

IN THE SUPERIOR COURT OF PENNSYLVANIA

Docket No. 290 EDA 2019

COMMONWEALTH OF PENNSYLVANIA
Appellee,

v.

WESLEY COOK, aka MUMIA ABU-JAMAL,
Appellant

**APPLICATION OF MAUREEN FAULKNER TO INTERVENE, TO
DISQUALIFY THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE,
AND TO QUASH APPEAL FOR LACK OF JURISDICTION**

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Intervenor Maureen Faulkner*

Applicant and Proposed Intervenor, Maureen Faulkner (“Mrs. Faulkner”), the widow of Police Officer Daniel Faulkner, the murder victim of Appellant, hereby applies to the Court: (1) to Intervene pursuant to Pa.R.A.P. 1531, (2) to Disqualify the Philadelphia District Attorney’s Office (“DAO”); and (3) to Quash the Appeal for Lack of Jurisdiction.

1. This appeal was previously stayed by Order of the Pennsylvania Supreme Court, dated February 24, 2020, pursuant to which the Supreme Court exercised extraordinary jurisdiction over the King’s Bench Petition filed by Mrs. Faulkner raising the DAO’s numerous conflicts of interest.

2. By exercising King’s Bench jurisdiction over the conflict of interest issues raised by Mrs. Faulkner, the Supreme Court rejected the argument that Mrs. Faulkner lacked standing to raise the DAO’s conflicts of interest, an argument which was advanced by the DAO and Appellant in opposition to Mrs. Faulkner’s previous *pro se* Application to Intervene.

3. While this Court denied Mrs. Faulkner’s prior Application to Intervene on October 10, 2019, presumably ruling there was no standing to intervene, that ruling is no longer the “law of the case” since the Supreme Court found Mrs. Faulkner has standing by accepting jurisdiction of Mrs. Faulkner’s King’s Bench Petition.

4. Thus, the Supreme Court has now determined Mrs. Faulkner – as the victim of the underlying crime in this matter – has standing under the unique facts of this case to raise the DAO’s conflicts of interest in this matter.

5. Chief among the multiple conflicts of interest raised by Mrs. Faulkner’s King’s Bench Petition was the fact that a senior officer of the DAO previously represented Appellant, Wesley Cook, aka Mumia Abu-Jamal (“Abu-Jamal”), in prior PCRA appeals. *See* Faulkner King’s Bench Petition at 2 (“the current head of the Appellate Unit responsible for the *Jamal* conviction, Paul George, was previously Jamal’s lawyer who asserted in filed pleadings before this Court that Jamal is innocent and the his conviction was the result of fabricated evidence, subornation of perjury and a false confession.”) (attached hereto as Exhibit “A”).

6. Still other conflicts raised by the King’s Bench Petition emanated from senior DAO officials – including the elected District Attorney – aligning themselves with groups expressly advocating for the release of Abu-Jamal. Those senior DAO officials and advocates have publicly declared Abu-Jamal was innocent and otherwise did not receive a fair trial because of unfounded allegations of police corruption and fraud. *See Id.* at 3; *see also* Supplement to King’s Bench at 2, § I (“Krasner’s Close Association with the Movement to Free Mumia Abu-

Jamal and Legal Work on Behalf of Jamal Supporters.’’) (attached hereto as Exhibit “B”).

7. The District Attorney himself publicly described the former prosecutors who defended Abu-Jamal’s conviction as “war criminals,” and the DAO’s “communications director” publically commented on Mrs. Faulkner’s protest of the current District Attorney’s handling of this matter by shamelessly (and falsely) implying there were racist undertones to the protest. *See King’s Bench Petition at 22.*

8. Further evidencing the DAO’s conflicts were the multiple instances of the DAO’s office taking inexcusable procedural steps directly benefitting Abu-Jamal and prejudicing the Commonwealth’s defense of his murder conviction, including:

- the DAO inexplicably withdrawing the appeal from the Trial Court’s Opinion granting Abu-Jamal new PCRA rights;
- the DAO consenting to Jamal’s Motion for Remand before interviewing critical witnesses to find out if boxes of evidence were actually “newly discovered” or just old material previously disclosed to Jamal and his lawyers;
- the DAO’s failure to interview Robert Chobert, the eyewitness at the Abu-Jamal trial who authored a letter to Joe McGill – the

former trial prosecutor – which formed the foundation of Jamal’s Motion for Remand;

- the DAO’s failure to preserve McGill’s testimony – which all DAO witnesses acknowledged as essential to defending the conviction and Jamal’s PCRA – despite his “advancing age,” even during a global pandemic which disproportionately has killed elderly people in McGill’s age range.
- the DAO’s illogical testimony claiming it was powerless to preserve McGill’s testimony despite Rule 500 of the Criminal Rules of Civil Procedure expressly giving parties the right to preserve “elderly” witness testimony over the age of 60.
- the DAO’s systematic efforts to delay this appeal for close to a year by first consenting to Abu-Jamal’s two requested briefing extensions, and then the DAO requesting three additional briefing extensions, even after this Court specifically instructed “no further extensions” would be granted, all the while allowing Joe McGill’s testimony to go unpreserved.

9. Only four of seven Justices participated in the decision on the King’s Bench Petition.¹

¹ Chief Justice Saylor and Justices Baer and Todd did not participate in the decision.

10. Although three Justices voted not to issue a disqualification Order, two of the four participating Justices (Mundy and Dougherty) issued Opinions concluding the factual record warranted the disqualification of the DAO from further representing the Commonwealth in this matter.²

11. Justice Mundy expressly ruled that “the record before us establishes an appearance of impropriety that warrants transferring this case from the District Attorney’s Office to the Office of the Attorney General.” Mundy Dissent at 2 (Exhibit “C.”)

12. Justice Mundy reasoned that:

Like Justice Dougherty, I am troubled by the DAO’s decision to withdraw its appeal from the order reinstating Abu-Jamal’s appellate rights *nunc pro tunc*, and its concession to a remand without having interviewed Joseph McGill, the trial prosecutor who had personal knowledge of the facts on which the remand was, in part, based. Also concerning , as Justice Dougherty points out, are the District Attorney Krasner’s reference to former prosecutors as “war criminals,” and the existence of evidence in the record that Paul George, Assistant Supervisor of the DAO’s Law Division, who represented Abu-Jamal in the past, was not adequately screened from the instant matter.

Id. at 2 (Exhibit “C.”)

² A copy of Justice Mundy’s Opinion is attached as Exhibit “C,” while a copy of Justice Dougherty’s Opinion is attached as Exhibit “D.”

13. Justice Dougherty’s concurrence was the deciding vote for the three-to-one majority decision. While Justice Dougherty chose not to “intervene any further *at the present time*,” his Concurring Opinion notes that “petitioner has exposed several grave and alarming allegations concerning District Attorney Krasner and his office’s ability to act impartially in this case.” Dougherty Concurring Opinion at 1, 22, (Exhibit D)(emphasis added).

14. Justice Dougherty chose not to “intervene” by disqualifying the DAO at that time “because the procedural landscape of this case is almost certain to change due to a significant intervening development in the law.” *Id.* at 19.

15. The change in “procedural landscape” noted by Justice Dougherty was the Pennsylvania Supreme Court’s decision in *Commonwealth v. Reid*, 235 A.3d 1124 (Pa. 2020), which generally held that *nunc pro tunc* appeals reinstated pursuant to *Williams v. Pennsylvania*, ___ U.S. ___, 136 S.Ct. 1899 (2016) “are subject to *sua sponte* quashal.” *Id.* at 19.

16. Justice Dougherty noted that “Abu-Jamal’s case falls squarely in this category,” and thus he saw “no pressing need for any additional action on our part at this stage” since Abu-Jamal’s appeal would be quashed as untimely. *Id.* at 20.

17. Justice Dougherty did, however, note that, should additional PCRA proceedings occur in the future, “other statutory mechanisms for removing the DAO would be available in any future PCRA proceeding,” including the

Commonwealth Attorneys Act, 71 P.S. §732.205(a)(5), which provides the “president judge of the district having jurisdiction of any criminal proceeding, [who] has reason to believe that the case is a proper one for the intervention of the Commonwealth, [] shall request the Attorney General to represent the Commonwealth in the proceeding. . .” Dougherty Concurring Opinion at 20 (Exhibit D)(citing 71 P.S. § 732.205(a)(5)).

18. Justice Dougherty’s Concurrence in the King’s Bench Petition concluded that Abu-Jamal’s current *nunc pro tunc* appeal before this Court should be quashed under existing Supreme Court precedent. That, however, is not what transpired.

19. Due to the District Attorney’s continued dereliction of his duty to defend the underlying conviction as the Commonwealth’s Attorney – which would have required the DAO to at least move for quashal of the appeal – this appeal has not been quashed on untimeliness grounds.

20. Indeed, instead of moving this Court for quashal of Abu-Jamal’s untimely *nunc pro tunc* appeal as indicated by Justice Dougherty, the DAO filed its merits Brief on February 3, 2021, wherein the DAO actually conceded the quashal

issue under *Reid*, and elected to argue untimeliness under a different legal theory all together.³

21. What is more, the DAO's merits Brief buried its jurisdictional untimeliness argument in the procedural history section of the Brief at page 21, failing to include the jurisdictional issue in the Argument section, and worse, omitting any heading in the Brief that would highlight the issue for this Court so that the Panel does not have to even decide the merits of Abu-Jamal's PRCRA appeals.

22. From Mrs. Faulkner's perspective, the DAO filing its merit Brief without first moving to quash and without even including a separate heading in the Brief is extremely troubling.

23. This is particularly the case since the DAO failed to provide Mrs. Faulkner or her undersigned counsel with a copy of the Brief when it was filed. A copy of the Brief was only obtained after Mrs. Faulkner requested it from the DAO's victims unit.

24. The DAO has failed to provide any sort of an explanation why a separate motion to quash was not filed.

25. The DAO has failed to explain why, at the least, a separate heading in the Brief on the jurisdictional issue was not included so as to highlight to this Court

³ A copy of the DAO's merits Brief is attached as Exhibit "E." The DAO addresses the untimeliness issue under *Reid* on page 21.

that there exists a clear-cut basis to quash the PCRA appeal as untimely and lacking jurisdiction.

26. As noted by Justice Dougherty, and as the Supreme Court held in *Reid* (and many other prior decisions), where, as here, a criminal defendant fails to file a timely PCRA appeal that does not satisfy one of the time bar exceptions of the PCRA statute, the issue represents a jurisdictional bar to *all* of the PCRA arguments on appeal.

27. In other words, the untimeliness issue completely avoids the need for this Court to re-address the merits of Abu-Jamal's appellate arguments because the Court lacks jurisdiction to do so.

28. Once again the DAO has taken a strange, inexplicable step in defending the conviction in this case, curiously failing to separately move for quashal, and then burying the jurisdictional, untimeliness argument in the procedural history on a single page of a 96 page brief without any heading that would highlight the issue for this Court.

29. When a party has a jurisdictional issue on appeal, which completely obviates the need to address the merits, any unbiased and competent appellate practitioner would take every effort to highlight the issue for the Court.

30. The DAO has not done so here, and once again Mrs. Faulkner, aware of the DAO's multiple conflicts of interest, is left wondering why.

31. Mrs. Faulkner should not have to worry any longer. This Court should grant this Application, allow her to intervene, disqualify the DAO from further proceedings in this matter (including any remand or subsequent PCRA proceedings in the Trial Court), and lastly quash this appeal as untimely.⁴

WHEREFORE, Applicant-Proposed Intervenor, Maureen Faulkner, respectfully requests this Court to grant this Application by: (1) giving her intervenor status pursuant to Pa.R.A.P. 1531, (2) disqualifying the Philadelphia District Attorney Office (“DAO”) and (3) quashing this appeal for lack of jurisdiction.

Respectfully submitted,

BOCHETTO & LENTZ, P.C.

Dated: March 17, 2021

By: /s/ George Bochetto
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⁴ At the absolute least, this Court should allow Mrs. Faulkner to intervene, and then take up the disqualification issue itself by accepting briefing on the issues based on the factual record that has been developed.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: John A. O'Connell, Esquire

Signature: s/ John A. O'Connell

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