

MAY 2019

By Hal V. Parfait

## WOULD YOU BELIEVE

"Say Richie Rich, (all names are changed), we need to sneak out and try to get to lunch early."

"Wassup, homie?" The 32-year old black male asked.

"They have, allegedly, fried chicken, it could turn out to be baked. Still, it may be two or three hours before they call this building and our pod." I told him.

"Fuck! Well, let's try to get out."

We did. A cleaning crew came in. We donned working caps and left. No guard said a thing. The two of us walked by the next guard at a guard shack.

"Look Richie, That work we did all day two days ago, didn't work. We have to redo it." I complained.

"You do it this time. My work sucks." He responded, as we walk by the guard shack.



We chuckled at how easy it was to fool this guard.

As we talked Richie told me something that twisted my ear.

"I had this 30-year case years ago. And, the place was paroling people left and right. I was out 26 years after I did barely over a year."

"It ain't that way now." I grumbled.

"Yeah, I know. But in between that time, I caught another case. The judge gave me a 10-year probated sentence. I got through that. AND ...".

"Whoa there a sec, dude. Something is rattling in my empty head. It's on what you said."

"Huh? What?" Richie asked as the two of us meandered to the chow hall.

"Man, there are some case-law and Texas Government Code the D.A. nor most attorneys give to the court."



"Offenders, inmates, need to learn a term and stop using the word, in jail, in prison, incarcerated. We are to use the term "In Custody."

"What's the diff? I'm still locked up!"

"When we get back, I'll show you a Supreme Court case older than you that will - not may - but will reduce your sentence time, to almost nothing. Whatcha think of that?"

"Great, I come up for Parole in November. Maybe I won't need that."

"You have 28 years or so to do. How would you like to have it reduced by 26 years?"

"Don't be fucking with my head. I mean. Damn! You ain't making sense."

"Look Richie; if what I think is ~~is~~ true, your 30 years is about over." I spread my hands out, like an umpire, telling a runner he safe on a stolen base. "You're safe at home."

Richie couldn't eat. He choked three



times on the baked chicken. He bagged the chicken up and smuggled it out of the chow hall. We made our way back to our building and Pod. We gave all the bad news.

"They screwed us again. It's semi-baked blackbirds. The leg quarters are that small."

Murmurings ran through the crowd that waited hours for fried chicken. Everyone now knows there is none.

Richie Rich walks over to my cubicle. I open my locker which is my personal law library. The Unit Law Library does not have many case-law that inmates desperately need.

To give one an idea, the ruling case where the District Attorney must hand over any and all exculpatory evidence, is not in the TOCJ's Law Libraries. BRADY v. Maryland, is not there. Also, they will not Shepardize that case; nor will they Shepardize any case 20 years or over.

I tell Richie, "You hear people say



they have done almost all their five years or so."

"Yes. So?"

"Would you believe they may have already done all the five and now are giving the State "free time" of their lives!"

"What! How?" He looked puzzled.

"Way back, before you were born, in 1963, the U.S. Supreme Court declared that "in custody" includes a person on parole."

"No way!"

"Yes, way. In Jones v. Cunningham, 374 U.S. 236 (1963); a person at large on his own recognizance but subject to several conditions is also, "in custody." Hemsley v. Municipal Court, 411 U.S. 345 (1967)."

"And you will not find either controlling case in the law library. IF you are on probation you are "in custody." U.S. v. Re, 372 F.2d 641 (2d Cir. 1967); Walker v. North Carolina, 262 F. Supp. 102 (W.D. N.Y. 1966); Marden v. Purkey, 409 F.2d 784 (5th Cir. 1969) (Free on bail)."



Richie Rich was trembling as I pointed out non-retrievable cases from the State's prison law libraries. He could not believe what he was seeing as my finger slid from one case to the other. The last case I showed was Capter v. City of Greenville, 422 F.2d 299 (5th Cir. 1970) (released on appeal bond).

"I'll do what is called a Muncie/Tunc Hearing, in the trial court, to jump dead in the ass of the D.A. and your attorney. I will show that court's jurisdiction. Then, show some rules the trial court must follow. I will present the facts, argue your point and pray for your entire time be reviewed and added as time served as "in custody."

Richie walked away. He had never, ever heard of this. The next day he had told a lot of his home boys about this. Some said I was full of shit. Others told him this was to be filed with the Parole Board, not the Trial Court. He told me all this.

"Come here dumb ass, I want you to read just a few of the Rules on this."



I opened my mini-law library.

"Read this. Now this. Move to here. What does each one say?"

"File in trial court."

"Where do you want me to send it?"

"Trial Court."

A month later Richie Rich got a 2-year set-off. He would have to stay in prison for at least two more years. His sister was sick.

I finished the motion, the petition, and he sent it to his baby sister. She carried it to the Court Clerk, for filing.

She told ~~him~~ <sup>Richie</sup> the Clerk said, "I've not seen one of these in decades; since 1992."

Richie told me, "The Parole Board informed me my time is being messed with. That's all they said." Later he told me, "The Parole Board is recalculating my sentence."

At the end of January, he woke me. I had since moved to another building. He snuck in to say, "Goodby."

"I can't believe it. I have less than six months to do on this 30-year sentence."

"Get out of here mo-fo before I kill you for waking me."

He left. He left to go home to do six months of parole.

END

