

NATIONAL LEGAL PROFESSIONAL ASSOCIATES

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MEMORANDUM

TO: ALL INTERESTED COUNSEL

FROM: NATIONAL LEGAL PROFESSIONAL ASSOCIATES

RE: TECHNIQUES FOR REINSTATING APPELLATE RIGHTS--ANOTHER NLPA VICTORY

NAME: TAYLOR

As we are all aware, the enactment of the Anti-Terrorism and Effective Death Penalty Act (AEDPA) on April 24, 1996 drastically changed the procedure for filing §2254 and §2255 motions. One of the significant changes was that defendants are now required to get permission, in the form of a Certificate of Appealability (COA), prior to filing an appeal of the denial of a §2254 or a §2255 motion. Most courts initially found that the AEDPA's new COA requirement applied to any defendant who attempted to file an appeal subsequent to the enactment of the AEDPA, regardless of when they filed their §2254 or §2255 motion. However, the Supreme Court's holding in Lindh v. Murphy, 117 S.Ct. 2059, (1997) in June 1997 made it apparent that applying the COA requirements of the AEDPA to those who filed their initial §2255 prior to the enactment of AEDPA would be an ex post facto violation. The case of United States v. Taylor, No. 96-30497 is an example where NLPA has been successful in assisting counsel for the Defendant in reinstating his appellate rights when the Court erroneously applied the provisions of the AEDPA.

In Mr. Taylor's case, he filed a pro se motion pursuant to Title 28 United States Code §2255 on January 31, 1996. However, on April 26, 1996, the Court denied the Appellant's motion without ordering an evidentiary hearing. Mr. Taylor and appointed counsel filed an appeal with the Fifth Circuit Court of Appeals challenging the district court's denial of an evidentiary hearing. The Court of Appeals construed the appeal as a request for a Certificate of Appealability, and it was dismissed on January 2, 1997. The appeal was erroneously dismissed because the Fifth Circuit held that Mr. Taylor needed a COA to proceed in the Fifth Circuit Court of Appeals and it did not grant him one.

At this point, Mr. Taylor hired NLPA to assist his new attorney in determining the options available to him. NLPA assisted his new attorney in filing a Motion to Recall Mandate pursuant to Rule 41.2 of the Fifth Circuit Rules of Appellate Procedure and Rule 41 of the Rules of Appellate Procedure to get his appellate rights reinstated. Based on the Supreme Court's holding in Lindh, Mr. Taylor argued that he was entitled to a recall of the mandate. On July 23, 1998, the Fifth Circuit Court of Appeals agreed and reinstated Mr. Taylor's appellate rights. This provided

Mr. Taylor with the opportunity to have his claims heard on the merits by the Fifth Circuit Court of Appeals.

If you are representing a defendant who filed his §2254 or §2255 prior to April 24, 1996 and was not permitted to file an appeal without first obtaining a COA, contact National Legal Professional Associates (NLPA). A defendant in this situation can get his appellate rights reinstated so he can have his claims heard on the merits by the Court of Appeals. For more than a decade, NLPA has assisted attorneys in obtaining significant relief for their clients. We hope you will contact NLPA the next time you have a client who is in need of such assistance.

NLPA, We Care, We Listen, We Get Results!