Sept. Term, 2005, filed June 8, 2006), the Court of Special Appeals ruled that the denial by the circuit court of a petition for drug treatment under the Health-General Article could not be appealed. The Court did not rule on the merits of the case, but noted that the appeal arose "out of a petition that appellant was entitled to file in the circuit court as a result of amendments enacted by the General Assembly in 2004." The

appealability issue in *Fuller* hopefully will go to the Court of Appeals for further review. There are other unresolved issues of the reach of the drug treatment option that also have led to conflicting lower court decisions. These and other issues will be revisited by the courts in the future, as the Health-General statute was amended again, effective October 1, 2006.

A few other miscellaneous matters that also may be of significance to you: (1) as mentioned above, if a defendant was sentenced before October 1, 1995, there is no statute of limitations on the filing of a post conviction petition; (2) if a defendant was sentenced after October 1, 1995, time has either run or will run after 10 years, and the petition can only be filed if “extraordinary cause” is shown; (3) there is a one-petition limit applicable to every defendant, but there is no limit on the number of motions to reopen post conviction that may be filed; (4) for sentences imposed on or after July 1, 2004, the court’s revisory power to reduce the sentence expires five years after the date of sentencing; (5) for sentences imposed before July 1, 2004, there is no time limit on the court’s revisory power, so long as a timely motion for reduction of sentence was filed.

Thus, for defendants sentenced in 1996 and 1997, time has run out or will expire soon for the filing of a post conviction petition. And for defendants sentenced after July 1, 2004, who have pending motions for modification being held sub curia, the sentencing judge must make a ruling within the five year period or will lose jurisdiction over the case. Any motions to supplement or requests for hearing should be made with that time limit in mind.

The firm continues to represent hundreds of clients in the state and federal courts. We are currently handling trials, direct appeals, motions for reconsideration of sentence, post conviction petitions, motions to reopen post conviction, and petitions for coram nobis relief, throughout the State of Maryland. We have recently obtained favorable trial results; been granted relief in post conviction cases based on ineffective counsel, defective guilty pleas, erroneous jury instructions, and other grounds; and had sentences reduced on belated motions for reconsideration and motions to correct illegal sentences. In addition, numerous appeals are pending in the Court of Special Appeals, the Court of Appeals, the United States Court of Appeals for the Fourth and Eleventh Circuits, and the United States Supreme Court.

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**