

Russell v Borders

*Writ
Of
Habeas Corpus*

Ground 8

*Ineffective Assistance
of
Appellate Counsel*

1 **GROUND 8. INEFFECTIVE ASSISTANCE**
2 **OF APPELLATE COUNSEL**

3 Petitioner contends his appointed appellate counsel
4 Christine Vente associated with the Central California Appel-
5 late Program in Sacramento provided ineffective assistance of
6 counsel to him on appeal. April 25 2014 the Sacramento County
7 Superior Court sentenced him to a determinate term of 13 years
8 four months in state prison. (5C.T. 1252-1255), (12R.T.
9 3543-3544) Appellant filed a timely notice of appeal on April
10 28 2014. (5C.T.:1256) The Court Transcript, contained in five
11 (5) volumes and the Reporter's Transcript, contained in twelve
12 (12) volumes was provided to Ms. Christine Vente as soon as they
13 were prepared and available.

14 Appellate counsel argued the trial court incorrectly appli-
15 ed the pre-January 25, 2010 version of §4019 to calculate his
16 presentence conduct credits. The People agreed the trial court
17 erred in awarding Petitioner a total of 873 days of pre-
18 sentence custody credit and further agreed Petitioner was
19 entitled to a total of 1,165 days of presentence custody credit
20 under the current credit accrual rate in section 4019 The
21 California Court of Appeal agreed in an unpublished undated
22 decision received by Petitioner in August 2016.

23 Petitioner's appellate counsel presented no other issues on
24 direct appeal and thus Petitioner argues to the extent the
25 issues addressed in Grounds 1 through 7 in the instant habeas
26 petition could have been and/or should have been raised on
27 direct appeal appellate counsel was ineffective.

28 (Ronald Russell, Habeas Corpus Petition, Ground Eight, page 96.)

1 Petitioner received assistance in researching and preparing
2 the instant habeas petition from a fellow prisoner. Neither
3 Petitioner nor the fellow prisoner has previous formal legal
4 training or experience. The fellow prisoner began by having a
5 month long series of continued discussions with the Petitioner
6 regarding the underlying facts of the case, his memory of
7 critical issues developing as the case moved toward trial,
8 Petitioner's memory of critical points and issues during the
9 trial and his thoughts about the evidence both presented and
10 excluded at trial. Waiting for the Reporter's Transcripts to
11 arrive, the assisting prisoner began researching what appeared
12 to him to be matters of law by day in the prison's sparse and
13 spartan law library. He intently studied the twelve volumes of
14 Reporter's Transcripts by night making copious notes referring
15 to potential habeas material after Petitioner obtained the
16 transcripts in July, 2016. He reviewed his notes and narrowed
17 the issues to the eight grounds contained herein.

18 At an evidentiary hearing, this prisoner will testify he has
19 no formal legal training and experience but the grounds for
20 direct appeal and a habeas petition attacking Petitioner's
21 conviction literally jumped off the page for him. If an
22 evidentiary hearing is granted Petitioner will argue the point:
23 In a matter of 3-4 months a fellow prisoner with no legal
24 training and extremely limited access to only basic legal
25 research facilities recognizes and identifies countless issues
26 then narrows them to all the issues presented herein; while his
27 appellate counsel in the course of 27 months ONLY identifies the
28 most obvious pre-trial custody credit issue to which the People

(Ronald Russell, Habeas Corpus Petition, Ground Eight, page 97.)

1 agreed BECAUSE THE ISSUE HAD BEEN RESOLVED LONG BEFORE THE
2 APPELLANT'S OPENING BRIEF WAS FILED. Petitioner will argue this
3 dichotomy represents evidence he did not receive effective
4 assistance from appellate counsel.

5 Petitioner offers the following as further indications why
6 appellate counsel was ineffective:

7 A FAILURE TO CONSULT
8 WITH APPELLANT REGARDING APPEAL

9 Appellate Attorney Christine Vente's communication with
10 Petitioner was limited to correspondence confirming her to be
11 Petitioner's counsel on appeal, correspondence pertaining to the
12 Appellate Court's granting her a series of time extensions to
13 file Appellant's opening brief that were based on her personal
14 situation. She responded in writing to Petitioner's first
15 request to send him all of the transcripts, saying she couldn't
16 release them until the appeal was concluded. She responded in
17 writing to Petitioner's second request to send him all of the
18 transcripts, saying she had identified the pretrial custody
19 credit issue above and was about to file Petitioner's opening
20 brief, adding she had informal conversations with the Deputy
21 Attorney General who agreed with her position about the credits.
22 She responded to a telephone call from Petitioner's brother Mr.
23 Richard Russell inquiring into the status of the appeal, stating
24 she was waiting on the Respondent's brief. She did not accept
25 any of Petitioner's collect phone calls. In July, 2016
26 Petitioner wrote her a letter listing his reasons why he
27 intended to file a complaint about her with the State Bar,

28 (Ronald Russell, Habeas Corpus Petition, Ground Eight, page 98.)

1 further describing what she could do to avoid a complaint to the
2 State Bar. Petitioner had two simple requirements: 1.) Bring
3 his appeal to a conclusion, and 2.) Send Petitioner all of the
4 transcripts. Ms. Vento fulfilled those two requirements. A few
5 weeks later she sent him a copy of the Appellate Court ruling
6 with a "sticky note" attached to the first page which read
7 "Ronald - As you know we won! Christine"

8 Attorney Vento never solicited any input from Petitioner
9 regarding the appeal. She did not seek any clarification
10 regarding pre-trial matters, trial matters and issues, or the
11 factual substance of Petitioner's defense.

12 Attorney Vento, who lives and works out of her home in Los
13 Angeles, made no attempt or arrangements for an attorney-client
14 visit despite the fact Petitioner is housed at California
15 Institution for Men in Chino, California approximately an hour
16 or less from Los Angeles. Attorney-client visitation is
17 available during normal business hours Monday through Friday at
18 CIM.

19 The direct result of appellate counsel's failure to consult
20 with the Petitioner, when all the while, the attorney had
21 exclusive control of the Court and Reporter's Transcripts was,
22 Petitioner didn't really receive "legal counsel" about
23 appealable issues, remained in the dark for 27 months about
24 progress on his appeal, and was sorely restricted from moving
25 forward in seeking post-conviction relief because his appellate
26 counsel maintained control of all relevant documentation while
27 the appeal process and decision dragged on and on.

28 (Ronald Russell, Habeas Corpus Petition, Ground Eight, page 99.)

B. CONTINUED DELAYS RESULTING FROM MULTIPLE TIME EXTENSIONS

Appellate counsel requested and was granted a total of 6 time extensions to file an Opening Brief. Counsel complained about her workload, the enormous size of the record, personal illness and her temporary physical disability as the basis for these time extensions. But counsel admitted she worked from home, in Los Angeles, and objectively speaking that is her tacit admission she has at least an extra two (2) hours a day that other people spend commuting between home and work. Her reasons for time extension after time extension were part and parcel of circumstances under her own control. If you can't handle the workload you have, don't take on additional work. If you can't deal with seventeen (17) volumes of transcripts from a 26 day trial, revisit your expectations and revise your priorities. True, professional people become ill, but unless you are in the hospital and comatose, you can undertake basic tasks like reading transcripts and making notes from your sickbed, particularly if you are fortunate enough to work from home. (NOTE: The elderly physically disabled seriously ill prisoner who assisted the Petitioner studied transcripts and made notes from his prison bunk!)

Petitioner contends his appellate counsel found as many reasons as she could to delay working on Petitioner's appeal because she simply dreaded taking on the task. Petitioner compares the final product as only rising to the standard of "at least something." The final product reflected a trending motto: "We aspire to mediocrity and sometimes almost achieve it!"

(Ronald Russell, Habeas Corpus Petition, Ground Eight, page 100.)

1 If an evidentiary hearing is granted in this matter,
2 Petitioner will argue Appellate counsel's performance mirrored
3 trial counsel's performance. Both took a great deal of time to
4 accomplish very little. Appellate counsel was ineffective from
5 the standpoint of how much time she wasted for not even a
6 marginal result to the benefit of the Petitioner.

7 **C. FAILURE TO RAISE ANY SIGNIFICANT ISSUE:**

8 Petitioner contends when the trial court essentially says:
9 "I don't care let counsel deal with it on appeal!" (R.T.
10 3548:4 - 3549:9) the trial issue BECOME PLAINLY OBVIOUS, but not
11 necessarily significant. This is the case with the pre-trial
12 custody credit matter, the only issue to catch the attention of
13 appellate counsel. Petitioner has included in the instant
14 petition equally obvious issues that are unmistakably
15 significant in the context of this entire case, not the least of
16 which being Petitioner's right to a fair and speedy trial, lack
17 of necessary elements of intent and wrong doing, and Brady
18 concerns.

19 Petitioner has maintained his innocence since before his
20 arrest. As a starting point, counsel should have wondered: The
21 defendant is 73 years old, never been subject of a complaint
22 about business practices during his 30 years in the real estate
23 industry, and has no criminal history He says he's innocent.
24 With all the evidence presented, how or why does he maintain his
25 innocence - This is a mystery and requires something of an
26 intellectual journey.

27 The journey, once begun by carefully walking through all the
28 evidence, eventually leads to the legal conclusion that as a

(Ronald Russell, Habeas Corpus Petition, Ground Eight, page 101.)

1 matter of law, Petitioner is innocent on all counts. Petitioner
2 violated no state or federal law in setting up and conducting
3 his Rent To Own business. The case against Petitioner was
4 predicated on an untested assumption he was operating a scam or
5 "Ponzi scheme" and the available evidence then cherry-picked to
6 create an illusion congruent with the untested assumption. The
7 law however, presumed the Petitioner to be innocent until proven
8 guilty beyond a reasonable doubt of each and every necessary
9 element and in each and every crime (count).

10 Beginning with the presumption Petitioner is innocent, the
11 evidence conclusively demonstrated: 1.) The experienced Real
12 Estate Broker was operating a legitimate business. 2.) Peti-
13 tioner advertised for a specific group of customers who might be
14 interested in the services he intended to provide. 3.) Petition-
15 er signed a contract with each customer promising to provide
16 specific services, or if the customer changed their mind, Peti-
17 tioner would refund the fee the customer paid to the Petitioner
18 in consideration for these promised services. 4.) The customers
19 understood Petitioner was not obligated to them and would not
20 provide services to them UNTIL AFTER they paid the fee to Peti-
21 tioner. 5.) Once the fee was tendered to Petitioner, as a matter
22 of law, the fee became Petitioner's property. 6.) Petitioner
23 exercised his right to finance his business operations using the
24 fees he collected. 7.) Based on the best information available
25 to Petitioner provided by his attorney handling recruitment of
26 private investors, Petitioner believed receipt of the required
27 private investment was imminent. 8.) Petitioner encountered
28 unexpected business conditions resulting

(Ronald Russell, Habeas Corpus Petition, Ground "Eight" page 102.)

1 in an inability to attract private investors and private
2 investor funds thus making it impossible for the time being to
3 honor his contractual promise to buy and rent homes to his
4 customers. 9.) Customers 'changed their mind' requested refunds
5 of the fee paid to the Petitioner 10.) Petitioner paid refunds
6 while funds were available. 11.) Petitioner pursued an
7 application to HUD for participation in the Neighborhood
8 Revitalization Program. 12.) Petitioner's best information
9 provided by then Senator Lungren was the HUD application
10 approval was imminent 13.) Responding to complaints about
11 Petitioner and his Rent to Own program the Bureau of Real Estate
12 launched a six (6) month investigation and concluded no
13 violations or wrong doing on Petitioner's part 14.) Petitioner
14 obtained a letter of commitment for \$5 million from a private
15 investor. contingent upon approval of the HUD application. 15.)
16 To Petitioner's utter surprise and disbelief the HUD
17 application was denied. 16.) The majority of customers, whipped
18 into a frenzy by an opportunist customer began demanding
19 immediate refunds creating a "run on the bank." 17.) Petitioner
20 provided information to these customers allowing them to obtain
21 their refund from the Consumer Recovery Fund Petitioner had paid
22 into during the many years he bought and sold real estate. 18.)
23 Petitioner completely ceased business operations including
24 advertising and accepting new customers. 19.) Petitioner's
25 customer's remained in contact with Petitioner via e-mail. 20.)
26 Petitioner's business failed. 21.) Customers received full
27 refunds through the Consumer Recovery Fund. 22.) A Broker's
28 License remains suspended until the broker fully reimburses the

(Ronald Russell, Habeas Corpus Petition, Ground Eight, page 103.)

1 fund monies paid to the broker's clients or customers.

2 Only after carefully walking through the evidence with the
3 presumption of innocence can anyone begin to identify the
4 significant issues that contributed to Petitioner's conviction
5 on all counts. BECAUSE THE PIVOTAL ISSUES IN CASE WERE
6 PETITIONER'S INTENT AND KNOWLEDGE OF WRONG DOING. Petitioner
7 did not expect or intend his appellate counsel to "re-try" the
8 case, but did expect counsel to attend to fundamental issues
9 arising from erroneous interpretation of law made by and
10 repeatedly relied on by the prosecution in order to obtain
11 Petitioner's conviction. (i.e. Did the complaining witnesses
12 pay Petitioner a fee for services or pay the Petitioner a rental
13 deposit? Once paid to the Petitioner, were the funds
14 Petitioner's property or did they remain the property of the
15 party who tendered funds to Petitioner?) At an evidentiary
16 hearing, Petitioner will demonstrate evidence and subsequently
17 argue: 1.) There are several issues appearing to be "matters of
18 law" and erroneous interpretation of legal principles similar to
19 the fore-mentioned. 2.) These are significant and underlie
20 Petitioner's conviction. 3.) Petitioner received ineffective
21 assistance of appellate counsel because his appellate counsel
22 could not, would not and did not identify any of these
23 underlying significant issues.

24 D . "W E W O N !"

25
26 The truth of the matter is W E W O N N O T H I N G !
27 The error in computing presentence time credits was corrected by
28 a Records Technician almost immediately after Petitioner entered

(Ronald Russell, Habeas Corpus Petition, Ground Eight, page 104.)

1 into the custody of the California Department of Corrections and
2 Rehabilitation. The correction required mere minutes for a
3 clerk to accomplish compared to appellate counsel's
4 approximately twenty-eight months to obtain the same result.
5 The award of pre-sentence custody credits determined by statute
6 are not within the discretion of the Court. Presumably
7 appellate counsel knew or should have known this to be true.
8 Had counsel made a couple of telephone calls soon after
9 receiving the transcripts she would have discovered the error
10 had been corrected even before she had the transcripts in hand -
11 HENCE IT WAS A NON ISSUE for appeal. Had counsel counsulted
12 with the Petitioner just once regarding his appeal, she would
13 have discovered the error had been corrected before she received
14 the transcripts. - HENCE IT WAS A NON-ISSUE for appeal.
15 Petitioner contends that counsel taking credit where no credit
16 is due reflects an ethical problem and suggests counsel's
17 professional ethics as an attorney played a role in her
18 providing ineffective assistance of appellate counsel.

19 C O N C L U S I O N

20 If an evidentiary hearing is granted in this matter,
21 Petitioner will present voluminous evidence of appealible issues
22 which escaped his appellate counsel's scrutiny, demonstrating he
23 did not receive effective assistance from appellate counsel and
24 will argue; the magnitude of issues require detailed review of
25 the case and warrant reversal of his conviction on all counts.

26 APPLICABLE CASE LAW:

27 Smith v. Robbins, 528 U.S. 259 (2000) The U.S. Supreme Court
28 found the Petitioner's appellate counsel was ineffective in
(Ronald Russell, Habeas Corpus Petition, Ground Eight, page 105.)

violation of petitioner's Sixth Amendment right to counsel.