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ARCH C. McCOLL, III
S. MICHAEL McCOLLOCH

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**Re: Lowering your federal client's criminal history category
with a prompt writ of *habeas corpus* in state court**

Dear Fellow Attorney:

In two federal cases, one a few years ago in Indiana and one recently in Alabama (both drug cases), I have been able to lower the criminal history category of my clients by immediately filing petitions for writs of *habeas corpus* in the state courts to set aside convictions of my clients in those state courts while each federal case was pending.

Of course, one has to dig for facts in the state cases which show either ineffective counsel or a broken plea agreement or some other fundamental, structural error in the proceedings, of which the client may or may not be aware. But diligent counsel, on occasion, can find a serious defect that has not been waived (or the waiver was unknowing and constituted ineffective counsel) if he will take the time and/or hire local counsel to carefully investigate the file, including the district attorney's file. The payoff can be dramatic. If the record of the error is clear, or can be made clear, one can also get the right local counsel to obtain from the local criminal district attorney (or the prosecutor, however denominated) a non-objection to the granting of the writ of *habeas corpus*.

The difference that can make in the federal sentence can be quite significant, especially if one of the newly set aside convictions had initially made your client a career criminal. Although the U.S. Sentencing Guidelines allow the federal district judge to take into consideration those convictions which have been set aside or expunged, both of my federal judges in these two instances did ***not*** do so on the grounds of comity and because the language of the state court orders granting relief (which undersigned counsel had drafted) made quite clear the lack of fundamental fairness underlying those state court convictions.

I am the former President of the Dallas Criminal Defense Lawyers Association, was voted "Best Criminal Defense Lawyer" by "D" (Dallas) Magazine and am both a "Lifetime" and 25-year member of the NACDL. My website is www.mcmclaw.com in Dallas, Texas.

Cordially,

Arch C. McColl, III

ACM/gap