

July 10, 2008

Dear Client:

As we pass the mid point of 2008, 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 Erica J. Suter, a 2003 graduate of the Georgetown University Law Center. Before earning her law degree, Ms. Suter was awarded a Master's Degree from the University of Chicago and a B.A. degree in Philosophy and African American Studies from Bates College. Most recently, Ms. Suter worked for the prestigious Washington, D.C. law firm of Williams and Connolly. Earlier in her legal career, Ms. Suter served as a law clerk to ten senior judges of the D.C. Superior Court. Ms. Suter began working at Bennett & Bair on June 2, 2008, and is admitted to the Bar in Maryland, D.C., and Illinois.

On the legal developments front, three cases decided last month by the Court of Appeals of Maryland may be of help to you or someone you know. In *Price v. State*, ___ Md. ___, 2008 WL 2330222 (No. 19, Sept. Term, 2007, filed June 9, 2008), the Court overruled a long line of its own decisions and held for the first time that inconsistent verdicts will no longer be tolerated in criminal cases. It is not clear whether the ruling will be given retroactive effect, but as a matter of fundamental fairness, the issue may be a good one to raise in post conviction or a motion to reopen. In *Christian v. State/Stevenson v. State*, ___ Md. ___, 2008 WL 2468533 (No. 26 & 95, Sept. Term, 2005, filed June 30, 2008), the Court issued an important ruling in a consolidated opinion arising out of two appeals. Overruling its decision of *Richmond v. State*, 330 Md. 223 (1993), the Court held that the mitigation defenses of hot-blooded response to adequate provocation and imperfect self-defense can apply to mitigate first degree assault to second degree assault. Again, it is not clear that the decision will be applied retroactively, but it could be used on post conviction in connection with a claim of ineffective assistance of counsel. Finally, the Court ruled in *Montgomery v. State*, ___ Md. ___, 2008 WL 2356952 (No. 89, Sept. Term, 2007, filed June 11, 2008), that a three-year deferral of a sentence reporting date imposed upon the revocation of probation was an illegal sentence. In reaching its decision, the Court cited to a 1977 Maryland Bar Journal article written by "the late Fred Warren Bennett, a prominent member of the Maryland Bar." *Id.* at *7.

In the three months since our last firm letter, we have continued to obtain significant positive results for our clients. Mr. Bair obtained the right to file a belated motion for reconsideration of sentence in Prince George's County for Travis McAllister, and the court has set the case in for a hearing in August, 2008. In Charles County, post conviction relief was obtained for Dwight Galloway, who was permitted to change his plea from attempted second degree sexual offense to second degree battery and thus obtain relief from a life time of sex offender registration. Mr. Bair also obtained the reversal of a parole revocation in Baltimore City Circuit Court in a petition for

judicial review in the case of Lawrence Metscher.

Ms. Kamins and Mr. Ginsburg also continue to win relief for firm clients. Ms. Kamins convinced the Maryland Parole Commission to abate the parole of LeBon Walker. Such relief is rarely granted. In May, Mr. Ginsburg obtained the right to file a belated motion for reconsideration of sentence in Baltimore City for James Scott; the court has set that case in for a hearing in October 2008. Just last month, Mr. Ginsburg obtained a sentence reduction from 15 to 10 years in the Howard County post conviction case of Brian Doukas.

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, petitions for coram nobis relief, and parole and commutation matters throughout the State of Maryland. In addition, numerous appeals are pending in the Court of Special Appeals, the Court of Appeals, and the United States Court of Appeals for the Fourth Circuit. On June 19, 2008, the Court of Appeals of Maryland granted **two** of Mr. Bair's certiorari petitions on the same day, a highly unusual occurrence.

A reminder of a few timing matters that may be of significance to you: (1) 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, a post conviction petition must be filed within 10 years of sentencing, and thereafter only 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.

Finally, we are still awaiting the decision of the Court of Appeals in *State v. Adams*, which was argued in November 2007. This is the case dealing with "advisory only" jury instructions that were routinely given in jury trials before 1980. We have filed post conviction pleadings on behalf of many clients who have this issue in their case, but all such cases are being held without decision until the Court of Appeals issues its ruling. Hopefully, the ruling will come soon and will be favorable.

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

Sincerely,

THE LAW FIRM OF BENNETT & BAIR, LLC