

THE LAW OFFICES OF SETH KRETZER

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ADMISSIONS

State Bars of Texas, New York, and Colorado; all four federal judicial districts in both New York and Texas; the and Bar of the Supreme Court of the United States, and the courts of appeals in the First, Second, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits.

EDUCATION

J.D. - **University of Texas School of Law**, Austin, Texas, 2003.

- Law Review / Articles Editor 2002-2003.

B.B.A. - Finance, **University of Texas**, Austin, Texas, 2000.

- Honors graduate.

JUDICIAL CLERKSHIPS

United States Court of Appeals for the Fifth Circuit, Hon. Thomas Reavley (2005-2006)

Eastern District of Texas, Chief Judge Hon. David Folsom (2003-2004)

EMPLOYMENT HISTORY

The Law Offices of Seth Kretzer (2009-present)

- **Direct Appeals**
 - Served as lead counsel on dozens of appeals; presented oral argument in more than thirty (30) cases.

PRO BONO

In the summer of 2015, the Colorado federal district court appointed me to represent an indigent bankruptcy litigant in his appeal from the Bankruptcy Judge to the presiding Article III judge of a large award of sanctions payable to the client's ex-wife. *In re Muth*; 15-cv-557. On March 10, 2016, Chief Judge Kreiger reversed and vacated the entire award of fees and costs. 2016 U.S. Dist. LEXIS 31653.

In the Fall of 2015, the Colorado federal district court appointed me to represent a Social Security claimant in *Vigil v. Colvin, Acting Commissioner of Social Security*; 15-cv-1990. The Government ultimately filed a motion to remand to allow Vigil the opportunity for a new hearing before the Administrative Law Judge and to submit new relevant medical evidence.

In January 2016, the Tenth Circuit Court of Appeals in Denver appointed me to file a supplemental brief for *pro se* plaintiffs in an action against their longtime landlords and David Weekly Homebuilders. *Tomkins v. Lifeway Christian Resources of the Southern Baptist Convention, et al.*, 15-2053. The Supplemental Brief was filed in March 2016 and oral argument in expected in September 2016.

CIVIL APPEALS

Exergy Dev. Grp. of Idaho, LLC v. Higher Power Energy, LLC, No. 14-14-00788-CV, 2016 Tex. App. LEXIS 105 (App.—Houston [14th Dist.] 2016). Unanimous reversal of \$20 million in “death penalty” sanctions when my client had been excluded from the damages phase of the trial court’s proceedings.

Lousteau v. Noriega, No. 01–15–00341–CV, 2015 WL 6081385 (App. – Houston [1st Dist.] 2015). My clients filed a suit for trespass and nuisance after the defendant fraudulently obtained a writ of execution on clients’ house and purchased it at a constable’s sale; prevailed in setting aside the constable’s deed, restoring property rights, and ordering the defendants to turn over possession of the property back to its rightful owner.

WHITE COLLAR CRIME

- *United States v. Kuhrt*, 788 F.3d 4030 (5th Cir.]2015). In January, 2015, argued the appeal of Mark Kuhrt, an executive tried in the prosecution of Alan Stanford’s \$2 billion Ponzi scheme and who received a 20-year sentence; key issue on appeal was the exclusion of the defense’s expert witness in accountancy despite pretrial rulings rejecting the Government’s *Daubert* motion on the very same basis. Carmen Germaine, Law360.com, “Ex-Stanford Execs’ Convictions Upheld By 5th Circ.” Available at: <http://www.law360.com/articles/664755/ex-stanford-execs-convictions-upheld-by-5th-circ> (June 8, 2015).
- *United States v. Tisdale*; 774 F.3d 267 (5th Cir. 2014). Fifth Circuit unanimously reversed for resentencing when the District Court erred in awarding restitution to secondary purchasers of mortgages because the Government did not establish what price was paid in the secondary market. Michael Lipkin, Law360.com, “5th Circ. Vacates Sentences In Ex-NFL Star’s \$20M RE Scam”. Available at: <http://www.law360.com/articles/604560/5th-circ-vacates-sentences-in-ex-nfl-star-s-20m-re-scam> (December 12, 2014).
- *United States v. Pate*; 15-41481 (5th Cir. 2016). On appeal from the jury trial of a multi-million dollar Ponzi scheme involving currency trading, Government confessed error and moved to remand for resentencing in response to my argument that a 2-level Specific Offense Characteristic for obstruction of justice in the form of perjured testimony in a related civil suit when the District Judge had never seen a transcript of the allegedly false testimony, and the deposition was taken years before the criminal investigation began.
- *United States v. Lozano*; 15-40163 (5th Cir. 2015). Government confessed error and moved for remand on appeal when restitution was imposed without any mention of the Supreme Court’s recent *Paroline* opinion establishing new and more restrictive standards for restitution in this context. No objection was made by trial counsel, so review was confined to plain error. Nevertheless, soon before re-sentencing, the Government abandoned all efforts to seek restitution, and an amended judgment memorialized the reduction from tens of thousands of dollars to zero. 5:14-cr-315-1 (S.D. Tex. 2015). In addition, Lozano’s term of supervised release was lowered from LIFE to 25 years, and several of his conditions were relaxed.

PUBLIC CORRUPTION

- *United States v. Don Hill*; 725 F.3d 471 (5th Cir. 2013). Represented the immediate past Mayor Pro Tem of the City of Dallas City Council who received a sentence of 18 years following a four-month long jury trial in Dallas for public corruption and money laundering. Robert Wilonsky, Dallas Morning News, “After appeals court rules against former mayor pro tem Don Hill, attorney vows to take case to Supreme Court”. Available at: <http://cityhallblog.dallasnews.com/2013/08/after-appeals-court-rules-against-former-mayor-pro-tem-don-hill-attorney-vows-to-take-case-to-supreme-court.html/> (August 3, 2013).

FEDERAL DEATH PENALTY

- *United States v. Tyrone Williams*, 610 F.3d 271 (5th Cir. 2010). Fifth Circuit unanimously reversed 19 LIFE sentences on grounds of both instructional error and sufficiency of the evidence. Defendant's sentence was reduced to 34 years on remand. KHOU, "Life sentences overturned in smuggling deaths case". Available at: <http://www.khou.com/story/news/2014/07/11/11330564/> (June 24, 2010).

NARCOTICS

- *United States v. Edwards*, 746 F.3d 590 (5th Cir. 2014). Appellate issue of first impression was whether a Secret Service agent could offer lay (i.e., not designated as an expert) testimony about coded speech patterns.
- *United States v. Salas-Galaviz*, 726 F.3d 586 (5th Cir. 2013). In a prosecution of Mexican drug cartel leaders, the key appellate issue concerned witness testimony under assumed names when no finding had ever been made that these witnesses perceived any danger to their testifying under their actual names.

HUMAN TRAFFICKING

- *United States v. Phea*, 2014 U.S. App. LEXIS 11040 (5th Cir. 2014). Argued an issue of first impression about the culpable mental state required to convict under the newly revised William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.

SENTENCING GUIDELINES REVERSALS

- *United States v. Tyrone Jordan*, 2011 U.S. App. LEXIS 21831 (5th Cir. 2011): money laundering case where defendant was convicted of facilitating the purchase of a Cessna airplane for the Los Zetas Gulf Coast Drug Cartel. On clear error review, the Fifth Circuit unanimously concluded that the sentencing judge incorrectly included as relevant conduct a massive amount of cash absent from the indictment and which could not qualify as money laundering because, at most, the defendant did no more than help to physically transport that lucre. The error inflated the defendant's sentence by over 50%. At resentencing, successfully obtained a Guidelines sentence of 5 years, compared to the 10 year sentence originally imposed.
- *United States v. Juan Moron-Solis*, 388 Fed. Appx. 443 (5th Cir. 2010): credit card fraud prosecution, the Fifth Circuit unanimously reversed and remanded after the government confessed sentencing error.
- *United States v. Tobias*; 14-40848 (5th Cir. 2015): Government confessed error on appeal and moved to remand for resentencing when the Prosecutor breached plea agreement and District Court sentenced based on an artificially inflated Guidelines range. Mr. Tobias's sentence was lowered from 405 months to 280 months.
- *United States v. Cox*; 15-40412 (5th Cir. 2015): Government confessed error and moved to remand for resentencing when appellant's brief established that Mr. Cox did not come within the ambit of the Armed Career Act, and at least nine (9) Guidelines points were incorrectly added to the score on which we was originally sentenced.

BANK ROBBERY

- *United States v. Corey Duffey*, 2012 U.S. App. LEXIS 35 (5th Cir. 2012): Corey Duffey was convicted of leading the "Scarecrow Bandits" on a spree of bank robberies across the Dallas Metroplex. The Fifth Circuit unanimously reversed two attempt counts for insufficient evidence because no robber actually approached the banks in question. Two appurtenant 924(c) counts were also vacated. As a result, Duffey's sentence was reduced by 50 years at resentencing.

CAPITAL HABEAS CORPUS (DEATH PENALTY)

- Authored capital habeas writs in federal district court, petitions for certificate of appealability to the Fifth Circuit, and cert petitions to Supreme Court in death penalty cases.
- In July 2015, presented oral argument in *Allen v. Stephens*, 805 F.3d 617 (5th Cir. 2015). Key issue was District Court's denial of funding to investigate *Wiggins* issue in light of the Supreme Court's recent *Martinez/Trevino* authority creating an equitable exception to the cause-and-prejudice standard for procedural default by state habeas counsel. After the opinion issued, I filed a petition for en banc rehearing to best situate Mr. Allen's cert petition to the Supreme Court.
- In July 2015, filed petition for Certificate of Appealability in *Davila v. Stephens*, 15-70013, in which main issue is whether *Martinez/Trevino* exception for ineffective assistance claims can apply to state counsel on direct appeal (rather than limited to state habeas counsel).
- In June 2015, Fifth Circuit Court of Appeals found that the District Court erred in denying COA in *Roberson v. Stephens*, 14-70033, and ordered merits briefing on whether exclusion of a defense expert on diminished capacity at the guilt/innocence phase violated petitioner's constitutional rights. 2015 WL 3396822. The Fifth Circuit subsequently denied relief, 619 Fed. Appx. 353; subsequently, I authored Mr. Roberson's cert petition in the Supreme Court in December, 2015. 15-7246.
- In *Williams v. Stephens*, Texas' Court of Criminal Appeals granted last minute stay of execution on the same day execution was to be carried out when the State produced evidence it had received weeks earlier (but never disclosed) casting aspersions on the statistical reliability of its DNA database. NO. WR-71,296-02. U.S. News and World Report, "Texas man scheduled for Thursday execution in killing of woman, 93, wins court-ordered delay" (July 16, 2015)
(Available at: <http://www.usnews.com/news/us/articles/2015/07/16/texas-inmate-set-for-execution-for-killing-93-year-old-woman>).
- Authored cert petition in United States Supreme Court for Texas death row inmate Rickey Lewis, on *Atkins*/retardation grounds and its implementing opinion in Texas, *Briseno*. CBS News, "Rickey Lynn Lewis, convicted Texas murderer, to be executed Tuesday"; Available at: <http://www.cbsnews.com/news/rickey-lynn-lewis-convicted-texas-murderer-to-be-executed-tuesday/> (April 9, 2013).

NON-CAPITAL HABEAS CORPUS

- Prosecuted numerous evidentiary hearings on habeas writs alleging ineffective assistance of counsel. In July 2014, the media in El Paso, Texas extensively covered a daylong hearing for a client who pled guilty to producing child pornography in federal court when his trial lawyer failed to file a motion to suppress the original search of his home. Strikingly, that same lawyer did file a motion to suppress in state court on parallel charges arising from the same search. "Sentence upheld in Marco Alferez case"; Available at: <http://www.kvia.com/news/sentenced-upheld-in-marco-alferez-case/26869160>

CRIMINAL TRIAL

- Tried criminal cases to juries, and resolved dozens of cases by plea agreement running the gamut from a gun runner "straw purchaser" to a massive insurance fraud case with over 6 million pages of discovery documents.
- Tried a 2-week human trafficking/hostage taking case to a jury in Houston federal court. *United States v. Castro-Flores*, 4:12-cr-614.
- State dismissed all charges on the day of trial in *State v. Nanika Holloway*, 2014293 (Harris County Court at Law Number One). This was a theft case in which the prosecutor had neglected to ever look at the discovery he produced including a surveillance video unquestionably showing that my client was not the person who perpetrated the theft in question.

CIVIL FORFEITURE

State of Texas v. \$11,000; 2015-55303 (151st Civil District Court of Harris County, Texas):

My client's cash was seized from his wallet at the Houston Intercontinental Airport even though there was no indication he had done anything illegal whatsoever and no criminal charges were ever pressed, much less investigated. After I filed a motion for summary judgment, the State dismissed the case and returned the money with interest.

CIVIL PRACTICE

- Trial counsel in *Hassan v. Yazdani-Beioky*, 2011-50350 (152nd District Court of Harris County). My client sold his insurance agency, but the buyer reneged on his promise to pay most of the purchase price based on an agreed upon formula. After I presented the case to three arbitrators, the state District Court affirmed arbitration award of 100% of what my client asked for in his complaint. Subsequently, the defendant paid the judgment in full (plus accrued interest) after Sheriff seized assets from the defendant's home.
- Served as guardian ad litem in both state and federal court for dozens of children in the settlement of civil tort cases.
- Served as attorney ad litem locating absent defendants in suits brought by municipal taxing authorities.

TURNOVER RECEIVER

- Served as court-appointed receiver for creditors with turnover orders. In one notable case, I recovered assets satisfying 100% of the judgment (inclusive of costs, fees, and interest) less than one week after being appointed receiver. *Prelude Systems, Inc. v. International TechnologiesPro, Inc.*, 10443376-401 (Harris County Court At Law Number 2).
- Similarly, I recovered 100% of the judgment soon after being appointed receiver in *TimePayment Corp. v. Artisan Manufacturing, LLC*, 1067563-404. (Harris County Court At Law Number 2).
- In an action to recover a \$4.5 million wrongful death judgment, currently litigating whether a receiver can attach proceeds of a spendthrift trust. *Bernal v. Ferguson*, 2011-72784 (133rd Judicial District of Harris County, Texas). The debtor killed the plaintiffs' mother while driving high on drugs. Although she is serving a 20-year sentence for involuntary manslaughter, she has not paid any money out of the millions of dollars in her marital deduction trust.

PAST LARGE LAW FIRM EMPLOYMENT

- **Associate, Fulbright & Jaworski (now named Norton Rose Fulbright)**, Associate (2006 to 2007)
- **Associate, Akin, Gump**, Associate (2004-2005)