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CASE EVALUATION

Date: July 18, 2006

From: James Q. Butler, Esq.
Attorney at Law & C.C.L.U. General Counsel

To: Mr. Anthony Cioffi, Jr.

CLIENT I.D.

On November 17, 1995, the Trumbull County Grand Jury indicted Anthony Cioffi, Jr, on two counts of Gross Sexual Imposition, felonies of the third degree, in violation of R.C. 2907.05(A)(4), and one count of Kidnapping, an aggravated felony of the second degree, in violation of R.C. 2905.01(A)(2). The charges against Mr. Cioffi, Jr, stemmed from an allegation that Mr. Cioffi, Jr, had fondled the genitalia of his girlfriend's nine-year old daughter. The case was assigned to the docket of Judge John Stuard.

While that case was pending, Mr. Cioffi, Jr, was indicted for a second time on September 27, 1996. In that indictment, Mr. Cioffi, Jr, was charged with three counts of Rape, aggravated felonies of the first degree (with life specifications), in violation of R.C. 2907.02(A)(1)(b)(2), and three counts of Gross Sexual Imposition, in violation of R.C. 2907.05(A)(4). The charges contained in the second indictment stemmed from allegations that Mr. Cioffi, Jr, had engaged in sexual activity with two of his biological children years prior to the allegations contained in the first indictment. This case was assigned to the docket of Judge Mitchell Shaker.

On December 3, 1996, as Mr. Cioffi, Jr, was preparing to proceed with a jury trial on the first indictment, Mr. Cioffi, Jr, entered into a plea agreement covering both indictments. At the request of Mr. Cioffi, Jr,'s trial counsel, the second case was transferred to Judge Stuard prior to Mr. Cioffi, Jr, entering his plea. In exchange for the States request to dismiss the life sentencing specifications, Mr. Cioffi, Jr, agreed to plead guilty to one count of Gross Sexual Imposition and one count of Kidnapping on the first indictment. Appellant also agreed to plead guilty to three counts of Rape (without life specifications) and three counts of Gross Sexual Imposition on the

second indictment.

On December 6, 1996, Mr. Cioffi, Jr, was sentenced to one year on the Gross Sexual Imposition count and three to fifteen years on the Kidnapping count contained in the first indictment. On the second indictment, the trial court sentenced Mr. Cioffi, Jr, to ten to twenty five years on the three Rape counts and one year on the three counts of Gross Sexual Imposition. All sentences were set to run concurrently, meaning appellant was faced with ten to twenty five years of imprisonment.

On March 16, 2001, four and a half years after his sentencing, Mr. Cioffi, Jr, filed a "Motion to Set Aside Judgment of Conviction and to Withdraw Pleas of Guilty." The trial court held an evidentiary hearing on January 31, 2002. The trial court denied appellant's motion in a judgment entry dated March 11, 2002. In an April 1, 2002 judgment entry, this appellate court consolidated Mr. Cioffi, Jr,'s cases for purposes of disposition.

The appellate court noted for the record that Mr. Cioffi Jr"s medical expert testified that Mr. Cioffi had an IQ of 75 was "not quite in the mentally retarded range. Appellant's expert also testified that "he was a man of at least average basic intelligence, * * *, probably appreciably brighter than he could show." Furthermore, the record indicates appellant had been involved in criminal proceedings before and appellant's trial counsel also testified: "I don't have any doubt that he knew what we were there about or how it was going to be handled. Not only because I explained it to him, but in comments that Tony made to me throughout these proceedings."

I am of the opinion the court erred in light of the United States Supreme Court decision n Atkins v. Virginia, 536 US 304 (2002). In the Atkins case I.Q. standards are set.

ATKINS *v.* VIRGINIA
536 US 304 (2002)

III Assessment 60 (1999). It is estimated that between 1 and 3 percent of the population has an IQ between 70 and 75 or lower, which is typically considered the cutoff IQ score for the intellectual function prong of the mental retardation definition.

Sadock & V. Sadock, Comprehensive Textbook of Psychiatry 2952 (7th ed. 2000). At the sentencing phase, Dr. Nelson testified: "[Atkins'] full scale IQ is 59. Compared to the population at large, that means less than one percentile. . . . Mental retardation is a relatively rare thing.

It's about one percent of the population." App. 274. According to Dr. Nelson, Atkins' IQ score "would automatically qualify for Social Security disability income." *Id.*, at 280. Dr. Nelson also indicated that of the over 40 capital defendants that he had evaluated.

Atkins was only the second individual who met the criteria for mental retardation. *Id.*, at 310. He testified that, in his opinion, Atkins' limited intellect had been a consistent feature throughout his life, and that his IQ score of 59 is not an "aberration, malingered result, or invalid test score." *Id.*, at 308.

The mentally retarded criteria starts at the I.Q. to and ends at 75.

The Court in the Cioffi case accepted a plea from a mentally retarded man. The experts were totally wrong (Note: This testimony was prior to the ATKINS decision in the Cioffi case). The experts stated:

"medical expert testified that Mr. Cioffi had an IQ of 75 was "not quite in the mentally retarded range. Appellant's expert also testified that "he was a man of at least average basic intelligence, * * *, probably appreciably brighter than he could show."

This is incorrect as 75 is retarded...functionally retarded, but all the same retarded. The acceptance of a plea from Mr. Cioffi, Jr. is unconstitutional.

Furthermore, the attorneys comments prove his ineffectiveness and prejudice towards his client wherein the attorney states:

"I don't have any doubt that he knew what we were there about or how it was going to be handled. Not only because I explained it to him, but in comments that Tony made to me throughout these proceedings."

Ineffective assistance of counsel.

A brief definition

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.

Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

In the case of Anthony Cioffi, Jr,, there are glaring violations of the ineffectiveness rule that need to be addressed. The problem is has the case been properly pled at the state level. *The question is in the absence of professional advocacy did Mr. Cioffi, Jr, enter a knowing and voluntary plea, understood as a plea resulting in a verdict worthy of confidence. The answer appears to be no! The reasoning is this is a plea entered by a functionally retarded man.*

The problem is no one has bothered to map out an argument in any of the briefs which show how this resulted in a situation wherein a 'reasonable probability' of a different result in the juries deliberations is accordingly shown.

One does not show an ineffectiveness violation under the Sixth Amendment to the United States Constitution, unless they can show step by step *that had counsel acted more professionally in investigating and the obvious simple step of reading the indictment that this approach could reasonably be taken to put the whole case in such a different light, so as to undermine confidence in the verdict, which is the case with Tab Lee.*

Simply stated the post conviction filings in this case thus far have failed to succeed as they have not be properly pled.

There is abundant merit in this case of a constitutional magnitude.

If you wish to retain the Butler Legal Group the cost until is $ 4,995.00 if you pay in full on or before July 31, 2006 the cost will be $3,995.00.

NO PERSONAL CHECKS. Official bank checks or money orders only.

I wish you well.

Very truly yours,

James Q. Butler, Esquire
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B.L.F. Managing Partner
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