IN THE
SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA : 290 EDA 2019

V. :

WESLEY COOK, a/k/a MUMIA ABU-JAMAL :
Appellant

COMMONWEALTH'S RESPONSE TO PETITIONER MAUREEN FAULKNER'S APPLICATION FOR RELIEF

TO THE HONORABLE, THE PRESIDENT JUDGE AND JUDGES OF THE SUPERIOR COURT:

The Commonwealth respectfully opposes Petitioner Maureen Faulkner's application for relief, and in support thereof states:

1. Petitioner Maureen Faulkner is the widow of Officer Daniel Faulkner. In 1982, a jury convicted Defendant Wesley Cook (a/k/a Mumia Abu-Jamal) of first-degree murder and possessing an instrument of crime for the killing of Officer Faulkner.

2. On December 27, 2018, the PCRA court entered an order, over the Commonwealth's opposition, reinstating Defendant's right to appeal from prior orders dismissing his first four PCRA petitions.

3. Pursuant to the PCRA court's order, Defendant filed the present *nunc pro tunc* appeal. Defendant and the Commonwealth have both filed their principal briefs, and Defendant has filed his reply brief.[1]

4. On the same day Defendant filed his reply brief, Petitioner filed an "Application . . . to Intervene, to Disqualify the Philadelphia District Attorney's Office, and to Quash Appeal for Lack of Jurisdiction" (some capitalization omitted) (hereinafter "Application"). The Commonwealth opposes Petitioner's Application.

5. This is now Petitioner's *third* attempt to have the District Attorney's Office removed from handling this appeal.

6. Petitioner filed her first petition to intervene and disqualify the District Attorney's Office in this Court, in September of 2019, two weeks after Defendant filed his Brief for Appellant.[2] Petitioner claimed that removal of the District Attorney's Office was necessary because the office supposedly faced conflicts of interest

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[1] The Commonwealth has also filed an application to file a surreply brief and has attached its proposed surreply brief to that application.

[2] On the same day he filed his appellate brief, Defendant also filed a motion for a remand to the PCRA court to consider documents that he contends are newly-discovered evidence relevant to the issues on appeal. The Commonwealth filed a response stating that it did not oppose a remand so the documents could be presented to the PCRA court for its review. This Court has issued an order stating that decision on Defendant's motion is deferred to the panel of this Court assigned to decide the merits of this appeal.

that prevented it from properly representing the Commonwealth's interests in this case. On October 10, 2019, this Court denied the petition.

7. A little more than a month later, Petitioner filed a King's Bench petition in the Pennsylvania Supreme Court asking that Court to remove the District Attorney's Office from the case. Once again, Petitioner contended that removal of the District Attorney's Office was necessary because of alleged conflicts of interest that supposedly prevented it from properly handling the case. Two weeks later, Petitioner filed a supplement to her King's Bench petition.

8. On February 24, 2020, one week before the Commonwealth was to file its appellate brief in this Court, the Supreme Court exercised jurisdiction over the matter and stayed all pending matters relating to the case. The Court subsequently appointed the Honorable John M. Cleland as special master to investigate the allegations contained in Petitioner's King's Bench petition. The stay imposed as a result of the petition would ultimately result in a ten-month delay in these appellate proceedings.

9. In the months following his appointment as special master, Judge Cleland received numerous filings submitted by Petitioner and the District Attorney's Office. Judge Cleland also "interviewed, under oath, every person directly referenced in the King's Bench Petition as having some involvement in litigating the

underlying PCRA matter and also reviewed their depositions, taken under oath" (Report of the Special Master, p. 2).

10. Judge Cleland subsequently filed a report announcing his findings.[3] In the report, Judge Cleland reviewed the alleged conflicts of interest identified by Petitioner and found that not a single one of them provided a reasonable basis for calling into question the impartiality of the District Attorney's Office in handling this case (*id.* at pp. 15-23).

11. Judge Cleland also considered decisions that had been made by the District Attorney's Office in its approach to the case—decisions that, according to Petitioner, supposedly showed that the office was not committed to defending Defendant's conviction. The special master concluded that those decisions "rest on reasonable legal and strategic foundations" and that "no evidence has been presented that supports a finding that the District Attorney or his assistants do not intend to defend the conviction" (*id.* at p. 2; *see also id.* at p. 4). The special master further explained, "No credible argument has been made that [the District Attorney] and his assistants have adopted legal positions or legal strategies that do not have arguable merit or are not supported in law based on the facts" (*id.* at p. 23).

[3] A copy of the report is attached as Exhibit A.

12. Judge Cleland summed up his findings as follows:

> Having completed my investigation, it is my conclusion that [Petitioner] has failed to establish the existence of a direct conflict of interest, which compromises the ability of the District Attorney or his assistants and staff to carry out the duties of his office. Nor has she established the existence of an appearance of impropriety that would compromise a reasonable person's confidence in the capacity of the District Attorney or his assistants and staff to serve the fair and impartial administration of justice in defending the conviction of [Defendant] against issues raised in the pending PCRA petition.

(*id.* at pp. 1-2).

13. Based on the above findings, the special master recommended that the King's Bench petition be dismissed (*id.* at pp. 2, 24). The Supreme Court subsequently entered an order stating that, "in accordance with the special master's recommendation," it was dismissing the King's Bench petition (Supreme Court *Per Curiam* Order, filed Dec. 16, 2020).[4] The Supreme Court also lifted its stay in the present appeal.

14. Just three months after the Supreme Court rejected her attempt to remove the District Attorney's Office from handling this appeal, Petitioner filed the present Application, again seeking removal of the office from the case. Petitioner identifies the same supposedly disqualifying conflicts of interest she presented in her King's Bench petition. She also continues to criticize the Commonwealth "for taking

[4] A copy of the Supreme Court's order is attached as Exhibit B.

inexcusable procedural steps directly benefitting [Defendant] and prejudicing the Commonwealth's defense of his murder conviction" (Application for Relief, ¶ 8).

15. As explained above, the special master considered the alleged conflicts of interest and determined that none of them reasonably called into question the impartiality of the District Attorney's Office. The special master also found that the legal and strategic decisions the Commonwealth has made in this case were based on the law and sound reasoning. The special master relied on these conclusions in recommending that Petitioner's attempt to disqualify the District Attorney's Office be denied, and the Supreme Court rejected her petition "in accordance with the special master's recommendation." Petitioner's attempt to have this Court revisit the findings of the special master and to effectively overrule the Supreme Court's decision should be rejected.

16. Having failed to demonstrate that the District Attorney's Office is laboring under any disqualifying conflicts of interest, or that any of its prior decisions in prosecuting this case were in any way unsound, Petitioner now turns her attention to criticizing the Commonwealth's actions in just the few weeks since the Supreme Court lifted its stay in this matter. Specifically, Petitioner criticizes the Commonwealth for the manner in which it has addressed in this Court the issue of whether the PCRA court had the authority to reinstate Defendant's prior PCRA appellate rights.

17. Petitioner faults the Commonwealth for not taking a cue from Justice Dougherty's concurring opinion in the King's Bench matter and arguing that the present appeal should be quashed under *Commonwealth v. Reid*, 235 A.3d 1124 (Pa. 2020), as being from an untimely PCRA petition. She criticizes the Commonwealth because, as she describes it, it "conceded the quashal issue under *Reid,* and elected to argue untimeliness under a different legal theory all together [sic]" (Application for Relief, ¶ 20).

18. Unfortunately, Petitioner appears to misapprehend the basis upon which Defendant's PCRA appellate rights were reinstated. Based on that apparent misunderstanding, she criticizes the Commonwealth for not advancing a time-bar argument that is *not* supported by the facts and the law and for, instead, advancing one that *is*. Attacking the Commonwealth for presenting an argument that is likely to succeed, rather than one that would fail, is at the very least misguided. It certainly cannot serve as a basis for removing the District Attorney's Office from the case.

19. As Justice Dougherty correctly pointed out in his concurring opinion in the King's Bench matter, in *Reid,* the Pennsylvania Supreme Court held that *Williams v. Pennsylvania*, 136 S.Ct. 1899 (2016), "does not provide an exception to the PCRA's timeliness requirements, and that *nunc pro tunc* appeals reinstated pursuant to *Williams* are subject to *sua sponte* quashal." *In re: Conflict of Interest of the Office of the Philadelphia District Attorney*, 125 EM 2019 (Dougherty, J., concurring

statement, filed Dec. 16, 2020, p. 19).[5] The procedural circumstances in the present case, however, are different than those in *Reid*, because Defendant's appellate rights were not reinstated pursuant to *Williams*.

20. As the Commonwealth explains in its Brief for Appellee, although Defendant originally sought reinstatement of his appellate rights under *Williams*, the PCRA court ultimately rejected his *Williams* claim (*see* Commonwealth's Brief for Appellee, p. 17; Opinion, Tucker, J., filed Dec. 27, 2018, pp. 16, 26-27). Instead, the PCRA court reinstated Defendant's PCRA appellate rights based on a letter that was disclosed by the Commonwealth during the PCRA proceedings. The PCRA court found that the letter constituted newly-disclosed evidence that showed that Chief Justice Castille was biased against those convicted of killing police officers and therefore should have recused himself from hearing Defendant's appeals (Opinion, Tucker, J., filed Dec. 27, 2018, pp. 30-32).[6] Notably (for the purpose of assessing

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[5] In *Williams*, the United States Supreme Court held that Chief Justice Castille should have recused himself from hearing Williams' case when it was on PCRA appeal. This was because, as District Attorney, he had approved the trial prosecutor's request to seek the death penalty against Williams and thus had had "significant, personal involvement in a critical decision" in the case. *Williams*, 136 S.Ct. at 1908.

[6] In the letter, District Attorney Castille implored the governor to sign death warrants for those on death row whose direct appeals had concluded. Because Defendant's direct appeal was then ongoing, the letter did not refer to him. Nevertheless, District Attorney Castille wrote, "I urge you to send a clear and dramatic message to all police killers that the death penalty in Pennsylvania actually means something."

the alleged conflict of interest), the letter that the PCRA court relied upon to grant Defendant relief was *not* provided to the defense by the current District Attorney but, rather, was disclosed by the prior administration.[7]

21. The Commonwealth states in its Brief for Appellee that because the PCRA court did not reinstate Defendant's appellate rights based on *Williams*, this case is not controlled by *Reid*. But, the Commonwealth goes on to explain, that does not mean that *Reid* is irrelevant to the question of whether Defendant had timely raised the claim upon which relief was granted. *Reid* establishes that Defendant's original (fifth) PCRA petition, which was based on *Williams*, was untimely and should have been dismissed. So, Defendant needs a different basis for jurisdiction; as he effectively acknowledges, the only possibility is that the letter constituted newly-discovered evidence so as to come within a PCRA time-bar exception (*see* Defendant's proposed supplemental memorandum, filed Jan. 5, 2021, pp. 9-11).[8]

22. In order for Defendant to demonstrate that he was entitled to relief based on the letter—a claim he raised for the first time in his amended PCRA petition—he was required to demonstrate that he filed *that* petition within sixty days of receiving the letter. This, the Commonwealth argues in its brief, Defendant failed to

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[7] The prior administration provided the letter to the PCRA court judge who then gave it to Defendant (N.T. 4/30/18, 10).

[8] On February 2, 2021, this Court granted Defendant's request to submit his supplemental memorandum and accepted it for filing.

do, and thus the PCRA court was statutorily barred from reinstating his appellate rights (*see* Commonwealth's Brief for Appellee, pp. 19-21).

23. As the above description of what occurred in the PCRA court and what the Commonwealth argues in its appellate brief shows, the particular time-bar argument Petitioner faults the Commonwealth for not making (and instead replacing with a different but related one) is based on her misunderstanding of the record and the law. That misunderstanding, of course, cannot supply a basis for disqualifying the District Attorney's Office.

24. Petitioner is also displeased with the manner in which the Commonwealth *presents* its above-described time-bar argument to this Court. She criticizes the Commonwealth for not raising the issue in a separately-filed motion to quash, for placing its discussion of the issue in the procedural history section of its brief, and for not including a specific heading that would "highlight the issue for this Court" so that this Court would know that it "does not have to even decide the merits of [Defendant's PCRA] appeals" (Application for Relief, ¶ 21). Accusing the Commonwealth of "burying" the issue in its brief (*id.* ¶ 10), Petitioner apparently fears that this Court might somehow grant Defendant relief without doing anything more than quickly skimming through the Commonwealth's brief.

25. The Commonwealth addresses the time-bar issue over seven pages in its brief in which it discusses the necessary procedural history, the applicable law,

and the reasoning why the PCRA court did not have the authority to reinstate Defendant's appellate rights (*see* Commonwealth's Brief for Appellee, pp. 14-17, 19-21). The Commonwealth appropriately places this discussion at the end of its procedural history of the case and before it addresses the merits of any of the substantive claims raised by Defendant. After arguing that the PCRA court was barred from granting Defendant relief and restoring his appellate rights, the Commonwealth explains that, in any event, even if the court had correctly restored his appellate rights, none of his claims provides a basis for relief. The Commonwealth's thorough advocacy is hardly a basis for disqualification.

26. The Commonwealth has no doubt that this Court will closely read its brief before rendering a decision in this case. Since the Commonwealth addresses the time-bar issue before presenting any argument regarding the merits of Defendant's substantive claims, the Commonwealth is confident this Court will know that it need not necessarily address the substantive claims if it finds the time-bar argument persuasive. Tellingly, Defendant appears to have no doubt that this Court will need to grapple with the Commonwealth's time-bar argument before it could possibly grant him relief. This is shown by the fact that he has filed a reply brief in which he devotes a substantial amount of effort to responding to the time-bar argument. Petitioner's fear that this Court will somehow overlook this issue is unfounded.

27. The Commonwealth's decision to raise the time-bar argument in its appellate brief rather than in a separate motion to quash is entirely justified. Presenting this Court with a brief that argues against relief on both procedural and substantive grounds is sound appellate strategy. And, demonstrating to this Court that Defendant's first-degree murder conviction should be upheld not only because he filed his PCRA petition some months late, but also because his claims that he received a fundamentally unfair trial are without merit, is also sound appellate advocacy.

28. The District Attorney and his assistants have worked tirelessly in the PCRA and appellate courts to secure justice in this case. They have endeavored to do so not only in a legally appropriate way but also in a manner that will hopefully inspire confidence in the result among the citizens of Philadelphia. That Petitioner may disagree with some of the strategic decisions the District Attorney and his assistants have made along the way is not a reason for disqualification.

29. Petitioner has failed to identify any legitimate grounds for intervening in the case and having the District Attorney's Office removed from its prosecution. This most recent attempt of hers to disqualify the office, like her earlier ones, should be denied.

WHEREFORE, the Commonwealth respectfully requests that this Court deny the petitioner's application to intervene in the case and disqualify the District Attorney's Office.

Respectfully submitted,

/s/ Grady Gervino

GRADY GERVINO
Assistant District Attorney

EXHIBIT A

IN THE SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

IN RE: CONFLICT OF INTEREST OF THE OFFICE OF THE PHILADELPHIA DISTRICT ATTORNEY

No. 125 EM 2019

PETITION OF: MAUREEN FAULKNER, WIDOW OF DECEASED POLICE OFFICER DANIEL FAULKNER

REPORT OF THE SPECIAL MASTER

FILED UNDER SEAL

June 17, 2020 **Unsealed 12/16/2020**

By orders entered by the Supreme Court of Pennsylvania, I was appointed as special master "to investigate the matters referenced in the King's Bench Petition herein and to make recommendations" to the Court. Specifically, I was directed "to determine if the participation in the underlying criminal case...by any attorneys or staff of the Philadelphia District Attorney's Office who have been identified in the King's Bench Petition presents the appearance of a conflict of interest such as to impede the fair and impartial administration of justice."

Having completed my investigation, it is my conclusion that Petitioner, Maureen Faulkner ("Faulkner"), has failed to establish the existence of a direct conflict of interest, which compromises the ability of the District Attorney or his assistants and staff to carry

out the duties of his office. Nor has she established the existence of an appearance of impropriety that would compromise a reasonable person's confidence in the capacity of the District Attorney or his assistants and staff to serve the fair and impartial administration of justice in defending the conviction of Mumia Abu-Jamal against issues raised in the pending PCRA petition.

I interviewed, under oath, every person directly referenced in the King's Bench Petition as having some involvement in litigating the underlying PCRA matter and also reviewed their depositions, taken under oath. Some of those referenced testified that they had no involvement in the case. All witnesses having a role in the PCRA dispute, however, stated that it is their intention to defend the conviction, and that they are aware of no evidence that would support or justify a decision to the contrary or to concede any PCRA relief. In addition, I specifically questioned those people directly involved in making two decisions criticized in the King's Bench Petition: not opposing Abu-Jamal's Application for Remand of the pending Superior Court appeal to the PCRA court; and not interviewing Joseph McGill.

It is my conclusion that those two decisions rest on reasonable legal and strategic foundations. It is also my conclusion that no evidence has been presented that supports a finding that the District Attorney or his assistants do not intend to defend the conviction.

Accordingly, it is my recommendation that the King's Bench Petition be dismissed.

1. Factual and Procedural Background:

Petitioner is the widow of Philadelphia Police Officer Daniel Faulkner. He was shot and killed in the early morning hours of December 9, 1981, while making a routine traffic stop on Locust Street in Center City Philadelphia. The defendant, Wesley Cook, now known as Mumia Abu-Jamal ("Abu-Jamal"), was arrested at the scene, convicted at trial of first-degree murder, and sentenced to death. Assistant District Attorney Joseph McGill ("McGill") was the trial prosecutor. The conviction became final after the verdict was affirmed by the Pennsylvania Supreme Court and the United States Supreme Court refused Abu-Jamal's petition for writ of certiorari in June 1991.

In 1995, Abu-Jamal filed what would be the first of five PCRA petitions. Beginning in 1999, litigation also proceeded in federal court. After more than a decade of federal litigation, the District Attorney, with Petitioner's agreement, consented to the imposition of a life sentence in lieu of the death penalty. Abu-Jamal was resentenced to life imprisonment in October 2012.

On August 7, 2016, the most recent, and the pending, PCRA matter was filed. It is focused on what is alleged to be a "*Williams* violation,"[1] predicated on the fact that former Philadelphia District Attorney Ronald Castille sat as a Justice when various Abu-Jamal appeals were decided by the Pennsylvania Supreme Court. Tracey Kavanaugh, ("Kavanaugh"), an ADA since 1987, then the Deputy Supervisor of the PCRA Unit of the District Attorney's Office (DAO), was assigned to litigate the PCRA petition. While the case was in litigation, Respondent Lawrence Krasner ("Krasner") was elected and was sworn in as District Attorney in January 2018. Under Krasner's administration,

[1] Williams v. Pennsylvania, 136 S.Ct. 1899 (2016) (finding an impermissible risk of actual bias violative of the Due Process Clause when a judge sitting on appeal earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case).

Kavanaugh was promoted to Supervisor of the PCRA Unit and continued in her assignment to oppose the relief requested in Abu-Jamal's PCRA petition.

On December 27, 2018, after what the Honorable Leon Tucker called a "lengthy and arduous PCRA proceeding," including two years of discovery and hearings, he filed an opinion and order in which he concluded that there was no evidence of actual bias or improper activity that would support a finding of a *Williams* violation. However, Judge Tucker concluded that Justice Castille's involvement was violative of the Due Process Clause of the United States Constitution and granted Abu-Jamal's PCRA petition. In his opinion, Judge Tucker wrote, "[b]ecause of Justice Castille's participation in the Pennsylvania Supreme Court's decision regarding the post conviction relief act, re-argument before that court would best serve the appearance of justice.... Argument only on the past submitted briefs will avoid the unacceptable danger of having the slightest appearance of impropriety." PCRA Court Opinion, 12/27/2018, at 34-35.

Both the Commonwealth and Abu-Jamal appealed Judge Tucker's order. After Judge Tucker filed an amendment to his opinion which, in the Commonwealth's view, narrowed the scope of its application to three specific cases involving the murders of police officers, the Commonwealth withdrew its appeal. Petitioner has presented no evidence that suggests the DAO's decision to withdraw the appeal was not based on sound strategic or legal reasoning.[2] Judge Tucker's amended opinion reiterated that "The only issue is whether Appellees [sic] should reargue before the Pennsylvania

[2] The DAO was less focused on the effect of Judge Tucker's original opinion on the Abu-Jamal case and more concerned about the effect the broad language of his original opinion might have on numerous other cases pending at the time. *See* Krasner Deposition, p. 127. Respondent Ex. 2 Statement of Reasons on Appeal.

Supreme Court. This court, sitting as the PCRA Court, found that reargument should be had, nunc pro tunc, without new briefs." (Supplemental Opinion, March 26, 2019, at 2).

During the litigation before Judge Tucker, he ordered the DAO to produce its Abu-Jamal file. At various times, and as additional files were discovered, the DAO produced 32 file boxes of material for his review. However, once Judge Tucker's opinion and order had been filed, the DAO discovered six additional boxes that had been stored in an out-of-the way closet and had not been included in the DAO's data base. Included in the boxes were a letter from an eyewitness who testified at the trial, Robert Chobert, to McGill asking the latter to pay him money; McGill's original jury selection notes apparently showing the race of prospective jurors; and various notes regarding the disposition of pending charges against the other eyewitnesses.

On March 11, 2019, the Superior Court issued a per curiam order directing the parties to show cause why the appeal should not be transferred to the Supreme Court. On April 23, 2019, by per curiam order, the Superior Court directed that the issue raised by the March 11 order would be referred to the panel assigned to decide the merits.

On September 3, 2019, Abu-Jamal filed an Application for Remand requesting that the case be returned to the PCRA court to consider the evidence found in the boxes after the case was on appeal. The Commonwealth filed its Answer to the Application for Remand and did not oppose the requested relief. The Superior Court has not ruled on the defendant's application because of the Supreme-Court-ordered stay currently in effect.

On September 3, 2019, the defendant also filed his appellate brief, raising issues that had been previously litigated and decided by the Supreme Court when Justice

Castille was sitting. The Commonwealth, after requesting three briefing extensions, completed its ninety-one page brief, but has not filed it because of the stay currently in effect. The brief is part of the record in this proceeding.

On September 18, 2019, Faulkner filed a *pro se* Application for Intervention in the Superior Court, requesting that Krasner be removed and replaced by the Pennsylvania Attorney General. The King's Bench Petition alleges many, but not all, of the grounds pled in her *pro se* Application. Both Abu-Jamal and the Commonwealth objected to her intervention. On October 10, 2019, the Superior Court denied her petition to intervene, and she did not appeal the ruling.

2. Investigation Process:

On November 22, 2019, Petitioner, through counsel, filed her King's Bench Petition. On February 24, 2020, the Supreme Court granted the Petition, exercised its King's Bench jurisdiction, and stayed all further proceedings in the Superior Court.

Petitioner's King's Bench Petition asserts that, in litigating Abu-Jamal's PCRA petition, the DAO "is simply refusing to carry out its responsibility to objectively analyze the case and enforce the law. Unfortunately high ranking officials from the [DAO] — including the District Attorney himself — suffer from undeniable personal conflicts of interest which are so obvious and so incendiary that the Office's continued representation of the Commonwealth all but guarantees a biased and unjust adjudication of the *Jamal* case." (Petition at 2). The Petition asserts that both an actual conflict of interest and an appearance of impropriety by the District Attorney and the attorneys and staff of his office justify a decision by the Pennsylvania Supreme Court to

disqualify the entire DAO and to refer the matter to the Pennsylvania Attorney General. (Petition at 24).

The Supreme Court's order appointing me did not prescribe any particular manner, or define any specific process, for conducting the investigation. On March 6, 2020, pursuant to the authority of my appointment, I entered an order directing that the burden would lie with Petitioner to prove the allegations contained in the King's Bench Petition. I further directed the DAO to identify any attorneys and staff "who have had, or it is reasonably anticipated will have, a significant involvement in prosecuting the underlying case, including the assessment of the merits of the case, the development of legal strategy, or the litigation of any contested issue."

The DAO responded by identifying those attorneys and staff assuming those responsibilities. By order dated April 7, 2020, I then permitted Petitioner's counsel to depose those individuals identified by the DAO, as well as those not identified by the DAO but referenced in the King's Bench Petition. Petitioner's counsel subsequently deposed Krasner, Kavanaugh, Paul George, and Jody Dodd.

The focus of the King's Bench Petition involves the two specific decisions made by the DAO that Petitioner alleges proves that the District Attorney and DAO are not committed to defending Abu-Jamal's conviction: not opposing a defense-requested remand to the PCRA court for consideration of the three categories of documents discovered by the DAO while the PCRA court's decision was on appeal to the Superior Court, and not interviewing McGill concerning the circumstances surrounding the creation of those documents. The Supreme Court's direction to conduct an investigation left the manner of doing so to my discretion. As a result, I allowed counsel to engage in

discovery. To keep focus on the matters referenced in the Petition, by order of April 7, 2020, discovery was "limited to an inquiry addressing the following questions: (a) Whether it is the intention of the DAO to defend the conviction in the pending PCRA proceeding; (b) Whether the DAO has any evidence to support or justify a decision by the DAO not to defend the conviction; (c) What the strategic or legal basis was for consenting to a remand to the PCRA court; (d) What the strategic or legal basis is for not interviewing Joseph McGill or otherwise preserving his testimony."[3]

At the conclusion of discovery, counsel submitted pre-hearing statements, hearing exhibits, transcripts of the depositions, affidavits, and offers of proof. Petitioner filed 74 exhibits, including depositions of Krasner (151 pages and three hours in duration), Kavanaugh (123 pages and two and one-half hours), George (39 pages and 47 minutes), and Dodd (81 pages and one hour, fifty minutes). Respondent filed 35 exhibits.

I entered various orders detailing the process by which I would conduct my investigation.[4] With the agreement of counsel, I reviewed all of the deposition testimony and the voluminous exhibits submitted by the parties. I then scheduled a proceeding to begin at 9:00 a.m. on May 18,[5] with witnesses listed in the order I prescribed. They were, in order: Tracey Kavanaugh, Nancy Winkelman, Paul George, Lawrence Goode, Grady Gervino, Lawrence Krasner, Jody Dodd, and Maureen Faulkner. I conducted the

[3] All pleading and discovery referencing facts or legal arguments in the case have been ordered to be filed under seal. *See* Order of April 20, 2020.

[4] Various pre-hearing motions involving discovery disputes, the DAO's motion for continuance and procedural issues were addressed in orders or telephone conferences. Those matters appear of record, but, being matters that did not affect the substantive issues that were the focus of my investigation, are not addressed in this report.

[5] The hearing was conducted by video conference, coordinated by the Supreme Court's IT department. It was closed because it is my view that I am conducting an investigation as an agent of the Supreme Court and that any decision to make public part or all of the record should rest with the Court.

initial questioning of each witness, focusing on the issues I believed required explanation or clarification beyond what had been already produced for my review. I then permitted counsel to conduct additional examination. As a result, my analysis and conclusions are based on my consideration not only of the live testimony, but the deposition testimony of any witness deposed, exhibits presented as part of the prehearing statements, and affidavits submitted post-hearing.

All of the deposition transcripts and exhibits submitted by each side have been made part of the record, except Petitioner's exhibit 18, which the DAO objected to on the basis that it is an internal DAO document that, it is contended, was improperly obtained by Petitioner's counsel. Also included, but which I did not consider, is Petitioner's exhibit 37, a letter from Matthew D. Weintraub, Bucks County District Attorney, expressing an expert opinion in support of the Petition. I have disregarded any objections made by Respondent's counsel to Petitioner's exhibits asserting lack of foundation establishing authenticity or hearsay, and have given each of Petitioner's and Respondent's exhibits such weight as I believed it deserved. As a result, the Court has a full record available for its eventual review.

3. Essential allegations of the Petition:

I focused my investigation on what I determined to be the essential allegations of the Petition supporting the contention that the DAO is "beset by clear and unambiguous conflicts, as well as appearances of impropriety." Petition at 24. They are:

1. The lack of any legally sufficient or strategically legitimate reason to concede to Abu-Jamal's Application for Remand to the PCRA court to

conduct a hearing regarding the discovery and possible relevance of documents discovered by the DAO.[6]

2. The lack of any legally sufficient or strategically legitimate reason for not interviewing the trial prosecutor, Joseph McGill, in connection with the contested documents and before taking a position on Abu-Jamal's Application for Remand.

3. Hiring Paul George, given his previous representation of the defendant, and placing him in a position of authority as Assistant Supervisor of the Law Division where he can influence the decisions of the DAO in the underlying PCRA litigation, specifically because he oversees the work of Lawrence Goode, supervisor of the Appeals Unit; Grady Gervino, the ADA assigned to the PCRA appeal; and Kavanaugh, Supervisor of the PCRA Unit and the ADA assigned to the PCRA trial litigation.

4. Hiring Jody Dodd as Restorative Justice Facilitator, a juvenile diversion program, given her involvement in Y2K and the Women's International League for Peace and Freedom ("WILPF"), which took positions in support of Abu-Jamal.

5. Hiring Patricia McKinney as an Assistant District Attorney, given that she was formerly George's law partner.

6. The participation of Michael Coard on Krasner's transition team, given his controversial statements about policing, advocacy on behalf of the

[6] "To simply concede the issue now pending in the Superior Court was tantamount to refusing to carry out the District Attorney's responsibility to enforce the law…." Petition at 5.

defendant, and his political endorsement of Krasner in which he states "everything that I support Larry Krasner supports." Petition at 22.

7. Krasner's decisions and the actions of the DAO in the underlying litigation are influenced by opinions of Krasner that are characterized in the Petition as "anti-law enforcement" or "anti-police."

8. The existence of a direct conflict of interest that has infected the legal or strategic decision by the DAO in defending the defendant's conviction.

9. The cumulative effect of Krasner's past political or professional activities, or by those of his ADAs and staff, would lead a significant minority of the lay community to reasonably question the impartiality of Krasner and the DAO.

4. Conclusions:

Based on the testimony presented, the depositions and exhibits, my conclusions are as follows:

a. There was a legally sufficient and strategically legitimate reason to concede Abu-Jamal's Application for Remand to the PCRA court to conduct a hearing regarding the discovery and possible relevance of documents located by the DAO after the entry of Judge Tucker's opinion and order and while the case was on appeal.

During the PCRA litigation, Judge Tucker ordered the DAO to produce its file in the original prosecution, subsequent appeals, and previous PCRA litigation. The DAO produced 32 boxes of files. After Judge Tucker filed his opinion and order, and while the appeal was pending, Krasner discovered six additional boxes of files and permitted Abu-Jamal's counsel to review their contents. The boxes contained documents about which McGill would have important background information. As a result, Abu-Jamal's

counsel filed an Application for Remand, and the DAO has not contested the requested relief.

Petitioner argues that conceding the remand, and doing so without first interviewing Joseph McGill to determine if the documents were relevant or newly discovered, demonstrates Krasner's and the DAO's unwillingness to aggressively defend the conviction. Krasner and his assistants, however, explained the rationale for conceding to the remand request.

Kavanaugh testified as follows:

> "[W]hen we were litigating the fifth PCRA appeal and I had talked to Mr. McGill on the phone and I had seen him in court. After it was over and we found the six boxes I went through the boxes and saw the Chobert letter and other materials and at that point the case was already on appeal and so I didn't call him at that point because there was no reason to. When Nancy came to me with the remand motion, Nancy Winkelman, she asked my opinion and I said since Mr. McGill is getting — advancing in age and the case was so old, it was a 1982 case, it was my opinion that a reason to agree to the remand and not oppose it would be because I thought this Chobert letter might require an evidentiary hearing and we would want to get Mr. McGills' testimony on the record, you know, under oath and I though we should do that sooner [than] later."[7] (Tr. 8-9).

Winkelman offered the following testimony:

> "[W]e thought that not opposing the remand to permit the PCRA court to consider whether or not [to] let defendant file a new PCRA petition which he can't do while the appeals are pending. So if the case were to be remanded defendant could file a new PCRA petition, we would respond to it, the court would decide whether there needed to be an evidentiary hearing....let him put on the table what he has, let the PCRA court decide, let it be litigated there, and then let an appeal come up all together rather than have this tangent of the appeal go on and on and on only for it to end only for it to start all over again with the PCRA court with his sixth petition and more appeals." (Tr. 32-33).

[7] "Tr." citations refer to the hearing transcript of the May 18, 2020 hearing.

Along these lines, Krasner indicated that:

> "When we saw these items and saw that so far as the office's electronic database was concerned they did not even exist, it was extremely concerning the issues that were already before the appellate court without finality, for example, as to jury selection, (t)hat we would go through an appellate process perhaps for a few years only to come down and to have more factual questions to answer that were based on the contents of the box. I didn't want it to take a couple of years on appeal and then another three to five years. I wanted to get it over with so that we could get to the proper conclusion. Whatever the facts were in that box whether they had been fully disclosed and addressed before or not, we wanted there to be a factual determination by the lower court and then any appellate issues that existed would be resolved with finality by the higher court." (Tr. 87).

It cannot be said that this strategic and legal decision lacks merit. As Winkelman testified in response to my question, there was no way to address the issue of whether the documents were newly discovered or relevant other than a remand to the PCRA court. (Tr. 34). Since the case is on appeal, Judge Tucker would have no jurisdiction to consider whether the documents are relevant or newly discovered. Nor would the Superior Court panel have jurisdiction to hold a hearing and make a fact-based determination. Accordingly, without a remand, the litigation of those issues would have to await another, and long-delayed, day. In the interest of moving the case as expeditiously as possible toward finality, a consent to remand cannot be said to be unreasonable.[8]

b. <u>There was a legally sufficient and strategically legitimate reason for not interviewing the trial prosecutor Joseph McGill in connection with the documents discovered while the case was on appeal.</u>

[8] There is caselaw holding otherwise. <u>See</u> <u>Commonwealth v. Bond</u>, 819 A.2d 33, 52 (Pa. 2002); <u>Commonwealth v. Lark</u>, 746 A.2d 585 (Pa. 2000). Nonetheless, under the unique circumstances of this case and the potential consequences of still further delay, agreeing to a remand was arguably appropriate.

Petitioner asserts that the failure to interview McGill, who is in his late 70s, before conceding to the remand request is evidence of the DAO's unwillingness to aggressively defend the conviction because, if he were to become incapacitated, there would be no evidence available to contest Abu-Jamal's construction of the documents.

Tracey Kavanaugh, the ADA assigned to litigate the PCRA matter, explained her reasoning for not interviewing McGill:

> "At this point I didn't feel the need to talk to Mr. McGill. I knew Mr. McGill was a very upstanding prosecutor with a good reputation. When I saw the Chobert letter I instantly knew there — I didn't suspect there was any kind of deal in exchange for the testimony. So I didn't feel like I needed at that moment to clarify with Mr. McGill....I didn't want to piecemeal interviews of him because: number one, I always anticipate what the cross will be, how many times did you call Mr. McGill, and really more importantly, me in my unit, Judge Sarmina was one of the very busiest homicide judges who handled a lot of the PCRAs. During that time we had a problem. There was a case, Commonwealth versus King[9] that came down and it was her decision, and it was affirmed on appeal, where she precluded PCRA ADAs from interviewing trial counsel. Then to our surprise she extended that decision to include any witness and she called me to complain about one of the ADAs in my unit interviewing a witness before a PCRA evidentiary hearing. She said that she didn't want us putting our finger on the scale. She struck the witness's testimony. So I was just being very careful not to make more phone calls than I needed and I fully intended to interview Mr. McGill when I started my preparation....I sent out an e-mail to my unit and I said for Judge Sarmina's hearings do not speak to any witnesses before the hearing, see me and then we will seek permission to speak to the witnesses and if need be we would appeal her ruling. The e-mail didn't apply to every judge, but I think it made everybody — I should speak for myself, it made me very careful about interviewing or conducting unnecessary interviews." (Tr. 9-10, punctuation edited for clarity).

In a high-profile case such as this, it cannot be disputed than an abundance of caution would be warranted and that, under the circumstances explained by

[9] 167 A.3d 140 (Pa. Super. 2017), aff'd, 212 A.3d 507 (Pa. 2019).

Kavanaugh, an ADA would be justifiably hesitant about interviewing a trial prosecutor concerning documents created during or shortly after trial. She said she had cautioned all attorneys in her PCRA unit about interviewing witnesses. While the judge who made the ruling striking the testimony has recently retired, as a respected judge, the possibility that her ruling might be applied by other judges can not be discounted.

Petitioner argues, in effect, that this explanation is not credible because affidavits submitted by two former prosecutors state they had been interviewed about cases they had handled before court appearances involving the cases. Neither of those affidavits, however, specifically state that either attorney was interviewed by Kavanaugh or anyone in the PCRA unit. Indeed, a reply affidavit from Krasner indicates to the contrary.

Significantly, an affidavit from McGill (Petitioner's exhibit 1(c)) detailing the circumstances surrounding the Chobert letter, his jury selection notes, and efforts on behalf of the second eyewitness makes no reference to him being in ill health or suffering from a failing memory.

c. Paul George has been screened from involvement in the underlying litigation, and there is no evidence that he has been involved in making or influencing any legal or strategic decisions.

Paul George was hired by Krasner in early 2018 as the Assistant Supervisor of the Law Division. That division oversees both the PCRA Unit and the Appeals Unit.

It is undisputed that, in 2007, George signed as local counsel an appellate brief filed on behalf of Abu-Jamal. George testified he has never met or talked to Abu-Jamal, did not write the brief, and did no legal or factual research in support of the arguments it contained. While the brief alleges a variety of police misconduct in the Abu-Jamal case,

George testified “I did not feel that by signing it I was saying that I agreed with them, I was saying I agreed there should be an evidentiary hearing.” (Tr. 51). He testified that signing the brief has been his only involvement representing Abu-Jamal and that he has done no other advocacy on his behalf, has written no op-eds or articles, has given no speeches, and has contributed no money. (Tr. 52-53).

Upon being hired as Assistant Supervisor of the Law Division in 2018, George told Winkelman that he “needed to be screened from any involvement in that case.” (Tr. 49). George then consulted with the DAO’s ethics officer, Richard Glazer, and has been screened from receiving any information about the case, discussing the matter, or participating in any way in the litigation. He testified that he does not have input into the performance evaluations regarding the work on the case done by Kavanaugh or Gervino. (Tr. 50). Further he “has not discussed anything with respect to this case including the factual merits ever with Mr. Krasner either before or since taking my present position,” (Tr. 51), and that the has had no involvement regarding the case with Gervino, Kavanaugh, or Winkelman. (Tr. 51-52). Krasner, Winkelman, Kavanaugh, and Gervino all confirm George’s testimony.

Kavanaugh, who litigated the PCRA action in the common pleas court, testified she has never read the 2007 brief, had never talked to George about the brief or his views of the case, and did not know his opinion about the legal or factual merits. (Tr. 7). Gervino testified he had never talked to George about the case and had only read the 2007 brief “in response to the King’s Bench Petition.” (Tr. 64-65). Winkelman, Supervisor of the Law Division, also testified she has never talked to George about the case or read the brief he signed in 2007. (Tr. 24).

Krasner testified that, when he hired George, he did not know that George had signed a brief on Abu-Jamal's behalf, and that he has never discussed the case with him either before he was hired or since. When questioned by me he testified:

> "Q: (Special Master Cleland): Have you ever discussed with Mr. George the guilt or innocence of Mumia Abu-Jamal?
>
> A: No, sir." (Tr. 82).

In Krasner's deposition, he testified:

> "Q: (Mr. Bochetto): Have you ever discussed the Abu-Jamal case with Paul George while you were the elected District Attorney of Philadelphia?
>
> A: The answer is no. I have absolutely no recollection of doing it. I am only hesitating so I can be real careful that I'm right. I do not remember speaking to him at all about it either as DA or before." (Petitioner exhibit 32, p. 117).

While Petitioner's counsel argues that Krasner's testimony is not to be believed, no evidence has been produced contradicting Krasner's testimony, or that of George, Kavanaugh, Gervino, and Winkelman.

Further rebutting any argument that George has exercised improper influence over the case is the fact that Gervino testified that he has worked as an ADA in the Appeals Unit since 1995, during the time Hugh Burns, who is now with the Office of Attorney General, was the supervisor of the unit. He testified that the legal arguments and legal strategy with respect to the Abu-Jamal case have remained consistent for all of the 25 years he has worked in the Appeals Unit and that there had been no change under the Krasner administration or following George's hiring. Gervino testified: "I have Mr. Burns' briefs so I have taken some different strategies in terms in how I approach the claims, but I assume, your Honor, you had an opportunity to review my brief. I think I

have been very vigorous in my defense of the defendant's conviction. And so, no, and nobody has talked to me about how to approach the case. I have just written the brief like I would any other brief in any other case." (Tr. 70).

d. <u>There is no evidence that Jody Dodd has played any role in the underlying PCRA litigation.</u>

Jody Dodd worked as a paralegal in Krasner's private law office before being hired as Restorative Justice Facilitator, a juvenile delinquency diversion program. There is no evidence that she has had any role in the PCRA litigation or any other matter involving Abu-Jamal during her employment.

Petitioner alleges, however, that she is a "well known Jamal advocate" (Petition at 20) and that, because of her background supporting various causes, her hiring creates an appearance of impropriety. The focus of the Petition concerning Dodd centers on her involvement in various protests occurring during the 2000 Republican Convention held in Philadelphia and her employment from 2000 to 2007 by the WILPF.[10] Petitioner argues that Dodd was directly involved in activities and protests directed at freeing Abu-Jamal, but presented no persuasive evidence to that effect.

Both Dodd and Krasner worked as part of a loose association known as Y2K during the 2000 Republican Convention. Both testified that their involvement was not directed at supporting any of the variety of issues which were the subjects of protest,

[10] WILPF supported a broad range of initiatives. Included as Exhibit E to the Petitioner's Answer to Philadelphia District Attorney's Application to Withdraw Exhibit from Response to King's Bench Petition are twelve pages of Resolutions adopted at the WILPF 26th Congress in Helsinki, Finland in 1995. Among the subjects of the worldwide resolutions are human rights, disarmament, rights for women and children, economic justice, abolishing capital punishment, intellectual property rights, rights of indigenous peoples, etc. Included is a resolution directed at "saving the life of Mumia Abu-Jamal" and calling on the Governor of Pennsylvania to stay the execution and afford him "a fair trial."

including free Abu-Jamal demonstrations. Krasner testified their efforts were directed only at protecting free speech and legal rights of arrested protesters, not the advocacy of any cause which was the subject of protests. (Tr. 81). Dodd testified that she has never been personally involved in any activities to specifically support Abu-Jamal, and has never contributed financially to causes supporting the defendant, given speeches, written articles, or engaged in any formal or informal advocacy. (Tr. 122-123).

Petitioner produced various Y2K fliers that identified Krasner and Dodd as contacts and legal resources for protestors who had been arrested during the 2000 demonstrations. The only document, however, that referred to Dodd in connection with Abu-Jamal protests was Petitioner's exhibit 1-N. It is a flier produced in connection with a demonstration in Philadelphia organized by International Concerned Family and Friends of Mumia Abu-Jamal. The flier lists various talking points in support of the protest. It identifies Dodd as a press spokesperson available to do interviews and lists her office telephone number. Dodd testified that she "had not seen the document. I had no part in creating that document prior to being shown that document (in the discovery deposition). And they put my number down as a contact for media around the arrests for the people who had been arrested. That is what I was there for was to do legal support for their arrests." She further testified that she had no memory of receiving any phone calls resulting from the flier. (Tr. 128-29).

Apart from exhibit 1-N regarding protests some 20 years ago, there is no evidence supporting an argument that Dodd has participated in any meaningful way in efforts to support Abu-Jamal or that could be deemed to undermine the efforts of the

DAO to uphold his conviction. She is not an attorney, and there is no evidence that she has discussed the case with any of the attorneys involved on behalf of the DAO.

e. Petitioner presented no evidence that hiring Patricia McKinney, George's former law partner, as an ADA or the participation of Michael Coard on Krasner's transition team had any effect on the underlying litigation.

Patricia McKinney did not testify, but she was characterized by Krasner as a supervisor in one of the DAO trial units and "a very experienced criminal defense attorney." He testified that he "had [never] to my recollection had any communication with her about Mumia Abu-Jamal. I certainly have never expressed any doubts about the conviction." (Tr. 93).

Michael Coard is identified in the Petition as a Philadelphia attorney who has expressed controversial views about policing in general and specifically about the validity of the defendant's conviction. The Petition cites a campaign endorsement Coard issued during Krasner campaign in 2017 in which Coard stated "everything that I support Larry Krasner supports." I asked Krasner directly whether he had ever expressed "to him (Coard) that you thought the conviction was improper or should be overturned." Krasner answered "No." (Tr. 93).

To the extent Petitioner argues the hiring of McKinney and Coard's campaign endorsement would create for a reasonable person the appearance of an impropriety, the argument is simply not persuasive. George's association with Abu-Jamal was 13 years ago, and he has been screened from the case. If his hiring by Krasner is not sufficient to raise a concern, any involvement by his former law partner also is not problematic. And Coard's endorsement, in the midst of a political campaign that

generated multiple endorsements,[11] is simply too tenuous to raise the concern of an impropriety.

f. There is no evidence of the existence of a direct conflict of interest, and no evidence that such a conflict of interest, if it existed, has infected any legal or strategic decision by the DAO in defending the conviction.

Petitioner's argument on this point is somewhat obscure. As I understand it, Petitioner maintains that Krasner's representation of Y2K protesters and his association with the National Lawyer's Guild creates a conflict because some Y2K protests supported Abu-Jamal, who has been listed as a member of the Board of Directors of the National Lawyer's Guild.

At the hearing I sustained Respondent's counsel's objection to a question regarding Krasner's association with the National Lawyer's Guild. In response to the objection, Petitioner's counsel argued "I wasn't really relating to the position that the organization takes, simply that he is a member of the same organization that Mr. Jamal is a member of and that creates an appearance of a publicly-elected official that I think is relevant to this inquiry." (Tr. 103). Krasner denied that he ever "paid dues to the National Lawyer's Guild." (Tr. 110). Even if Krasner was a member of a large national professional organization, mere association with the organization, or one of its directors, is hardly proof of a conflict of interest. Likewise, Krasner's professional representation of clients arrested during political demonstrations does not identify him with the causes for which the clients were protesting.

[11] A campaign document listing dozens of endorsements is attached as Exhibit E to Respondent's Response to the King's Bench Petition.

g. Even assuming Krasner holds opinions which have been characterized in the Petition as "anti-police" or "anti-law enforcement" there is no evidence that any of his decisions, or those of the DAO's office, have diluted efforts to defend the Abu-Jamal conviction.

> I asked Krasner directly about his opinion of Abu-Jamal's guilt:
>
> "Q: And what is your opinion (of the defendant's guilt)?
>
> A: Sir, in my opinion based upon all of the facts in law that I have is that he is guilty.
>
> Q: Do you have any personal doubts about the validity of the conviction either factually or legally?
>
> A: No. Based on all of the facts in law known to me, no, I do not." (Tr. 83-84).

This testimony is consistent with his deposition testimony. (See Petitioner's exhibit 32, pp. 26-29).

District Attorney Krasner and his assistants have followed the same strategy and defended the case in the same manner as prosecutors before him have done for 30 years. He testified "there is really no difference in the positions we are taking on this case," and that he is aware of no evidence to support or justify a decision not to defend the conviction or to agree to PCRA relief. (Tr. 94). This testimony is consistent with the testimony of Kavanaugh,[12] Winkelman, Gervino, and Goode.

h. The cumulative effect of past political or professional activities by Krasner or his assistants or staff would not lead a significant minority of the lay community aware of the facts to reasonably question the impartiality of Krasner or his office in the Abu-Jamal matter.

[12] When asked whether there was ever a time when she did anything other than vigorously defend the conviction of Mumia Abu-Jamal, Kavanaugh answered "No, I only vigorously defended it. I put my heart and soul into it." Deposition at 101.

It is, of course, beyond dispute that Krasner, as a so-called progressive prosecutor, is, in some quarters, a polarizing figure in a polarized political environment. Krasner's priorities, statements, administrative policies, and hiring practices, as well as the full range of decisions made in one of the country's largest prosecutor's office, are the subjects of scrutiny and the focus of debates. He has both defenders and detractors. If one were to judge him based on the cumulative effect of criticisms from his detractors, one might have an understandable concern about his devotion to prosecutorial priorities. Certainly Petitioner does.

My focus, however, as directed by the Supreme Court, is to investigate "the matters referenced in the King's Bench Petition." The Petition is directed toward one specific case, Commonwealth v. Mumia Abu-Jamal. A perception based on the arguments of detractors cannot overcome the actual and undisputed fact that Petitioner has presented no evidence that Krasner or his assistants have not defended the conviction of Mumia Abu-Jamal or do not intend to do so in the future. Krasner and his assistants all testified they had no evidence that would support not defending the conviction or that would justify conceding any PCRA relief. No credible argument has been made that Krasner and his assistants have adopted legal positions or legal strategies that do not have arguable merit or are not supported in law based on the facts.

Under unusual circumstances, a petition to remove a prosecutor in a given case because of the appearance of a conflict of interest may be appropriate. But the burden should be on the objector to support such a course by presenting more than predictions based on suspicions.

Therefore, it is my recommendation that the King's Bench Petition be dismissed.

Respectfully Submitted

John M. Cleland, S.J.
Special Master

EXHIBIT B

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN RE: CONFLICT OF INTEREST OF THE OFFICE OF THE PHILADELPHIA DISTRICT ATTORNEY,	:	No. 125 EM 2019
PETITION OF: MAUREEN FAULKNER, WIDOW OF DECEASED POLICE OFFICER DANIEL FAULKNER	:	

ORDER

PER CURIAM

AND NOW, this 16th day of December, 2020, the King's Bench petition is hereby **DISMISSED** in accordance with the special master's recommendation. The special master is directed to unseal the record in this matter.

This Court's February 24, 2020 order staying all matters related to the underlying criminal case, *Commonwealth v. Wesley Cook, a/k/a Mumia Abu-Jamal*, No. 290 EDA 2019; CP-51-CR-0113571-1982, is hereby lifted.

Justice Dougherty files a concurring statement.

Justice Wecht files a concurring statement.

Justice Mundy files a dissenting statement.

Chief Justice Saylor and Justices Baer and Todd did not participate in the consideration or decision of this matter.