

ANNOTATED CHRONOLOGICAL JUDICIAL HISTORY OF JEFF MIZANSKEY:

On November 19, 1984 Jeff pleaded guilty to felony possession of over 35 grams of marijuana and felony sale of a controlled substance in Cooper County, Missouri. Jeff reports he sold one ounce of marijuana to someone who then gave it to an informant who got a search warrant for his house where approximately ½ pound of marijuana was found the next day.

On October 9, 1991 Jeff pleaded guilty to felony possession of over 35 grams of marijuana in Pettis County, Missouri. Jeff reports about 2-3 ounces of marijuana were found.

On December 19, 1993 Jeff was arrested in Pettis County, Missouri for his current conviction and, other than a brief period during which he was free on bond, he has been incarcerated since that time.

On April 20, 1994 there was a pretrial hearing that Jeff appeared at and he was found to be a prior and persistent drug offender.

On May 24, 1994 Jeff was given a life sentence by Judge Theodore Scott.

On April 4, 1995 the Western District of the Missouri Court of Appeals reversed and remanded for a new trial because of instructional error for not giving a jury instruction for the possibility of a lesser included offense. State v. Mizanskey, 901 S.W.2d 95 (W.D. 1995).

On December 7, 1995 an attorney entered appearance for the new trial and requested a change of judge for cause, which was later denied by Judge Scott as a successive motion for change of judge.

On April 25, 1996 Jeff was again found guilty by a Benton County jury.

On June 19, 1996 Jeff was again sentenced to life in prison by Judge Scott.

On June 24, 1997 the Western District of the Missouri Court of Appeals affirmed in a one sentence per curiam order in State v. Mizanskey, 947 S.W.2d 93 (W.D. 1997).

On September 24, 1997 Jeff filed a pro se Rule 29.15 post-conviction relief motion which was later amended by a public defender who argued that trial counsel was ineffective for not objecting to sentencing as a prior and persistent drug offender because the trial court did not revisit the finding from the first trial that Jeff was a prior and persistent drug offender. The public defender, after repeatedly requesting extensions of time because of an overwhelming work load, ultimately did not preserve several other legitimate legal arguments Jeff specifically directed to be preserved.

On March 16, 1999 the trial court denied Jeff's PCR 29.15 motion.

In 2000 the Western District of the Missouri Court of Appeals affirmed the denial of Jeff's 29.15 motion in a per curiam order Mizanskey v. State, 39 S.W.3d 923 (W.D. 2000).

On November 13, 2000 Jeff's public defender filed a motion for transfer to Missouri Supreme Court arguing issues of general importance justifying transfer are:

1. whether it is ineffective assistance of trial counsel to fail to call a witness at second trial on remand who testified at first trial and was present in court for second trial pursuant to subpoena from Jeff's attorney;
2. whether it is ineffective assistance of trial counsel to fail to object to relevancy of evidence of 86 pounds of marijuana seized from informants the day prior to Jeff's arrest.

On December 5, 2000 the Missouri Supreme Court denied transfer and did not address the issues.

On March 15, 2001 Jeff filed a "Motion to Recall the Mandate" in the Western District of the Missouri Court of Appeals in which he argued that he had ineffective assistance of trial counsel and of appeal counsel because:

1. there was a defective chain of custody of the seven pound marijuana brick in that the

arresting officer failed to mark any identifying information on it prior to turning it over to the crime laboratory;

2. it was an error in sentencing as a prior and persistent drug offender because the issue was not considered as part of Jeff's second trial after his successful appeal of the first trial outcome;

3. there was insufficient evidence to prove beyond a reasonable doubt that Jeff knew that Atilano Quintana intended to purchase and distribute the marijuana;

4. appeal counsel did not argue that it was ineffective trial counsel for not advising Jeff he would have to serve his entire sentence without parole if he were convicted;

5. it was erroneous for Jeff's trial counsel to object to the prosecutor defining "reasonable doubt" and "acting with another" for the jury;

6. it was erroneous for Jeff's trial counsel to not object to the prosecutor's reference to 86 pounds of marijuana seized from informants the day before Jeff's arrest;

7. appeal counsel failed to argue life sentence without parole for the marijuana charge is cruel and unusual punishment.

On March 16, 2001 Institutional Parole Officer Terry G. Hayden wrote a memo to Jeff stating: "A life sentence is treated as a 30 year sentence. As the sentence started 4-27-95 with no % required, your minimum eligibility date will be 4-27-05. You should receive a parole hearing in 2003. The CR, time credit dates, etc. are shown as 99/99/9999 on life sentences and will not be computed till your hearing." Jeff reports he has not been able to get a parole hearing at all because the central office of the Board of Probation and Parole informed the institutional parole officer that the statutes listed on the judgment and sentence form (that was never signed by the now-deceased judge, but only prepared by the Court Clerk) indicated his

sentence was life without parole.

On May 1, 2001 the Western District of the Missouri Court of Appeals denied the motion to recall mandate without issuing an opinion explaining why.

On August 12, 2001 Jeff filed a federal habeas corpus petition in the Western District of Missouri Case Number 01-0927-CV-W-4-P; a show cause order was issued on August 29, 2001; the petition was denied sometime in 2003. Jeff's petition complained of several issues:

1. there was improper chain of custody of the marijuana brick evidence and the officer could not identify it at trial;
2. insufficient evidence as a matter of law;
3. ineffective assistance of trial counsel for failing to investigate and prepare facts and law and not allowing him his defense of truth;
4. ineffective assistance of trial counsel for failing to object to admission of 86 pounds of marijuana seized from the informants the day before his arrest;
5. trial court did not revisit finding from first trial that he was a prior and persistent drug offender;
6. ineffective assistance of trial counsel for failing to object to prosecution defining terms "reasonable doubt" and "acting with another";
7. lack of trial court jurisdiction to impose enhanced sentencing as a prior and persistent drug offender in violation of the 14th Amendment;
8. failure of trial counsel to assert selective prosecution defense based on the fact that the 3 suspects transporting the 86 pounds from New Mexico were granted immunity and the principal actor received only a 10 yr sentence with his guilty plea.

On September 26, 2001 the U.S. Attorney identified 10 issues Jeff raised in the government's

carefully prepared response to the show cause order as to why a writ of habeas corpus should not be issued as follows:

1. error in admitting exhibit of marijuana brick because of defective chain of custody;
2. insufficient evidence;
3. ineffective trial counsel for failing to investigate and prepare facts and law;
4. ineffective trial counsel for failing to object to 86 pounds of marijuana seized from informants the day before Jeff's arrest;
5. error in sentencing Jeff as a prior and persistent drug offender;
6. ineffective trial counsel for failing to object to the prosecutor defining reasonable doubt;
7. lack of jurisdiction to sentence Jeff to enhanced term of imprisonment;
8. ineffective trial counsel for failing to assert selective prosecution;
9. error in admitting reference to uncharged crimes;
10. error in trial court failing to sua sponte declare mistrial.

On October 31, 2002 U.S. District Judge Howard Sachs for the Western District of Missouri issued an order denying habeas corpus relief on the grounds that issues 1,2,3,5,6,7,and 8 as summarized by the U.S. Attorney were procedurally defaulted grounds that the federal courts could not address because they were not raised on direct appeal or in post-conviction relief motions in the state courts. Issues 4, 9, and 10 were addressed as follows: Issue 9 regarding Jeff's complaint that the trial court allowed evidence of the 86 pounds seized from other people the day before Jeff's arrest was denied as harmless error if error at all because of overwhelming evidence of guilt in the absence of the contested evidence. Issue 4 regarding Jeff's complaint that his trial counsel was ineffective for failing to object to evidence of the 86 pounds seized from others was denied because his trial counsel testified in the Rule 29.15 motion that he

intentionally did not object for strategic reasons. Issue 10 regarding Jeff's complaint that the trial court should have declared a mistrial sua sponte when a deputy testified regarding Jeff's past bad acts was denied because the remarks were ambiguous and did not directly mention prior convictions.

On March 10, 2003 the 8th Circuit Court of Appeals refused to issue a certificate of appealability of the denial of Jeff's habeas corpus petition.

On January 12, 2010 Jeff filed a petition for nunc pro tunc to correct a clerical error in Benton County Circuit Court to clarify if he should be serving life with or without parole because the oral sentencing did not specify the deceased judge's intention that his life sentence be served without the possibility of parole.

On February 22, 2010 Benton County Circuit Court Judge John W. Sims denied Jeff's petition for nunc pro tunc to correct the clerical error and held Jeff's exclusive remedy would have been via direct appeal or in a Rule 29.15 post conviction relief proceeding, both of which were time barred. A final judgment was not signed until June 28, 2010 because the Court of Appeals noted a lack of jurisdiction for lack of a final appealable signed judgment rather than just a docket entry or notice of docket entry from the Clerk and sent the appeal back to obtain the signed judgment.

On October 4, 2010 Jeff filed his pro se amended brief in the Western District of the Missouri Court of Appeals seeking review of the Benton County Circuit Court denial of his application for nunc pro tunc for correction of a clerical error in the judgment and sentence that resulted in a lack of clarity of whether he has a life sentence with or without the possibility of parole because the Clerk's entries conflicted with the lesser sentence orally pronounced at his sentencing hearing.

On April 12, 2011 the Western District of the Missouri Court of Appeals affirmed the denial of Jeff's application for *nun pro tunc* because Jeff failed to meet his burden of proof to demonstrate that Judge Scott intended for his sentence to be with the possibility of parole and that there was some evidence in the record that Judge Scott did intend to sentence him as a prior and persistent drug offender. The opinion notes that *nun pro tunc* is not the procedure to complain about an error in judgment if Judge Scott erred in not re-visiting the issue in the second trial.

On March 9, 2012 Jeff filed a *pro se* application for Gubernatorial Clemency with the parole board arguing he has done enough time for the crime charged, has been a model prisoner, and he is thankful for the sentencing judge saving him from a life of drugs and giving him an opportunity to participate in rehabilitation programs.

On August 3, 2012 Jeff filed his second successive federal petition for writ of habeas corpus in the U.S. District Court in Kansas City in case number 12-0978-CV-W-HFS-P arguing the federal court should order the state Circuit Court to correct a clerical error in that the unsigned judgment and sentence form cites statutes resulting in life without parole as a prior and persistent drug offender when there was no formal proceedings or finding in Jeff's second trial to determine his prior and persistent drug offender status and Judge Scott orally sentenced him to a life sentence and orally ordered that credit be given for time served, which would not apply if he intended the life sentence to be without parole. The Court ordered Jeff to file an amended complaint on a form approved for *pro se* prisoners. In that form Jeff complains:

1. The oral sentence Judge Scott announced was for a life sentence and the written judgment form cites statutes that implicate a life sentence without parole. Jeff argues this is a clerical error that the federal court should order to be corrected.

On August 14, 2012 the District Court dismissed the petition without prejudice on the grounds that it was without jurisdiction to hear the merits on a successive petition for writ of habeas corpus regarding the same conviction and sentence unless he first got permission from the 8th Circuit pursuant to federal statutes.

On November 5, 2013 Jeff's attorney submitted his Supplemental Petition for Clemency and Commutation of Sentence of Life-Without-Parole to Governor Jay Nixon.