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First Reversal by Phil Miller

"Phil, can you help me?" asks an unfamiliar voice. I'm sitting at my desk in the law library of Five Points Correctional Facility, where I work as the administrative clerk. I lift my head, making eye contact with the stranger. "That depends; what do you need help with?" I ask, hoping that his request will be something simple. I'm very busy, and this interruption is taking up precious time. "Well, my name is David Huck, but everyone just calls me Huck. I was told to speak to you about legal assistance." Damn. This is not a simple request. "Uh-huh," I murmur, wishing that people would stop telling other people to seek me out for legal assistance. It isn't that I don't enjoy helping people; rather, it just seems like people show up for assistance only when I'm already inundated by what seems like a million other tasks. I push the piles of books and papers on my desk to the side, making space for Huck to put his own papers down. He understands the gesture and sits in the empty chair beside my desk.

"Phil, this is what happened..." A few minutes into his explanation, I stop him. "Huck, I'm really busy right now. Besides, you don't even have your trial transcripts. I can't help you unless you obtain those documents." He acknowledges my concern and tells me that his attorney has promised to send them this week. "Listen, Huck, maybe you should speak to another law clerk who isn't so busy," I say, glancing at the minute hand of the wall clock across the room. "I don't want anyone else, Phil. I'll just wait until I get my transcripts and then I'll come back. You're the only person that everyone tells me to talk to about my case." I break eye contact, feeling just a slight twinge of guilt. I reluctantly nod my head in assent, while Huck picks up his papers and walks away.

It's my own fault that people seek me out for legal assistance. I've been a law clerk at Five Points since 2000, and during that time word has spread about my accomplishments. My first legal victory takes place a couple years ago, when I convince a Judge to change consecutive sentences to concurrent sentences for a guy from the Bronx. That victory is followed by successful parole appeals, Article 78 petitions, and child support modifications for other prisoners at Five Points. The more proceedings that I win for people, the more the news spreads. Even staff members occasionally seek my legal advice. So it really isn't a surprise that the news has reached the ears of David Huck. I just wish I weren't so busy.

Two weeks pass after my meeting with Huck, and I begin to think that, perhaps, he has enlisted the aid of another law clerk. In fact, I'm hoping that he has. As the administrative clerk, I am responsible for overseeing 19 other law clerks, maintaining inventory, completing monthly reports, reviewing the work product of other clerks, teaching the legal research class, and the list goes on. The last thing I need right now is David Huck. But fate is not on my side. "Phil!!!" shouts a voice from behind the book counter. "I got my transcripts!" I look up and see David Huck smiling at me as if he has just won a two-week furlough. "Damn," I whisper, realizing that I can't get rid of this guy. "Come over to my desk," I say, already thinking of another way to keep him from taking up my time.

"I got my transcripts like you said. Can you help me now?" he asks, with more excitement in his voice than a kid in an ice cream store. I don't respond immediately. I just sit there looking at this pile of transcripts on my desk, thinking of all the things that I will not accomplish this month if I agree to help Huck. "Didn't you tell me that you have a lawyer?" I ask, already knowing the answer. "Why don't you just let him do his job? I'm sure he'll do great." Huck starts shaking his head from side to side in slow motion, as if the slower his head moves, the more emphatic the "no" will be. "Phil, I need your help. My lawyer is not going to do a good job; I just know it." I try to assure Huck that he'll be okay with just his lawyer. "Huck, I don't have time. I have so much work to do already that I can't give your case the attention it deserves. Let your lawyer do the work, and I'll review his brief when it's done." Huck's wide eyes are pleading with me to change my mind. "Phil, I don't have much, but my daughter can send you a food package, if you want. Can you just read my transcripts and tell me what you think?" Now I'm the one shaking my head. Not because I'm saying "no" again, but because I can't believe I'm about to agree to help despite knowing that I will fall behind on all my other tasks. "Huck, I don't need anything from you or from your daughter. Leave your transcripts here, and when I'm done reviewing them, I'll let you know." He jumps up to shake my hand with a happiness that seems so out of place in prison. After he leaves, I stare at the pile of transcripts for a few minutes, disliking the hope that Huck has placed in me. I enjoy helping people, but I'm not used to being so essential to someone else's happiness.

I analyze Huck's transcripts for a week, eventually settling on two issues that I feel are his strongest. The first is a repugnant verdict, which means that an acquittal on one of his charges negates an essential element of the charges for which he has been convicted. The second issue is what I call a legal impossibility. Huck's felony assault charge is based on a predicate felony of aggravated criminal contempt, but since both of those charges are not complete until physical injury occurs, the felony assault charge cannot be based on the contempt charge. Apparently, this is an issue that Huck's trial attorney, the district attorney, and the Judge have missed during trial. Both of the issues are unpreserved for appellate review, meaning Huck's trial attorney never objects to them. Unpreserved issues are difficult to raise on appeal because the appeals court does not have to review them. After I draft an outline for the arguments, I meet with Huck to discuss my findings.

"Huck, you have two good issues here." I explain what they are, but it's clear that he has no idea what I'm talking about. I type a letter to his attorney, asking him to include these issues in the brief he is preparing. Huck mails the letter, and I am finally free to resume my own matters again. At least I think I am, until Huck shows up with his attorney's response. "Phil, my lawyer won't argue these issues; what are we going to do?" I grab the letter and read it myself. The lawyer says the two issues have no merit. "No merit? What the fuck is wrong with this guy?" I say, convinced that the lawyer is either new or just plain stupid. I look over at Huck, and his wide, hopeful eyes plead with me once again. "I guess I'll have to prepare a pro se supplemental brief for you, Huck," I admit, grudgingly. What starts off as a simple review of transcripts has turned into full-blown litigation.

It takes me two weeks to prepare the pro se supplemental brief. Despite the opinion of Huck's attorney, I know the two issues I'm arguing are the best chance for reversing the conviction. I hand Huck the finished product, and he mails it to the Appellate Division, Third Judicial Department. He asks me what his chances are. "Huck, the issues are solid, but they're unpreserved. That means the Court does not have to review them, but I'm hoping they do so

as an exercise of discretion in the interest of justice." Huck nods, understanding that everything is out of his hands now. "I have faith in you, Phil."

With Huck's litigation out of the way, I can finally get back to work on my own tasks and personal studies. Months go by, and I see Huck only once or twice during that time. Huck is no longer on my mind, and I even forget that his appeal is still pending. That is, until Huck shows up out of the blue to remind me. In November of 2003 I walk down the main corridor, on my way to the law library. Suddenly, I hear Huck's voice yelling, "We did it! Phil, we did it!" At the moment, I'm oblivious to what he's talking about, but he runs up to me and hugs me as if I have just saved his life. And that's when I remember. "Huck, are you saying that the Court reversed your conviction?" His arms are still wrapped around me, and I have to pry him off. "Well, I'm really not sure what the Court did, but my neighbor read the decision and he said it was good news." I tell him that I'll have my boss call him to the law library the following morning so I can read the decision. As we part ways, Huck is still saying, "Phil, we did it!" And I walk away hoping that he is right.

The next day, Huck shows up at the law library with the Court's decision in his hand. His smile is just as wide as it was the day before. "Let's go to my desk, Huck." I sit and read the decision, and now both of us are smiling. The decision is reported as People v. David Huck, 767 N.Y.5.2d 555, and it is the sweetest legal victory I've had thus far. In the decision, the Court unequivocally rejects the arguments of Huck's lawyer, and it reverses the felony assault conviction because of the arguments I present in the pro se supplemental brief. Huck had a sentence of 14 to life because of that conviction, and now that the Court has both reversed it and dismissed that count of the indictment, that 14-to-life sentence no longer exists. Huck is left with only a 3 ½ to 7 for the contempt charge, which means he will be a free man in the very near future. I know Huck is around 50 years old, so I tell him that he needs to make this victory count, implying that he needs to stay out of jail and cherish his freedom. "I know, Phil. I just want to spend time with my daughter and stay far away from this place." A moment later, he adds, "If it weren't for your help, Phil, I probably would have spent the rest of my life in here."

Before we part ways, I have him sign an affidavit attesting to what I've accomplished for him. After that day, I never see Huck again. He is transferred to a medium security facility shortly after having received the Court's decision. My achievement for David Huck is the first time I cause a conviction with a life sentence to be reversed and dismissed. And it is also the first time an appellate court accepts my arguments while explicitly rejecting the arguments of the attorney assigned to the case. Huck is also the first person to ever hug me for winning a case; the rest just shake my hand.

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The cite referred to, above, is 767 NYS 2d 555.
A college editor mistakenly inserted a "5" instead of an "S."