

Examples of Reversible Error

The following is a list of some examples of reversible error on Appeal.

Errors Involving the Constitution;
Errors Involving Jurisdiction/Venue;
Errors Involving Time Limitations;
Errors Associated with the Grand Jury;
Errors Involving Indictments;
Errors Associated with Judges;
Errors Associated with Prosecutors,
Police and/or Judges;
Errors Involving Defendant and/or
Defense Attorney;
Errors Involving Dismissal;
Errors Involving Guilty Pleas;
Errors Involving Publicity;
Errors Involving Continuances;
Errors Involving Discovery;
Errors Involving Severance;
Errors Involving Double Jeopardy;
Errors Involving Identification;
Errors Involving Search and Seizure;
Errors of Sufficiency of the evidence;
Errors on pre-trial motions; and
Errors in 404(b), prior crimes
evidence and other errors.

Marcia G. Shein began consulting with criminal defense attorneys in 1980 on federal sentencing issues. Her background as a federal probation/parole officer, private therapist, her Masters Degree in Counseling Psychology, and her Juris Doctorate Degree have helped set the goals for providing consultation and representation to defendants and defense attorneys in matters of Federal pre- and post-conviction relief throughout the country. Ms. Shein has served as an adjunct instructor of legal and psychology courses for the Criminal Justice Programs for Broward Community College and Nova University in Florida, Troy State University in Alabama, and Kaplan University in Chicago.

Ms. Shein is a recognized attorney in pre-trial sentencing and post-conviction relief whose articles and personal interviews have been published in numerous state and national law journals. She has provided testimony before the United States Sentencing Commission and has spoken before state and national bar conventions, civic groups, and on television. Ms. Shein is the author of *The Sentencing Defense Manual*, published by West Group (formerly by Clark, Boardman, Callaghan, Ltd.) from 1988 to 1998. Her book served as a criminal defense attorney's guide to effective sentencing advocacy and sentencing resources. It was awarded the Best Legal and Accounting Text for 1988 by the American Association of Publishers.

Ms. Shein is also the editor of a self-help manual for federal prisoners as well as a monthly newsletter. Ms. Shein is a life member of NACDL and is admitted in all Federal Circuit Courts of Appeal, the Supreme Court of Georgia, and the United States Supreme Court. She has also been admitted in the following United States District Courts: Middle, Southern and Northern Districts of Georgia; the Districts of Arizona, Colorado, Nebraska, and Columbia; the Eastern District of Tennessee; Eastern District of Michigan; and the Western, Eastern, Southern and Northern Districts of Texas. Her practice includes pro hac vice appearances throughout the country.

Truth, Equality, Justice



When It's Time For A Change

THE BENEFITS OF USING AN APPELLATE ATTORNEY

*Appellate Services from
Pretrial • Trial • Plea • Sentencing*



*Law Office of Marcia G. Shein, P.C.
Federal Criminal Law Center
2392 N. Decatur Road
Decatur, Georgia 30033
(404) 633-3797
(404) 633-7980 (Fax)
email: Marcia@MSheinLaw.com
<http://www.MSheinLaw.com>*

Appealing your case

After a conviction is handed down and the sentencing hearing is concluded, there may be a sense of finality and hopelessness due to the results of the preliminary proceedings. However, there is an opportunity to turn the situation around. Here enters the appellate/post-conviction attorney. Through experience with the system and thoroughly examining trial motions and transcripts, the appellate/post-conviction attorney may provide valuable assistance in matters which arise from pre-trial, plea, trial, and sentencing. After trial and sentencing, the defendant can be represented by an attorney who can offer a fresh perspective on their case. Frequently it is best for new counsel to handle the appeal. Trial counsel's thoughts and opinions will be solicited but only after the appellate/post-conviction attorney has taken a fresh look at the file. See Billy-Eko v. United States, 8 F.3d 111 (2nd Cir. 1993). Every circuit is different. We endeavor to stay current on important issues in each circuit and the Supreme Court.

The appellate/post-conviction attorney examines the whole case, from indictment to trial through sentencing, searching for pertinent issues that support a different outcome. This includes, but is not limited to, rulings on pretrial motions, pertinent criminal statutes, search and seizure issues, defective indictments, illegal sentences, and a wide array of trial and constitutional issues. For example, in Duhart v. United States, 476 F.2d 597 (6th Cir. 1973), the court found that a motion to vacate the sentence could be properly raised based on the claim that the Defendant was illegally arrested and, therefore, the evidence found in his car was also illegal. United States v. Donaldson, 978 F.2d 381 (7th Cir. 1992), the court held that convictions tainted by constitutional errors must be reversed unless the errors are harmless. Searches conducted outside proper judicial process, without prior approval of a judge or magistrate, are generally *per se* unreasonable. United States v. Morris, 977 F.2d 677 (1st Cir. 1992).

Examples of Cases that have been Remanded

U.S. v. Long, 715 F.2d 1364 (9th Cir. 1983); U.S. v. Conroy, 589 F.2d 1258 (5th Cir. 1979), cert. denied, 444 U.S. 831, 100 S.Ct. 60, 62 L. Ed. 2d 40 (1979) 18 U.S.C. 3500(c).

It is error for the court to deny possible Jencks Act materials without first reviewing them in camera.

U.S. v. Roberts, 793 F.2d 580 (4th Cir. 1986) FED. R. EVID. 16(a)(1)(A).

The statements of co-conspirators who are not intended to be government witnesses should be discoverable under Rule 16(a)(1)(A) as imputable statements of the defendants, i.e., any statements made by co-conspirators that have the potential for being treated as evidentiary admissions of the defendant should be discoverable.

U.S. v. Calderone, 982 F.2d 42 (2d Cir. 1992).

The judgement of acquittal for conspiracy constituted double jeopardy as the use of the telephone related to that conspiracy. Judgment of acquittal for a larger conspiracy constitutes double jeopardy as to a smaller included conspiracy.

U.S. v. Jacobs, 986 F.2d 1231 (8th Cir. 1993).

A search warrant affidavit which stated that a drug-sniffing dog had shown an interest in the package without also stating that the dog failed to "alert" was fatally defective.

U.S. v. Bennett, 905 F.2d 931 (6th Cir. 1990).

The search warrant would be suppressed where the affiant admitted that the informant had not seen marijuana in the defendant's barn as stated in the affidavit but had bought marijuana from the defendant who, during the transaction, went out towards the barn presumably to get the marijuana, none of which was stated in the warrant.

U.S. v. Mareno-Chaparro, 157 F.3d 298 (5th Cir. 1998). Subjective considerations, rather than external sources cannot support a good faith exception to Exclusionary Rule. To do so would not have the deterrent effect on the future conduct of police officers.

Successful Appeal Cases

STATE OF GEORGIA

Miller v. State of Ga.
219 GA App. 284

THIRD CIRCUIT

U.S. v. Cudemo
100 F.3d 948

U.S. v. Funkhouser
185 F.3d 863

U.S. v. Holtz
116 F.3d 470

U.S. v. Kapral
166 F.3d 565

U.S. v. Salb
60 F.3d 819

U.S. v. Brightwell
104 F.3d 47

FOURTH CIRCUIT

U.S. v. Peterson
27 Fed. Appx. 193

U.S. v. Sanson
85 Fed. Appx. 967

FIFTH CIRCUIT

U.S. v. Schreiber
167 F.3d 213

U.S. v. Rose
2006 US App LEXIS
11679

NINTH CIRCUIT

U.S. v. Landivar
110 F.3d 71

Marquez-Perez v. Rardin
221 F.3d 1139

U.S. v. Osborne
129 F.3d 128

U.S. v. Reagan
218 F.3d 957

ELEVENTH CIRCUIT

U.S. v. Kirby
31 Fed. Appx. 934

U.S. v. Hands
184 F.3d 1322

U.S. v. Nolan
117 F.3d 1430

U.S. v. Ramsdale
61 F.3d 825

U.S. v. Stone
139 F.3d 822

SUPREME COURT

U.S. v. Husband
126 S.Ct. 322

We have represented appeal cases and 2255's in other Federal Circuits not mentioned here.

*** Full resume and additional information from all courts and Supreme Court available upon request.**