

Appellate Defenders, Inc.

May 18, 2011

Today we will discuss issues regarding right to counsel claims based on an ineffective assistance theory (IAC). A hypothetical frames the issues:

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A jury convicted Whiteside of the murder of Calvin Love. Whiteside had gone to Love's apartment to buy drugs. The two argued over price. The argument annoyed Love's girlfriend and she left the apartment. Love then told Whiteside he had a gun and demanded that Whiteside leave. Whiteside refused. Love went in to his bedroom and lay down on the bed. When Whiteside entered the bedroom, Love reached under his pillow. Whiteside shot Love through the head. No weapons were found in Love's apartment.

Robinson was appointed to represent Whiteside. At trial Robinson:

(A) Asked Love's girlfriend an open-ended question to which he did not know the answer, thus eliciting damaging testimony about Whiteside's previous aggressive behavior toward Love, which the prosecution had not attempted to elicit; or

(B) Called an expert psychiatrist to testify that Whiteside's temperament rendered him incapable of the alleged act, thus allowing the prosecution to impeach the expert with Whiteside's previous violent convictions, which the prosecution otherwise would not have attempted to introduce and which Robinson had not discovered; or

(C) Advised Whiteside to testify that he thought he saw a gun in Love's hand and shot in self-defense—that testimony is perjury and Robinson and Whiteside both know it. Whiteside so testified and was convicted. He would not have testified otherwise.

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Questions

A. Saint is appointed to represent Whiteside on appeal.

1. Must she inform the trial or appellate court of the perjury recited in 1(c)?
2. May she do so?
3. May she argue the evidence in 1(C) as part of an appeal or habeas petition?
4. Are any of 1(A)-(C) sufficient to satisfy *Strickland's* competence inquiry?
5. Are any of 1(A)-(C) sufficient to satisfy *Strickland's* prejudice inquiry?
6. Could Robinson argue an appeal or writ petition for any of 1(A)-(C)?