

**May 2007: Kentucky Man Free After Questionable Conviction Overturned.**

Calvin Carrender found himself facing two indictments for Manufacturing Methamphetamine. Rather than face the possibility of spending the rest of his life in prison, Carrender took his lawyer's advice and entered pleas to two charges of Possession of Methamphetamine Precursors, taking a 10-year sentence as part of the deal. However, Carrender is free today after Somerset attorney, Robert E. Norfleet and *Persuasion Consultants* teamed up to challenge the effectiveness of Carrender's court-appointed counsel.

Calvin Carrender did not know which way to turn. None of the staff attorneys in the Somerset office of the Kentucky Dept. of Public Advocacy (public defender) could represent him because they represented his co-defendant. Finding Carrender conflict counsel proved nearly impossible. Eventually, an attorney was found who would handle the cases for a minimal fee. Unfortunately for Carrender, getting his lawyer to court proved almost as difficult as finding him in the first place. Carrender's court-appointed counsel, who would later be disbarred by the Kentucky Supreme Court for galactically serious transgressions having nothing to do with this case, finally showed up for court and, in the absence of having even received—much less reviewed—the discovery and having done no research on the issues presented by the case, advised Carrender that he had to plead guilty to the prosecutor's offer. The deal? The charges would be reduced to Possession of Methamphetamine Precursors and Carrender would be sentenced to two five-year terms, to run consecutively for a period of ten years. The sentence would be probated for a period of five years.

“However good the offer sounded,” said Norfleet, “it was a lousy deal. Carrender was addicted to methamphetamine and never had any chance to successfully complete the probation because the terms of probation never included any sort of treatment modality. His attorney simply set him up to fail in order to collect his check and get out of town.”

Within thirty days of sentencing, Carrender found his probation revoked because he tested positive for methamphetamine. While in prison, he began to research what had happened in his case. Convinced that he had been done wrong, he filed a Petition with the trial court alleging that he had been denied the effective assistance of counsel. The trial court initially denied Carrender a hearing and the relief he sought—to withdraw his pleas and go to trial—saying that Carrender had received a “sweet deal.”

Carrender appealed the case, *pro se*, to the Kentucky Court of Appeals. There, he received a more favorable response. Saying that the “deal” Carrender received may not have been so “sweet” after all, the appellate court remanded the case for the trial court to conduct a hearing.

Enter Robert Norfleet and *Persuasion Consultants*.

“The problem we faced on remand was how to convince the judge, who clearly thought Calvin got what he deserved, that the assistance of counsel in this case could not have been worse,” said Norfleet. “Since I could not act as an expert on what was or was not the

effective assistance of counsel from a legal perspective, I knew I needed someone to help. That is when I thought to contact Mark Stanziano and run the facts by him. He said that there was no doubt Calvin had been the victim of shoddy practices. He was confident we could save Calvin from his predicament.”

With Stanziano’s involvement, Norfleet was able to convince the prosecutor of the following failures of Carrender’s appointed counsel:

1. As “meet and greet pleas” are being more and more harshly criticized and banned outright by public defender agencies throughout the country, failure to receive and review discovery was a violation of defense counsel’s obligations to his client
2. Failure to understand the issues the case presented and to make any attempt to resolve those issues through pre-trial motion practice was a violation of defense counsel’s obligations to his client.
  - A. “As it turns out, Calvin was advised to plead guilty to crimes that did not exist. This case lends some insight into how that can happen,” said Norfleet. “On some levels, this is terribly frightening because it reflects how little Calvin’s attorney knew about the law,” Norfleet added, “this is where having *Persuasion Consultants* on board was so important. Mark broke the issues down and made it easy for everyone in the process to understand what had gone wrong.”
  - B. The indictments charged the Manufacturing of Meth at a time (June and September 2002) when one had to possess ALL the ingredients or ALL the equipment necessary to make the drug in order to be guilty. Worst case scenario was that Calvin possessed one or two ingredients and one or two items of equipment in each case. The state could never have made either case at trial. He would have been acquitted of the manufacturing charges.
  - C. As for the amendment to Possession of Precursors, in June 2002 that offense did not exist. It did not become a crime until July of that year. He could not have been found guilty of the amended charge, either.
  - D. As for the amendment of the second indictment to the possession of precursors charge, the story was a bit different. By September 2002, the crime existed; having gone into effect in July of that year. However, in order to be guilty of the lesser-included possession charge, one had to possess 24 grams of ephedrine or pseudoephedrine. Carrender only possessed 6 grams. This would have resulted in a directed verdict even on the lesser-included, possession offense.

“Ultimately, I think, the prosecutors wanted to get what they could out of this case and get out of it because they saw the sky falling in on them,” said Norfleet. He added, “With my expert firmly in place, the only other way out for the prosecution was to get its own expert to contradict Stanziano. That was just not going to happen.”

With the issue of the ineffective assistance of counsel locked up, the parties agreed that if Carrender would enter a plea to the attempted manufacture of methamphetamine, the state would agree to a sentence of time served. After reviewing the discovery and consulting with his counsel and expert, Carrender made the decision to avoid further litigation and accept the offer. He was sentenced to time served and was released.