Rodney Thaxton against All Odds Award

FEDERAL PUBLIC DEFENDERS OFFICE, CLEMENCY PROJECT

CHRSTOPHER DECOSTE AND TARA KAWASS, STATE V. CHRISTOPHER RIVERO

Client was arrested in February 2015 for a 2012 murder. The case assigned to Judge Victoria Brennan. The defense moved for an APH and an Arthur hearing. The hearing lasted six days as a result of the Defense arguing that the State could not prove the APH. The defense won and Judge Brennan, finding no probable cause, released the client.

Shortly after the ruling, Judge Brennan was forced to recuse herself because of ex parte communications initiated by the State. This happened simultaneously to the State listing the prime suspect presented by the Defense at the hearing as their new star witness. The case was thereafter reassigned to Judge Ruiz and the contents of the ex parte communications were addressed, which the State revealed only after the defense filed a motion to compel. The two original ASAs grew to seven, including Don Horn. The State subsequently filed an indictment for First Degree Murder.

Defense kept Client out of custody until middle of 2016 when he was suspiciously arrested for cocaine possession. The State moved to revoke bond thereafter. The defense, despite agreeing that there was PC in the A-Form for the new case, argued that he was outright released on the murder case for lack of probable cause and was not on a recognizance bond and therefore not in violation. The motion to revoke to bond was denied and standard bond was set on the new case.

Just prior to this, Defense learned that the State had been working with the prime suspect that was revealed at the APH. Although his own case was on appeal before the Third DCA, the State appeared before Judge Eig with a motion to reduce his life sentence as a PRRP in order to secure his testimony against the client in the murder case. In exchange for cooperation, the State sought to mitigate his life sentence to 15 years. This cooperating witness was previously convicted of robbery by gunpoint weeks after his release from prison. During the robbery, he shot the victim three times using the same gun that was used in client's murder case. His deal with the State not only allowed a reduction to 15 years, but also allowed him to continue with his appeal of the robbery case which he was found guilty of after a jury trial. When the murder case was on for report, Judge Ruiz inquired as to the status of the cooperating witness' appeal. The State remained silent as to their motion to mitigate his sentence.

In the months to follow, the cooperating witness' case appeared on calendar several times in an effort to potentially ratify his deal. Judge Zilber, who took over

for Judge Eig, notices the presence of the defense team each time and eventually inquires. The defense informed Judge Eig of the situation surrounding the client's case and the cooperating witness' potential deal. At the next setting, however, the cooperating witness attacks another inmate in open Court.

With continued pressure by the defense, the State finally dropped him as a witness and the Defense immediately filed a Sworn Motion to Dismiss based on the sworn testimony adduced at the APH. The state filed a traverse but *nolle prossed* the case before the hearing on the motion to dismiss. Just prior to the announcement on the record, the defense filed a speedy demand to protect the client from future re-filing.

DAVID MOLANSKY, ARI GERSTIN & JACK ARRANGO, STATE V. GERMAN BOSQUE.

This case was a classic example of a Brady violation, almost from the script of Perry Mason. At the scene it was August 3, 2011 at 11:00 p.m. The alleged victim, was holding a 13 month old infant in his lap, refusing to give the baby back to the mother. Car was running out of gas and no car seat. Bosque leaves his radio in the car. He goes over to victim's car and tells him the Chief of Police wants him to return the baby to the mother. Victim disobeys the order. Bosque reaches in the car shuts the ignition. He tries to pull the baby away from the alleged victim. A struggle ensues. Bosque finally pulls the baby away and returns the child to the mother.

Bosque returns to the station. He is in the parking lot and one of the other officers tells him that the alleged victim tried to run over the mother of the baby with his car. The alleged victim walks into the police station to file an IA complaint because Bosque took his baby away. Bosque takes the alleged victim into custody for aggravated assault. Bosque held him in custody for 8 minutes until the Chief of Police orders him to let the victim go.

Two years later 2 FDLE agents arrest Bosque for false imprisonment, tampering with a witness and battery. Bosque hires Richard Sharpstein. But he passes away prior to trial. Bosque gets another attorney and goes to trial. He is convicted of false imprisonment and tampering with a victim making a complaint. State's theory at trial was that he never had PC to arrest. The only reason he took the alleged victim into custody was to retaliate for filing a complaint.

Molansky is hired post verdict for sentencing and appeal. Looks at the file and determines that something is missing. The car to car communications recordings and dispatch recordings are missing. Sends PI out to Miami Dade PD. They obtain a letter stating that the recordings were produced and given to Opa Locka P.D. Molansky emails the prosecutor asking her about the recordings? She says that Opa Locka does not have capability to record those communications. Even if they could be produced they were erased after 90 days. Prosecutor continues to deny that the recordings exist.

Defense files post verdict motion to disclose Kyles and Brady information. Molansky and Gerstin step up the podium at the hearing and prosecutor hands over 4 CDs. Judge De La O orders the prosecutor to produce the entire IA file to the defense. In the IA file is a note from an unlisted witness that the dispatcher was at least partially at fault for improperly routing the alleged victims IA complaint. Also, on the CD's is an order from the chief to arrest the alleged victim; "039 him." At the time of the incident Bosque left his radio in the car when he pulled the baby away from the alleged victim. He never got the chief's order to arrest. Also there was part of the recordings that would have impeached a key state
witness that said Bosque knew about the Agg assault at the scene. Molansky and Gerstin file a motion for new trial. Trial court grants in part and denies in part. Prosecutor then files an affidavit stating that she thought the CD's and IA memo and file were privileged under Gerrity v. New Jersey.
Molansky represents Bosque on appeal. Third DCA reversed for a new trial as to tampering based on Brady and Richardson violation and affirmed the granting of a JOA.

ADAM GOODMAN AND JAMES DEMILES, STATE V. DEANDRE CHARLES

"Although I know Mr. Goodman has won at least one acquittal at trial in a serious case involving the attempted murder of a LEO, I am nominating him in particular for his near-Herculean efforts this past year in eventually earning a nolle prosse in a murder case against his client, Deandre Charles, who was accused of killing Rabbi Joseph Raksin in Miami-Dade in 2014. The case was recently dismissed.

I believe his efforts in that case over the past year warrant your consideration of him for either of these awards, as:
-he is a young lawyer who undertook the representation on a *pro bono* basis
-he was nearly physically assaulted by a senior prosecutor on the case while in the courthouse
-he was routinely subject to public and private criticism for his representation of Charles because the victim was a beloved Rabbi
-he successfully and tenaciously defended Charles despite the government's routine withholding or delayed disclosure of critical discovery (and similar tactics that forced him to bring these issues the court's attention on countless occasions)
-he defeated the state in a near unending motion to get Charles a bond and out of custody
-he undermined the state's attempted use of speculative statistical data by college professors to exaggerate DNA evidence that Mr. Goodman then challenged with his own expert, forcing the State to concede the DNA evidence it had relied upon in a circumstantial case was worthless.

Just as important, it was Mr. Goodman's tireless belief in his client's innocence coupled with his ability to actually assemble the exculpatory evidence that refuted the state's evidence which resulted in the charges being nolle prossed.

Thank you for your time and consideration of Mr. Goodman for recognition by your organization," from Matthew L. Baldwin, Esq.

ISRAEL ENCINOSA, IMPERIAL GANSTERS

"In 2015 Isreal was appointed in Case# 14-20286-CR-Altonaga, along with 14 of us, to represent a group of defendants charged with RICO conspiracy and alleged to be members of the Imperial Gangsters, a national gang which originated in Chicago but had chapters in Indiana, Chicago, Miami and other cities. The gang was responsible for violent crimes(aggravated batteries, assaults, robberies, burglaries and murders) as well as narcotics trafficking, loan sharking and protection money. Israel's client, Leonel Carrera, was originally NOT charged with a VCAR murder count but was told that if he did not accept the government's plea offer he would be charged in a superseding indictment with a murder in aid of racketeering conspiracy (VCAR) count. He did not accept the offer and was charged with the VCAR murder count in addition to the RICO conspiracy. Most of the defendants pled guilty and some began cooperating with the government. Over the last year (2016) only 7 defendants remained. Five (5) pled guilty several months before trial and 1 started trial along with Israel and his client. That defendant was offered a plea during the first week of trial so Israel ended up trying the case by himself with the assistance of an excellent young lawyer, Juan Fernandez Barquin. Barquin had been appointed by Judge Altonaga at our request as additional support due to the massive discovery in the case.

DISCOVERY: The government's discovery was so voluminous and so disorganized that it took up an entire computer hard drive. It was in such disarray that we had to send it all to California to the Federal Public Defender Services Office for them to assist us in organizing it in a usable format. The indictment alleged a time period of criminal activity going back 30 years. The activity was spread over 3 states involving dozens of chapters, hundreds of witnesses both lay and law enforcement, state and federal, and over 50 cooperating co-conspirators that were charged and uncharged. In addition to the over one hundred thousand pages of discovery, there were thousands of hours of audio taped conversations and video recordings both consensual and court ordered.

Israel's Performance: From the start of the representation Israel waged a very aggressive defense for his client. He file numerous motions to dismiss and to suppress, all of which were denied by the Judge. In addition, he file several speedy trial motions and constantly objected to any continuances, announcing ready for trial at each calendar call and imploring the Judge to sever his client because he was ready to try the case and that his client was innocent of the charges against him. We held bi-weekly meetings in my office to discuss strategy and he never missed one. Always prepared and constantly bringing up points to

use in cross examination of the hundreds of witnesses we were facing. He always believed in his case and that his client was innocent, never once did I see or hear him question his client's decision to go to trial.

Israel's Health: What makes his victory even more astonishing is something only those of us that were in the case with him know. Israel suffered a heart attack during the course of the representation which was so serious that many of us thought he would not make it back in sufficiently good health to be able to finish the representation. This guy worked on the case while he was recuperating and remained in constant contact with Henry Bell, Brittany Horstman and myself in order for us to keep him informed of any developments in the case and in our trial preparations.

In conclusion, when you consider the degree of difficulty of this case coupled with the fact that Israel fought on while surviving a heart attack makes him the perfect example of the type of individual that should receive the FACDL "Against All Odds Award".

I hope that this is sufficient information for the committee to consider Israel as a candidate for the award. If there is any additional information that you require please do not hesitate to contact me." Bu Frank Quintero, Esq.

VANESSA CHEN, ACCA ENHANCEMENT CASES

Ayana and Katie are pleased to nominate Assistant Federal Defender Vanessa Chen for the Rodney Thaxton "Against All Odds" Award, to be given at the 2017 FACDL-Miami Gala. We are nominating Ms. Chen for her outstanding and tireless work on behalf of former and current clients in obtaining sentencing relief in light of the United States Supreme Court decision in *Johnson v. United States*, 576 U.S. ___ (2015). A bit of background explanation is necessary in understanding the magnitude of her work.

To qualify as an ACCA, a client must have three qualifying priors. Those priors are either "violent felonies" or "serious drug offenses." A state court conviction for possession with intent to sell cocaine qualifies as a "serious drug offense"—no matter if it is fifteen years old and the client was sentenced to time-served. There is no limit on the ACCA's reach, and all adult priors that qualify are fair game, no matter how old they are. This is a devastating enhancement that often catches too many clients in its net.

Much litigation has ensued over what constitutes a “violent felony.” Federal defender offices across the country have continued to object, appeal, and object anew about crimes the district courts found to be violent, particularly under the third clause of the “violent felony” definition. The third clause, the “residual clause,” contains vague and catch-all language designed to encourage courts to find that practically every felony could be violent. Defender efforts across the country were finally realized on June 26, 2015, when the Supreme Court found the residual clause of the ACCA to be unconstitutional and void for vagueness in *Johnson*. This decision was retroactive and entitled thousands of clients to relief from their currently-monstrous sentences.

Enter Vanessa Chen. Ms. Chen was the point-person in the Miami Federal Public Defender’s Office for the Johnson project. Her task was to make sure that each and every ACCA client in the Southern District of Florida had his/her case reviewed for relief eligibility, which meant reviewing every case to determine whether or not the client had any prior convictions deemed “violent felonies” pursuant to the now-vague residual clause. Once eligibility was determined, Ms. Chen was then responsible for reviewing the procedural posture of the case; any procedural bars for relief; the merits of the claim itself; and the actual filing of the motion for relief. Depending upon the procedural posture, that motion could take on several forms, and some motions had to be filed in both the 11th Circuit Court of Appeals and the district court. The amount of work was staggering, particularly because the *Johnson* case created a statute of limitations of **one year**. By the time the legal minutia sorted itself out and our office was able to properly review and file these petitions, Ms. Chen had less than 3 months until that statute of limitations expired. Below are the amazing numbers.

• The Federal Defender’s Office reviewed **834** cases, and determined that **640** of those cases were entitled to some relief.

• **As point-person, Ms. Chen was personally assigned to and reviewed 189 cases for eligibility, consulted on hundreds more, and filed petitions on behalf of 94 clients.** o Each petition not only required the original motion, but it also required a reply to any government response, supplemental briefing, and, if required, an appeal of a denial of relief. **The 94 clients Ms. Chen filed for easily equals over 250 separate filings.**

• Ms. Chen also served as advisor to the Criminal Justice Act panel, which constituted another 120 cases.

• During the closing few months before the filing deadline of June 26, 2016, Ms. Chen worked 18-20 hours per day. She set up a checks-and-balances system to ensure that one a client was deemed ineligible for relief, that determination was double checked on at least 2 different occasions to make sure nothing was missed Success stories:

• **US v. Larry Anderson**—sentenced reduced from 327 months to time-served. Mr. Anderson had already served 20 years, and was released immediately once Ms. Chen advocated that he no longer qualified as an ACCA.

• **US v. Jerry King**—Sentence reduced from 327 months to 120 months.

• **US v. David Miller**–Sentence reduced from 261 months to 120 months. He was eligible for immediate release.
• **US v. Michael Lee**—Sentence reduced from 180 months to 85 months. Client released.

Those are but a few of the cases where Ms. Chen has given someone their life back. Through her hard work and perseverance, she has ensured that clients previously sentenced to a near-life sentence will now get to embrace family members outside of prison. She is particularly deserving of this award because her work comes in the face of extreme adversity. The Eleventh Circuit Court of Appeals—the only appellate court in the nation to do this—originally held that *Johnson* was not retroactive. Thus, all clients in the 11th Circuit were denied relief if their case was final. This, of course, while others across the country were being released from prison pursuant to the *Johnson* decision. It took an appeal to the Supreme Court, in *Welch v. United States*, 578 U.S. ___ (March 30, 2016), to convince the 11th Circuit Court of Appeals that *Johnson* was in fact retroactive. This delay gave Ms. Chen less than three months to complete the work described above.
It is because of her tireless work and dedication to this project that clients continue to be given relief today. Just recently, Ms. Chen advocated to a magistrate judge that Florida arson is not a “violent felony.” In a case of first impression, the magistrate judge agreed with Ms. Chen and recommended granting client’s petition to vacate his previously-ordered 180 month sentence. Her creativity and intellect give all of our clients a fighting chance for survival in one of the harshest and most draconian arenas. Her accomplishments and continued work are absolutely “against all odds.”appeal to the Supreme Court, in *Welch v. United States*, 578 U.S. ___ (March 30, 2016), to convince the 11th Circuit Court of Appeals that *Johnson* was in fact retroactive. This delay gave Ms. Chen less than three months to complete the work described above.
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