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Virginia inmate released on new non-biological evidence.

Â Bill of Rights.Â (From the public domain.)Â Â A prison inmate's case does not become quiet merely because of a conviction and a lost appeal.Â Many inmates next seek post conviction relief, whether the term of art for such relief applications is habeas corpus, coram nobis, or any other phrase. Many inmates file their own post conviction petitions, sometimes drafted by other inmates, sometimes handwritten, and sometimes assembled with typewriters where computers are unavailable. Many inmates send letters to judges seeking relief. Some write for assistance to me and other lawyers they do not know, but few contact me back after I quote an hourly retainer fee for an initial visit to discuss their case, when it appears to be a matter I might be willing to defend. Â A knee-jerk reaction of many judges and legislators focused on keeping down the cost of running the judicial branch -- rather than in dispensing true justice -- might be to clamp down on the avenues of post conviction relief. In fact, such clampdowns already exist in such terms as severely short federal deadlines for filing habeas corpus petitions, with numerous states imposing their own deadlines, as well. Â Many inmates at the post conviction stage feel very desperate, seeing this stage as a final hope for freedom, after having lost at the trial court stage, and the appellate stage if an appeal has been filed (people who plead guilty often do not seek or obtain appellate relief). A criminal defense lawyer handling such a case should be ready for some of theirÂ clientsÂ to grasp at straws and anything else to try to pull themselves up from the often excruciating toll of prison on their freedom, dignity, and loss of time andÂ lifeÂ outside prison walls. Sometimes I wonder how many inmates file post conviction petitions partly as an effort to see the outside world for a few hours during the ride to and back from the courthouse hearing the case; it is a legitimate desire. Â I have defended many post conviction cases over the years, most of them in Maryland, and some in the District of Columbia, where post conviction matters ordinarily must be raised and resolved before the completion of the appellate stage. Fortunately, I have won many post conviction cases, but have lost more than I have won. Often the victories have come from insufficient advice of rights to the defendant at guilty plea hearings. In numerous other victories, the defense lawyer did not object to materially erroneous jury instructions. Some post conviction victories come in the form of getting an illegal sentence corrected, including where a court misapplies mandatory minimum sentencing calculations.Â In one instance, a victory came from my presenting a witness whom the trial lawyer did not contact nor present, whose testimony could have avoided my client's murder conviction through showing a self defense shooting against an armed decedent.Â A post conviction victory does not automatically mean release from prison, where a retrial is the applicable relief.Â Nevertheless, prison release is theÂ relief obtained by Darrell Copeland, under Virginia's somewhat new law that providesÂ inmates the opportunity toÂ present newly-discovered non-biological evidence of innocence, following on the heels of older laws that permit the presentation of DNA evidence to seek reversal of convictions. Â Darrell Copeland was convicted in Virginia for a 2006 handgun possession offense, for which he received a five-year prison sentence. Later analysis of the alleged handgun revealed it to beÂ a replica pistol that could not be operated as a firearm. Mr. Copeland is the first inmate to be released from prison under this law permitting the issuance of a Writ of Actual Innocence involving non-biological evidence. As reported by the Washington Post, "Virginia had long barred the introduction of new evidence more than three weeks after sentencing." Â Although Maryland is no liberal cakewalk for criminal defendants, Virginia is even less so. In that context, it appears noteworthy that Virginia's attorney general supported the result. His spokesperson mentioned that when serving in Virginia's legislature, Attorney General Bob McDonnell supported the legislation that led to Mr. Copeland's release. Â The law under which Mr. Copeland is being released reads as follows: Â "Â§ 19.2-327.10.Â Issuance of writ of actual innocence based on nonbiological evidence.Â Notwithstanding any other provision of law or rule of court, upon a petition of a person who was convicted of a felony upon a plea of not guilty, the Court of Appeals shall have the authority to issue writs of actual innocence under this chapter. Only one such writ based upon such conviction may be filed by a petitioner. The writ shall lie to the court that entered the conviction; and that court shall have the authority to conduct hearings, as provided for in this chapter, on such a petition as directed by order from the Court of Appeals. In accordance with Â§ 17.1-411 and 19.2-317, either party may appeal a final decision of the Court of Appeals to the Supreme Court of Virginia. Upon an appeal from the Court of Appeals, the Supreme Court of Virginia shall have the authority to issue writs in accordance with the provisions of this chapter." Â Unfortunately for Mr. Copeland, his release will not be to fresh air, but instead will be to serve a pending federal sentence. Â Congratulations and thanks to public defender lawyer Kathleen A. Ortiz for fighting for and obtaining this victory, andÂ in such a relatively quick timeframe at that.Â Jon Katz

Posted by Jon Katz at 00:00