

NCPLS



ACCESS

Limitations on Federal Habeas Corpus

The Anti-Terrorism and Effective Death Penalty Act of 1996

Despite its title, this act has major implications for all those convicted of crimes. Signed into law on April 24, 1996, The Antiterrorism and Effective Death Penalty Act [Pub. L. 104-132, 110 Stat. 1214 (1996)] (AEDPA) made many changes to the federal habeas corpus statutes.

Availability of Federal Habeas Corpus Relief

The Fourteenth Amendment prohibits the states from depriving a person of "life, liberty, or property," without due process of law. Since the adoption of the Fourteenth Amendment, the United States Supreme Court has held that, in a criminal proceeding, "due process" incorporates many of the protections of the Bill of Rights, including the right to counsel, the right to a trial by jury, and others. When a state court's determination of guilt or the imposition of a sentence rests on a violation of these due process rights, a defendant can file a petition for a writ of habeas corpus to obtain federal court review.

AEDPA was a congressional response to popular opinion that the federal court system was being abused by criminal defendants to delay executions, a view supported

by complaints that a large number of federal habeas corpus filings were frivolous. In large part, the AEDPA simply codified many of the limitations on habeas corpus actions that had been imposed by judicial decisions over the past two decades. But the Act also contains important new provisions.

Supreme Court Restrictions on Federal Habeas Corpus Relief

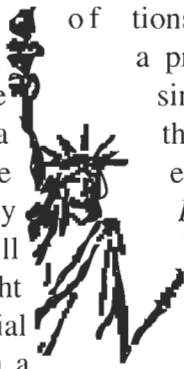
In *Rose v. Lundy*, 455 U.S. 509 (1982), the U.S. Supreme Court announced that habeas corpus petitions must contain all of the claims a prisoner wishes to present in a single petition. The holding of the case is known as the "total exhaustion" rule. In *Teague v. Lane*, 489 U.S. 288 (1989), the U.S. Supreme Court held that changes in the law since conviction, favorable to the defendant, could not be applied retroactively in federal habeas corpus proceedings.

In 1991, the U.S. Supreme Court held that, when a petitioner files a second or successive petition, the government may allege that petitioner has abused the writ of habeas corpus. Claims previously raised, having already been adjudicated, can be summarily dismissed, and the government

may move for dismissal of claims appearing for the first time because they could have been raised in the earlier petition. The burden then shifts to petitioner to show cause for failing to raise the claim previously, and he must also demonstrate that actual prejudice or a fundamental miscarriage of justice will result if the court fails to address the merits of his claim. *McLesky v. Zant*, 499 U.S. 467 (1991).

In *Brecht v. Abrahamson*, 507 U.S. 619 (1993), the Court held that a petitioner could not obtain federal habeas corpus relief unless the error had a "substantial and injurious effect or influence in determining the jury's verdict," unless the error resulted from a structural defect in the trial that undermined the entire process. [The previous standard

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Message from the Editor

In this issue, NCPLS looks at the changes in federal habeas corpus statutes and examines three cases in which our office was able to successfully litigate such cases. Though offenders are concerned with many issues they face in prison, their convictions and sentences are often of paramount importance to them.

Success Story: NCPLS wins three federal habeas cases

Three NCPLS clients recently won relief in separate petitions for writs of federal habeas corpus. Two of these cases were won at the Fourth Circuit Court of Appeals, and in the third case, relief was granted at the Federal District Court level. It is rare to prevail on a petition for a federal writ of habeas corpus, and these three cases illustrate the time-consuming and difficult path of obtaining post-conviction relief.

Love v. Freeman

After an eight-year legal battle, NCPLS won a new trial for a North Carolina inmate. The defendant was granted a new trial after the Fourth Circuit Court of Appeals ruled that evidence improperly withheld by the State had prevented Defendant from receiving a fair trial.

NCPLS's involvement in this case came after the defendant's appeals in North Carolina Courts had been exhausted, when he wrote to ask for legal help from our office. NCPLS reviewed the case and determined

While it is very difficult to obtain relief from a conviction or sentence, the cases that are highlighted in this issue illustrate that it can be done, even though the law has become more "unfriendly" to such challenges in recent years.

NCPLS ACCESS also examines Post-Release Supervision. We have received many letters recently about this provision of the Structured Sentencing Act, and we hope we

that a federal issue existed that might entitle the defendant to relief from his conviction.

The defendant had been charged with first degree rape of his step-daughter, then ten years of age. His trial counsel believed that exculpatory evidence was contained in documents in the control of Wake Medical Center, Wake County Public Schools, Wake County Mental Health Center, and the Wake County Department of Social Services. The trial attorney subpoenaed these documents prior to trial, but the trial court granted the prosecutor's oral motion to quash all of the subpoenas, with the exception of records relating to a medical examination of the victim. Although the



NCPLS attorney J. Phillip Griffin (pictured above) argued the *Love v. Freeman* case in the Fourth Circuit. NCPLS attorney Linda Weisel briefed the case for the Fourth Circuit and litigated the case in Federal District Court.

can clear up some misconceptions about this type of release.

We hope to use this newsletter as a way to better inform our clients and to provide accurate information about new developments. Please feel free to drop us a line with comments or suggestions for future articles.

Billy Sanders, CLAS
Editor

case entirely rested on the credibility of defendant's step-daughter, he was convicted.

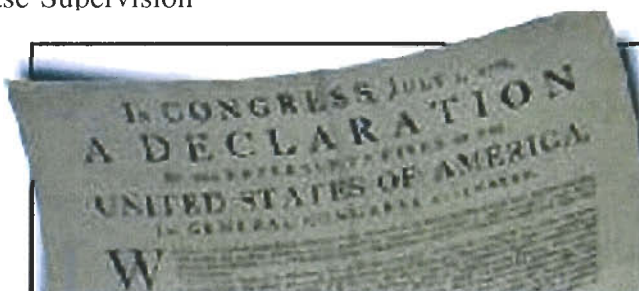
In 1989, NCPLS filed a petition for a federal writ of habeas corpus challenging the trial court's refusal to review the subpoenaed documents as a violation of due process, based upon *Pennsylvania v. Ritchie*, 480 U.S. 39, 107 S.Ct. 989 (1987). The Ritchie Case involved similar facts and was decided two years before defendant's trial. In *Ritchie*, the U.S. Supreme Court held that, once an accused makes a showing that evidence would be both material and favorable, the trial court must review the information and determine whether it must be disclosed.

Nonetheless, in this case, the U.S. Federal District Court rejected the petition for a writ of habeas corpus. NCPLS appealed to the Fourth Circuit Court of Appeals. In 1995, the Fourth Circuit ruled that

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Post-Release Supervision: What is it and how does it affect inmates?

Inmates frequently write NCPLS to inquire about Post-Release Supervision. Post-Release Supervision is a term that applies to those sentenced under the Structured Sentencing Act (SSA). It does not apply to those sentenced under the Fair Sentencing Act, or under previous sentencing statutes. The SSA applies only to those defendants whose offense dates occurred on or after October 1, 1994. Post-Release Supervision is available only to those inmates who were convicted of crimes in the class of felonies from B1 through E.



Because the penalties for those offenses involve substantial sentences, inmates who received convictions in those classes of felonies have only recently become eligible for release from prison, and some who have been released are now facing revocation proceedings based upon alleged violations of the conditions of Post-Release Supervision.

General Structured Sentencing Provisions

Under SSA, the first step in sentencing a convicted defendant is to establish the minimum sentence. The minimum sentence is determined by a grid that matches a Prior Offense Level to the felony class of the conviction.

There are three ranges of possible minimum sentences; 1) mitigated, 2) presumptive, and 3) aggravated. The range chosen is determined by the presence or absence of mitigating or aggravating factors, as established by case law or statute, *Continued on page 4*

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was whether the error was harmless beyond reasonable doubt.

These restrictions, and other judicially created doctrines, now appear in the language of the federal habeas corpus statutes, 28 U.S.C. 2241 and 28 U.S.C. 2254.

Time Restrictions on Habeas Corpus Relief

The most novel and perhaps most dramatic change in the federal habeas corpus statutes is the unprecedented imposition of a time-limit for filing a petition for a writ of habeas corpus. 28 U.S.C. §1241(d) requires that an inmate file a petition within one year after a triggering event. For example, when there has been a jury trial and a direct appeal (and providing the prisoner has no unexhausted claims to present), the petition must be filed within one

year of the decision of the state's highest court.

If there is an unexhausted claim (in other words, one that has not previously been presented to the state court), a defendant must first exhaust that claim in state post-conviction proceedings. In North Carolina, the defendant must file a motion for appropriate relief to present such a claim to the superior court. If the defendant receives an adverse decision to the motion for appropriate relief, the decision could then be appealed to the court having jurisdiction over the direct appeal, by means of filing a petition for a writ of certiorari. If the North Carolina Court of Appeals is the court having jurisdiction over the appeal, the defendant would not have to appeal an adverse decision to the N.C. Supreme Court, because it is not permissible to

seek further review under State law. N.C.Gen.Stat. §15A-1422 (c) (3); Rule 21(e), North Carolina Rules of Appellate Procedure.

The periods of time during which state post-conviction proceedings are "pending," are excluded from the one-year statute of limitations. This term has been interpreted in different ways by federal courts. Under one interpretation, the government would be allowed to count the "gaps" in state post-conviction proceedings. Under the "gap" theory, the time from the denial of the motion for appropriate relief until an appeal or a petition for a writ of certiorari is filed, and the time required for preparation of the transcript of any state court hearing on the claim, would count against the one-year statute of limitation.

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and found by the trial court at sentencing.

Post-Release supervision has no effect on defendants convicted for felony classes F through I. The maximum sentence given in each case computes to about 120% of the minimum sentence. Once an inmate sentenced for that class of felony reaches the end of their maximum sentence, as reduced by earned time, they are simply released from the Department of Correction, with no restrictions other than those imposed by law as the result of a felony conviction.



Those convicted in the group of felonies from B1 through E, have a maximum release date that is generally about 120% of their minimum sentence, plus nine months. A chart that contains those computations appears at N.C.G.S. §15A-1340.17(e).

There are some inmates that believe that Post-Release Supervision constitutes some type of early release. That is not the case. There are no SSA provisions that allow for early release of a convicted felon. Instead, every inmate is required to serve an active term of imprisonment which can never be less than his minimum term of imprisonment. The last nine months of a felony class B1 through E sentence is served by the offender

while on post-release supervision, which is very similar to the service of a sentence while on parole.

The Purpose of Post-Release Supervision

As noted above, there seems to be some confusion about the purpose of Post-Release Supervision. It may seem that those convicted of a more serious felony are receiving a benefit. However, the purpose of Post-Release Supervision is not to provide an early exit for those convicted of the most serious offenses. The maximum term of a sentence for all felony offender groups is about 120% of the minimum, but the more serious

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defendant's due process rights had been violated and ordered the Federal District Court to review the documents and determine whether the evidence was material. *Love v. Johnson*, 57 F.3d 1305 (4th Cir. 1995).

On remand, the Federal District Court ordered that the parties review the documents in issue. After arguments from the parties, the Court ruled that the withheld documents were not material, and the *Love* case was once again appealed to the Fourth Circuit. On August 30, 1999, the Fourth Circuit reversed the District Court and held that some of the information in the withheld documents constituted evidence that was material to defendant's conviction, and ordered a new trial.

Bell v. Jarvis

The issue in the Bell case involved the defendant's right to a public trial. Before defendant's trial on charges of sexual offenses against a minor, the prosecution moved that the courtroom be closed during testimony of the minor prosecuting witness. The court granted the motion without inquiring into the need to close the courtroom.

However, *Waller v. Georgia*, 467 U.S. 39 (1984), held that "the explicit Sixth Amendment right of the accused is no less protective of a public trial than the implicit First Amendment right of the press and public." The *Waller* court held that, before a courtroom could be closed, the judge had to make certain specific inquiries. This was

not done in the Bell case.

Defendant raised numerous claims on direct appeal. Although defendant's counsel assigned error to the closing of the courtroom, she did not brief the issue before the Court of Appeals. Deeming the claim abandoned, the Court of Appeals did not discuss it and found no merit in the contentions counsel had briefed. See *State v. Bell*, 117 N.C. App. 732, 453 S.E.2d 877 (1995) (table).

After defendant's appeal was decided, he contacted NCPLS. After evaluation of his claim, NCPLS agreed to provide representation and filed a motion for appropriate relief in the Pitt *Continues on page 6*

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offenders have an additional nine months added to their maximum sentences, to be served on Post-Release Supervision.

Post-Release Supervision is, to some extent, designed to assist in the adjustment back into society after a long period of incarceration. But the major purpose seems to be to assure the public that those convicted of serious offenses are not released into society without any restrictions on their conduct.

How to Qualify

This is pretty simple. Everyone sentenced on a B1 through E felony qualifies. No provision of the statute allows the Parole Commis-

sion to deny an inmate release on Post-Release Supervision. Once an inmate reaches his maximum sentence, as reduced by earned time, he is automatically released. Also, an inmate cannot refuse Post-Release Supervision.

This differs from parole under Fair Sentencing on both counts. Under Fair Sentencing, the "mandatory" ninety-day parole could be denied if the Parole Commission made certain findings. Also, under Fair Sentencing, an inmate could refuse parole.

Conditions of Post-Release

Many of the same conditions

of parole under former law are carried over into the conditions which can be imposed in Post-Release Supervision. The Post-Release statute, however, contains several new conditions categorized as "reintegrative" and "controlling." There are 6 reintegrative conditions, and 14 controlling conditions. Under the former parole statute, there were only 12 conditions, total. Interestingly, the Parole Commission cannot require community service as a condition of post-release supervision.



A sex offender has additional conditions (5) to comply with, including one that forbids the offender from
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Recently, the Fourth Circuit has held that these "gaps" do not count against the one-year statute, at least in capital cases where state post-conviction proceedings had been initiated prior to the enactment of the AEDPA. *Taylor v. Lee*, 186 F.3d 557 (1999). Other federal courts that have considered this issue have rejected the "gap" theory in all habeas cases. See, for example, *Gaskins v. Duval*, 183 F.3d 8 (1st Cir. 1999); *Mills v. Norris*, 187 F.3d 881 (8th Cir. 1999). The broader question is presently pending on appeal in the Fourth Circuit. *Hernandez v. Caldwell* [No. 98-7640, (1999)].

Defendants whose convictions became final prior to April 24, 1996, generally had one year to file a federal petition for a writ

of habeas corpus, or until April 23, 1997. *Brown v. Angelone*, 150 F.3d 370, 374 (4th Cir. 1998). Since that date has passed, and absent extraordinary extenuating circumstances, those defendants no longer have a right to seek federal habeas corpus review.

Other New Restrictions on Habeas Corpus Relief

One of the newest restrictions on obtaining habeas corpus relief can be found in the language of 28 U.S.C. § 2254(d) which provides that:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was

adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

With respect to 28 U.S.C. § 2254 (d) (1), the Fourth Circuit has held that habeas relief is authorized
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County Superior Court. The issue before that court was whether defendant's counsel on direct appeal was ineffective for failure to raise the public trial claim. The Superior Court summarily denied the motion, *State v. Bell*, No. 92 CRS 12536 et al. (N.C. Sup. Ct. Pitt County, Nov. 8, 1996), and the North Carolina Court of Appeals rejected the subsequent petition for certiorari. *State v. Bell*, No. COAP96-591 (N.C. Ct. App. Dec. 31, 1996).

On April 9, 1997, having exhausted this federal claim through the state court system, NCPLS filed a petition for a writ of habeas corpus in the District Court for the Eastern

District of North Carolina. The Magistrate Judge concluded that defendant's counsel had provided ineffective assistance due to the failure to present a meritorious public trial claim. The Magistrate Judge recommended that defendant be granted a new direct state appeal. The State objected to that finding and the District Court rejected the Magistrate Judge's recommendation, holding that appellate counsel was not ineffective because the trial court did not err in closing the courtroom. The District Court granted summary judgment in favor of the State, dismissing the habeas petition. *Bell v. Jarvis*, F. Supp. 2d 699 (E.D.N.C. 1998).

An appeal followed, and on December 2, 1999, the Fourth Circuit Court of Appeals reversed and ordered a new appeal or defendant's release. Critical to the Court's decision was its finding that the trial judge had not satisfied the requirements in *Waller* by inquiring into the need to close the courtroom, or evaluating any less restrictive alternative measures.

Bates v. Jackson

Our client was indicted and tried for conspiracy to traffic a controlled substance by possession

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Post-Release Supervision *continued from page 4*

residing in any household where a minor resides, if he was convicted of a sex offense involving a child.

Both the former parole statute and the Post-Release Supervision statute contain a "catch-all" provision that allows the Commission to impose other conditions in their discretion if, "they reasonably believe it necessary to ensure that the [supervisee] will lead a law-abiding life or to assist the [supervisee] to do so."

Revocation

Post-Release supervision may only last for nine months, unless the conviction is for a sex offense listed in N.C.G.S. §14-208.6(5). For those offenses, the period of Post-Release Supervision is five years. The procedures for revoking Post-Release Supervision and the procedures for revoking parole are almost identical. After the parolee/supervisee is

arrested, a preliminary hearing must be held within seven working days to determine if there is probable cause to believe that a violation has occurred. The supervisee can request a continuance, or the Commission may hold a hearing prior to the arrest, but otherwise, that seven-day period cannot be waived.

The Commission must hold a hearing within 45 days from the arrestee's confinement to determine whether to revoke, but that provision can be, and often is, waived.

One interesting difference between parole under Fair Sentencing and Post-Release Supervision, is that while on parole, a parolee received credit against his sentence for the time he spent in compliance with the conditions of his parole, except the last six months. However, it appears that a person on Post-Release

Supervision would receive no credit for such time. Should the inmate violate the conditions of his release, he could be required to serve the remainder of his maximum sentence, calculated from the time of his release.

NCPLS will undoubtedly receive many questions from inmates as more individuals sentenced for more serious crimes become eligible for Post-Release Supervision.



NCPLS wins three habeas cases *Continued from page 6*

on or about January 4, 1995. At his trial in October of 1995, the defendant's motion for a dismissal based on the insufficiency of the evidence was granted. However, before the defendant was released from custody, a new warrant was issued for his arrest on the charge of conspiracy to traffic a controlled substance by possession, transportation, manufacture, and sale and delivery. An indictment was returned charging the conspiracy, which allegedly occurred between September 1993 and December 29, 1994.

Prior to his second trial in January of 1996, defendant made a motion on grounds of double jeopardy to dismiss the second charge, which was based on the same facts as the earlier conspiracy charge. The motion was denied, defendant was convicted of the conspiracy in the second trial, and the conviction was upheld by the North Carolina Court of Appeals.

NCPLS, on behalf of our client, filed a petition for a writ of habeas corpus in the United States District Court, Eastern Division of North Carolina. The District Court found that the dismissal for the insufficiency of the evidence in the first trial was functionally equivalent to a verdict of not guilty. That dismissal precluded the State from trying defendant for the same offense a second time. The issue then before the District Court was whether the conspiracy charged in the first indictment (of which the client was functionally acquitted) was the same conspiracy alleged in the second indictment. If the conspiracies were the same alleged offense, then the Double Jeopardy Clause of the Sixth Amendment of the United States Constitution prohibited the State from re-trying the client.

On November 18, 1999, the District Court, after a thorough and extensive review of the record, determined that there was only one alleged

conspiracy, which spanned the dates in both indictments. Since the conspiracy charged in the first indictment was in fact the same conspiracy charged in the second indictment, the District Court found that the defendant's right to be free from being tried twice for the same offense had been violated and issued its writ of habeas corpus.

Since the basis of the ruling was double jeopardy, our client was set free. In most cases, a victory in habeas corpus results in a new trial, rather than immediate release from prison.



NCPLS attorney James W. Carter represented Timothy Bates.

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only when the state courts have decided the question by interpreting or applying the relevant precedent in a manner that reasonable jurists would all agree is unreasonable. *Green v. French*, 143 F.3d 865, 870 (4th Cir. 1998). This standard, seemingly impossible to meet, is now being considered by the U.S. Supreme Court in *Williams v. Taylor*, 1999 WL 566136 (4th Cir. 1999).

Review of Habeas Corpus Issues

North Carolina Prisoner Legal

Services, Inc., (NCPLS), evaluates post-conviction issues upon request from inmates incarcerated in the North Carolina Department of Correction. Inmates wishing to have their cases evaluated should write to our office and request a post-conviction questionnaire. Inmates that have previously had their cases evaluated should be aware that, in the absence of a new issue, NCPLS will not conduct a second evaluation.

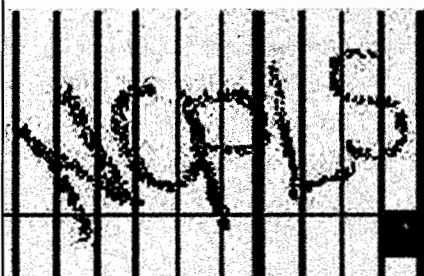
Seeking post-conviction relief is a complicated legal task, involving

difficult substantive and procedural legal issues. Even those inmates who choose to proceed on their own should first write to NCPLS. An attorney will review the case for possible representation, and if representation is declined, a detailed explanation of the relevant legal issues will be provided to the inmate. Inmates should request assistance as soon as possible after their direct appeal or entry of a guilty plea.

**THE NEWSLETTER OF NORTH CAROLINA
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