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7TH CIRCUIT GRANTS INMATE 'RARE' HABEAS CORPUS PETITION

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Saying a lawyer "entirely failed to represent his client" during sentencing, the 7th U.S. Circuit Court of Appeals has granted the inmate habeas corpus relief for a new sentencing hearing.

However, the federal appeals court upheld James Patrasso's 1983 convictions on two counts of attempted murder and two counts of aggravated battery, according to the opinion issued Tuesday. Patrasso, who was convicted of shooting and wounding two men during a fight in a restaurant, had claimed ineffective assistance of counsel during both the conviction and sentencing phases of his trial.

"At trial Patrasso was represented by attorney Patrick Muldowney," wrote Judge Daniel A. Manion. "Muldowney, who had not tried any felony cases in the 10 years preceding Patrasso's trial, did little to prepare for trial.

"The sole defense was the variance in dates between the indictment and the state's proof," Manion wrote. "Muldowney made no opening argument, his cross-examinations of the state's witnesses were perfunctory, he asked Patrasso only one question when Patrasso testified, and he offered a two-sentence closing argument only in response to the court's urging."

A Cook County judge found Patrasso guilty and sentenced him to the maximum extended term of 60 years in prison, finding the crimes "brutal and heinous," the opinion states.

Patrasso's current lawyer, Marc W. Martin, said he believes Muldowney is now deceased.

The Attorney Registration and Disciplinary Commission of the Illinois Supreme Court records show that Patrick J. Muldowney died in June 1990 at age 69, said ARDC Chief Counsel James J. Grogan.

Court records in the Patrosso case do not use a middle initial in identifying Muldowney. Patrick T. Muldowney listed in Sullivan's Law Directory earned his law degree in 1991 and is not the lawyer who represented Patrosso.

"Although Muldowney's performance during the conviction phase of the trial was below normal professional norms, his performance at sentencing was practically non-existent," Manion said.

"We emphasize that we find deficient performance not because Muldowney failed to offer mitigating evidence but rather because he made no effort to contradict the prosecution's case or to seek out mitigating factors," Manion wrote. "He entirely failed to represent his client, inaction which distinguishes this phase of the trial from the conviction phase.

"Lacking the assistance of counsel, Patrosso was left without a defense at sentencing, without an opportunity to argue for a sentence less than the statutory maximum he received," Manion wrote with Chief Judge Richard A. Posner and Judge Ilana Diamond Rovner concurring.

"By his own admission, Muldowney performed no investigation and made no effort to mitigate Patrosso's punishment -- omissions especially grievous where, as in this case, the facts and circumstances presented at trial and relied upon heavily at sentencing were one-sided and very possibly inaccurate," Manion wrote.

However, the three-judge panel rejected the ineffective assistance of counsel claim for the conviction stage. Patrosso would not have been able to show that the result of the trial would have been different "had Muldowney acted competently," the opinion states.

"I've been working on this case about seven years, and we finally found some conscientious judges who took a careful look at the record," Martin said Wednesday.

"It's hard to say what's going to happen at this point," Martin said.

Without the extended sentence, the sentencing range under the guidelines for Patrosso's convictions is 6-to-30 years, Martin said.

Since Patrosso has already served about 15 years in an Illinois prison, and under the state system he gets a day credit for each day of good time, he has served the equivalent of 30 years, Martin explained.

"I have to admit that where habeas corpus is granted is relatively rare," Martin said. "It's a rare occurrence across the nation."

Muldowney's handling of the case was an "aberration" in the legal field, Martin opined, but reading the trial court transcript the mistakes "just jumped out at you."

Robert K. Villa represented the Illinois attorney general at oral arguments.

"It's a partial loss for us [but] it's a win because the conviction was upheld," Villa said.

No decision has been made about whether a petition for rehearing will be filed, Villa said. The case is James Patrosso v. Keith O. Nelson, No 96-3962.

---- INDEX REFERENCES ---

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