

December 22, 2008

Dear Client:

As we reach the end of 2008, we wish everyone the warmest of holidays and best wishes for the new year. We are pleased to announce that Mr. Bair was selected for inclusion on the 2009 Maryland Super Lawyers list. Only five percent of lawyers in the State are chosen each year for this honor, and this is the third consecutive year that Mr. Bair has achieved this status.

We also want to bring you up to date on some of the positive results we have obtained for our clients over the past six months. As an initial matter, we obtained significant sentence reductions for several clients. Following a retrial after a successful appeal by the firm in a Wicomico County case, Sherman Melvin's sentence was reduced from 20 years to 4 years. In that case, Mr. Ginsburg won an acquittal on a felony drug charge, which resulted in that markedly lower sentence. On a motion for reconsideration of sentence in a Prince George's County case handled by Mr. Bair, Travis McAllister's sentence was reduced from 11 years to 6 years time served, which led to his immediate release. Similarly, Mr. Bair obtained a Health-General drug treatment commitment for Terry Blaine in Prince George's County, which resulted in the reduction of a 40-year sentence to 15 years time served. In a federal resentencing following a successful appeal in the Fourth Circuit, Mr. Ginsburg obtained a reduction in the sentence of Vernon Powell from 30 years to 14 years before U.S. District Judge Peter Messitte. Just two weeks ago, Mr. Bair convinced Judge Krauser in Prince George's County to strike a felony drug conviction and grant probation before judgment for another client.

Mr. Ginsburg also won post conviction relief for two clients since our last letter. Sebastian McMillan was granted the right to file a belated motion for reconsideration of sentence by Judge Whalen in Prince George's County. Kelvin Mock received the same relief from Judge Smith of the same county and, in addition, had a consecutive life sentence for attempted murder reduced to 30 years. Likewise, Ms. Kamins obtained the right to file a

belated motion for reconsideration of sentence in the Prince George's County case of Curtis Robinson before Judge Hotten.

The firm had major trial successes as well during the last six months. In addition to the felony acquittal obtained in Sherman Melvin's case discussed above, Mr. Ginsburg and Ms. Suter won total acquittals for André Hunt in the Circuit Court for Baltimore County. Mr. Hunt faced felony theft and conspiracy charges and was found not guilty on all counts following a three-day trial in October of this year. Ms. Suter also obtained nol prosses in three cases in the District Court of Maryland for Prince George's County for a client charged with burglary and related offenses. Lastly, Mr. Ginsburg obtained highly favorable dispositions in two cases that were originally charged as felonies. In the Circuit Court for Prince George's County, Christopher Tyler's charges of armed robbery and first degree assault were dismissed, with Mr. Tyler pleading guilty to misdemeanor counts of assault and theft. Mr. Tyler received a time served sentence. In the Circuit Court for Montgomery County, Michael Jackson, Jr., who faced felony drug charges, was allowed to plead guilty to a misdemeanor offense and was given a suspended sentence.

The firm was also busy with appeals in the Court of Special Appeals and Court of Appeals. Ms. Kamins won a reversal of several counts for Isiah Rudder, leading to a significant sentence reduction in his case. *See Rudder v. State*, 181 Md. App. 426 (2008). A petition for writ of certiorari is pending with respect to other issues in the case. Four appellate arguments took place on behalf of firm clients this past fall: Ms. Kamins argued on behalf of Arthur White and Wayne Stockstill; Mr. Bair argued the cases for Darryl King and Bryan Fultz. Hopefully, we will be reporting on successes in those cases in our next firm letter.

On the legal developments front, the most significant case in recent months dealt with "advisory only" jury instructions that were commonly given in the 1970's. In *State v. Adams*, 406 Md. 240 (2008), the Court of Appeals, by a four to three vote, held that Mr. Adams waived his challenge to the advisory jury instructions by not objecting to them at trial and by not raising the issue on direct appeal. The Court also declined to excuse Mr. Adams's waiver of the claim because, at the time of his trial, existing law provided a valid basis for an objection to the advisory instructions. Finally, the Court concluded that *Stevenson v. State*, 289 Md. 167 (1980), did not announce new law concerning advisory jury instructions, so there was no need to consider whether a new rule applied retroactively. The Court in *Adams* did not address or decide the issue of whether a trial attorney was ineffective in failing to object to the advisory jury instructions. Furthermore, the majority opinion asserted that, based on several Maryland cases that were decided in the 1970's, Mr. Adams "reasonably

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could have been expected to be aware that any instruction that he perceived as permitting the jury to disregard such clearly established constitutional law [the reasonable doubt standard] was improper.” We believe that this finding in *Adams* supports a claim that trial lawyers who did not object to advisory only jury instructions in the 1970’s rendered ineffective assistance. Consequently, we intend to continue to press for relief for our clients who were convicted in jury trials in the 1970’s and whose cases implicate advisory only jury instructions. Although some of our claims are now foreclosed in light of the Court of Appeals’ decision in *Adams*, we still can proceed on a claim of ineffective assistance of trial counsel.

We also wanted to remind you of a few timing matters that may affect your case: (1) if you were sentenced before October 1, 1995, there is no statute of limitations on the filing of a post conviction petition; (2) if you were 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) although the one-petition limit applies to everyone, there is no time or number limit on motions to reopen post conviction; (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.

In closing, 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. 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