

Judge Orders Rehearing of 4 Rejected Appeals: Surprise Ruling Opens New Avenue for Mumia to Win New Trial on His Murder Conviction

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In a surprise order signed Dec. 27, a Philadelphia Common Pleas supervising judge has offered a new chance in 2019 for Mumia Abu-Jamal to challenge his 1982 conviction for the murder of white Philadelphia police officer Daniel Faulkner.

Specifically, Judge Leon Tucker has ordered the Pennsylvania Supreme Court to reconsider four Post Conviction Relief Act (PCRA) hearings and petitions for hearings in the Abu-Jamal case that the state's high court had summarily rejected under questionable circumstances over the years.

The world-famous prisoner, journalist and political activist Abu-Jamal, better known to both his supporters and his enemies around the globe as simply Mumia, has spent 37 years in jail, most of that time in solitary confinement and on death row. His death sentence was initially vacated on constitutional grounds by Federal District Court Judge William Yohn in December, 2001 but at the insistence of the Philadelphia DA's office, he remained held on death row until that office's appeals were exhausted a decade later by the decision of an appellate court.

Barring a pardon, which in Pennsylvania is not remotely likely, particularly in this politically fraught case involving a prisoner who hasn't shied away of writing scathing reports on prison life from death row, the only way for Abu-Jamal to avoid dying in jail at this point is for him to have his conviction overturned and a new trial ordered. This is what PCRA hearings seek to do by presenting new evidence of innocence or by challenging trial errors, witness recantations or prosecutorial misconduct in the original trial.

This can get harder and harder to do as time goes by, as normally only new information relating to innocence — for example a witness recantation or other new evidence — can lead to a new PCRA hearing.

However, after two years of a bitterly contested hearing, Judge Tucker ruled that the four Abu-Jamal PCRA's in question had all been improperly rejected by a state Supreme Court that since 1994 included, and that between 2008 and 2014 was headed by Justice Ronald Castille.

The issue is that Castille from 1986 to 1991 had been Philadelphia's district attorney, a position that had him overseeing the Commonwealth's legal response to the appeal efforts of Abu-Jamal, unarguably the politically hottest case facing the DA's appellate legal team.

Judge Tucker decided, based upon established court precedent, that because of those years as DA, Justice Castille should have recused himself from considering those PCRA requests. Because he for whatever reason refused to do so — joining the court majority in rejecting all four of the requests including three that never even got a hearing or heard witness testimony — now the Abu-Jamal’s defense team gets to resubmit them all to a high court that no longer includes the ethically challenged Castille, who had to retire because of age in 2014.

Image on the right: Pennsylvania Common Pleas Supervising Judge Leon Tucker



As Tucker wrote in his 37-page decision signed on Dec. 27:

“...the claim of bias, prejudice, and the refusal of former Justice Castille to recuse himself from Petitioner’s PCRA appeals is worthy of consideration as true justice must be completely just without even a hint of partiality, lack of integrity or impropriety. Regardless of the underlying guilty verdict of the first degree murder charge, and regardless if the tribunal was trial or appellate, Petitioner is entitled to an unbiased tribunal, without even the appearance of impropriety.”

Judge Tucker, in his order, was particularly critical of several memos by then-DA Castille that an intense search by current DA Larry Krasner concluded were mysteriously missing from the Abu-Jamal case file in the DA’s office. The existence of those memos is proven because memos referring to them were found in the DA’s files.

Judge Tucker wrote:

“This court finds that the Commonwealth had a duty to preserve the memo by Mr. Castille to Ms. Barthold. The Commonwealth argues that there was no duty to preserve the memo. However, the Commonwealth has been involved in post-conviction death penalty case litigation regarding his particular case since 1983. Therefore, the Commonwealth knew or should have known that litigation in this death case matter was likely and preservation of all documents relating to this case should be preserved. It is ironic that the Commonwealth accepts no responsibility for the preservation of the memo request from Mr. Castille yet

has been able to retain the responsive document from Ms. Barthold that the memo request from Mr. Castille was attached to. Likewise, this court finds that it was foreseeable that the misplacement of the death penalty case documents could be prejudicial to the Petitioner.”

Image below: Ex-Philadelphia DA (1986-91), ex-PA Supreme Court Justice (94-2008) and ex-Chief Justice (2008-2014) Ronald Castille ran for the high court touting his record tally of death sentences, but had a serious ethical problem when it came to recusals involving death penalty cases before him.



A sharp rebuke of the former Chief Justice, the Tucker order for a reconsideration of the four rejected PCRA's also represents a huge turning point in how Pennsylvania courts have handled Abu-Jamal's tortuous and tortured journey through the state's corrupt legal system.

His case, from the moment he was arrested, when police left him cuffed and unattended for over half an hour in a police van, bleeding internally from a chest wound caused by a police bullet that critically pierced his lung and liver, has been plagued by official abuse, bias and corruption. This includes prosecution witnesses who were coached to lie and a high-profile murder trial in which the presiding judge was overheard telling his court tip, following a day of jury selection, "...yeah, and I'm going to help them fry the nigger." The scandalously flawed and corrupt trial was followed by a corrupted appeals process that featured a governor, Republican Tom Ridge, secretly obtaining privileged communications between the incarcerated Abu-Jamal and his attorneys. These communications, forwarded by SCI Green prison officials to the governor and forwarded to the Philadelphia DA's office, tipped prosecutors off to the timing of a defense appeal. Among other things, this allowed the DA and governor to have Abu-Jamal's execution date set for a date just weeks after the PCRA hearing, enabling the presiding Judge Sabo to rush the defense and cut off witness testimony, supposedly in order not to miss the execution date.

Abu-Jamal also had several avenues of appeal of his conviction and sentence that were made available to other death row prisoners declared inapplicable in his case (a pattern of selective application of precedent that my colleague, journalist Linn Washington, has condemned as "the Mumia exception").

As well, white Philadelphia police, in uniform and on the public payroll, have routinely been permitted to pack court hearings during Abu-Jamal's appeals, including in the latest case in Judge Tucker's courtroom, inevitably putting pressure on judges who have to face re-election and who know the political power of the Fraternal Order of Police in Philadelphia

and the state of Pennsylvania in those races.

Perhaps feeling that FOP pressure, while Judge Tucker did courageously grant Abu-Jamal another shot at having his PCRA's more fairly considered by a state court, he also put limitations on those re-hearings he ordered. He said that they cannot be "re-briefed," but must be reconsidered based only on resubmissions of the original briefs written by Abu-Jamal's various attorneys during that period: Leonard Weinglass (now deceased) and Daniel Williams, Eliot Grossman and Marlene Kamish (the latter also deceased), and the current legal team of Widener University Law School Prof. Judith Ritter and NAACP Legal Defense Fund Director Sam Spital.

Ritter says that Abu-Jamal's defense team can challenge that restriction and seek an opportunity to update the briefs, but there is no guarantee that would be allowed.

Ritter adds that there is no guarantee that the new state Supreme Court will even review the four PCRA requests at all. As she explains, "It's only death penalty cases that go automatically to the State Supreme Court for consideration. And since Abu-Jamal is no longer on death row, the Supreme Court could say the PCRA petitions should be decided by a Superior Court judge" — a lower tier of the state court system.

Ritter says Abu-Jamal will argue, however, that since the four PCRA petitions denied by the Castille-tainted Supreme Court were filed while he was still facing execution, they should be treated the way they should have been when initially filed, as though he were still facing execution, and be taken up anew directly by the state's Supreme Court.

It remains to be seen what aspects of his four earlier rejected PCRA's Abu-Jamal will be able to appeal. The rejected PCRA filed by attorneys Weinglass and Williams addressed a number of critical issues including the integrity of prosecution witnesses, the intimidation of defense witnesses, withheld evidence and the improper removal of qualified potential black jury panelists. Any one of these issues, as well as others that were raised in 1995, if upheld, could open the door to a new trial for Abu-Jamal. The same goes for issues raised in the other PCRA's that never got a hearing.

Ritter says Tucker's order strictly limits any reviews of old PCRA petitions to the issues raised in the initial improperly rejected briefs. New issues, she says, cannot be raised at any of those re-hearings.

Still, while it may be a long-shot, a reconsideration of the four PCRA hearings tarnished by Chief Justice Castille's unwillingness to recuse himself from considering and voting on them, does offer a chance for a new Supreme Court panel of judges to weigh the issues raised, and potentially to find something that sufficiently changes the evidence in the case or exposes a procedural flaw of such consequence that a new trial might be required.

There is even the possibility that, if the current Pennsylvania Supreme Court were to reject all four of the reconsidered PCRA requests, the defense could file a habeas corpus petition and obtain a new hearing in federal district court, where political pressures from groups like the Fraternal Order of Police would be less significant because federal judges, unlike Pennsylvania's state judges, serve lifetime appointments.

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