

NATIONAL LEGAL PROFESSIONAL ASSOCIATES

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MEMORANDUM

TO: TO INTERESTED COUNSEL AND THEIR CLIENTS

FROM: NATIONAL LEGAL PROFESSIONAL ASSOCIATES

**RE: TECHNIQUES FOR AVOIDING CAREER OFFENDER
ENHANCEMENTS -- ANOTHER NLPA VICTORY!**

NAME: DALTON

NLPA is often contacted by attorneys who are representing a defendant in a conspiracy case who has been convicted at trial and who is facing possible enhancement of their sentence based upon prior state convictions. These convictions have resulted in the government attempting to argue that the defendant is a career offender and should be enhanced in his sentencing guideline range pursuant to U.S.S.G. §4B1.1. The recent NLPA victory in the case of United States v. Dalton (U.S.D.C. W.D.VA. #97-0730-R) is an illustration of techniques that can be utilized to avoid an improper career offender enhancement.

In this case, Swanson Dalton was charged with conspiracy to possess with intent to distribute cocaine. The government filed an information for an enhancement pursuant to Title 21 United States Code §851 due to Mr. Dalton's prior state of North Carolina convictions for cocaine trafficking. Mr. Dalton then proceeded to trial and was subsequently convicted by the jury. At sentencing, the court granted the government's request and found that Mr. Dalton was a career offender resulting in a criminal history score of VI. The court noted

that, because Mr. Dalton had been previously convicted of a narcotics offense, the enhanced statutory maximum sentence under Title 21 United States Code §851 was life. The court then imposed a sentence of 360 months upon Mr. Dalton. Mr. Dalton then appealed his conviction and sentence to the Court of Appeals for the Fourth Circuit. The Court of Appeals subsequently affirmed Mr. Dalton's conviction and sentence.

Subsequent to his appeal being denied, Mr. Dalton contacted NLPA for assistance. NLPA referred Mr. Dalton to new counsel to represent him for purposes of a §2255 motion. Then, in conjunction with Mr. Dalton's new counsel, NLPA researched and prepared the §2255 motion for his attorney to file in United States District Court. One of the arguments raised in the §2255 motion was that Mr. Dalton had been denied due process of law as he was erroneously sentenced as a career offender. The argument contained in the pleadings prepared by NLPA for counsel was that Mr. Dalton's prior state of North Carolina convictions for cocaine trafficking were, in fact, a part of the conspiracy for which he had been convicted and sentenced in federal court.

Therefore, these convictions should not have been used under U.S.S.G §4B1.1 to enhance his sentence as a career offender. Accordingly, the pleadings argued that the prior state of North Carolina convictions for cocaine trafficking could not be a “prior offense” for purposes of enhancement under the career offender section of the Federal Sentencing Guidelines. Further, action was taken by counsel to attack the state of North Carolina convictions as being “not knowingly and voluntarily entered” which resulted in the state court vacating the aforesaid convictions.

Fortunately for Mr. Dalton, both the government and the court agreed with the arguments contained in Mr. Dalton’s §2255 motion. On May 27, 1998, the United States District Court for the Western District of Virginia issued the attached order vacating Mr. Dalton’s sentence and set the case for re-sentencing. Mr. Dalton was subsequently re-sentenced which resulted in a **reduction in his term of confinement of approximately 13 years.**

Once again, NLPA has demonstrated its ability to identify key elements of a defendant’s sentence or conviction which are subject to constitutional challenge, research the appropriate case law and draft arguments for counsel in such a way as to obtain significant relief for your client. We certainly look forward to assisting you as counsel in pursuing relief for your client whether it be on a pre-trial, pre-sentencing, appellate, or post-conviction basis.

NLPA: WE CARE, WE LISTEN, WE GET RESULTS!

THIS INFORMATIONAL MEMORANDUM IS DESIGNED TO INTRODUCE YOU TO NLPA. AS NLPA IS NOT A LAW FIRM, PROFESSIONAL SERVICES ARE ONLY PROVIDED TO LICENSED COUNSEL IN ALL AREAS THAT INVOLVE THE PRACTICE OF LAW.

