

**IN THE COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Respondent,	:	CP-51-CR-0113571-1982
	:	
v.	:	Nos. 1357-1359 (1981)
	:	
	:	
MUMIA ABU-JAMAL,	:	
	:	
Petitioner.	:	
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**MOTION FOR DISCOVERY**

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1. Petitioner Mumia Abu-Jamal, through counsel, respectfully moves the Court for discovery in support of his Petition for Habeas Corpus and Post-Conviction Relief (“PCRA Petition”). In support of this motion, Petitioner states: On this same date, Petitioner has filed a Petition for Habeas Corpus and Post-Conviction Relief and raises a due process claim based on the United States Supreme Court’s recent decision in *Williams v. Pennsylvania*, 136 S. Ct. 1899 (June 9, 2016). In *Williams*, the Supreme Court ruled that the Pennsylvania Supreme Court violated due process when Chief Justice Ronald Castille participated In *Williams*, the Supreme Court ruled that due process was violated where Pennsylvania Supreme Court Chief Justice, Ronald Castille, participated in the Pennsylvania Supreme Court’s consideration of an appeal in a capital post-conviction case where Castille, in his previous position as District Attorney of Philadelphia, had approved the decision to seek the death penalty. *Williams*, 136 S. Ct. at 1899.

2. Justice Castille was the District Attorney at the time of Mr. Abu-Jamal's direct appeal of his capital conviction and sentence, was an Assistant District Attorney during his trial and later participated as a justice in the Pennsylvania Supreme Court's adjudication of Mr. Abu-Jamal's post-conviction appeals. *See Commonwealth v Abu-Jamal*, 720 A.2d 79 (Pa 1998).

3. Mr. Abu-Jamal seeks disclosure of any documents or other records in the possession or control of the Philadelphia District Attorney's Office reflecting former District Attorney Castille's personal involvement in this case, including, but not limited to: memoranda regarding the appeal and its progress; notes or memoranda regarding meetings between Justice Castille and his staff regarding the case; press releases or other public statements about the case made by Justice Castille or issued by the Office during and after his tenure as District Attorney; and correspondence or other communications about the case received by the District Attorney's Office from members of the public or outside organizations.

### **ARGUMENT**

Pa. R. Crim. P. 902(E)(1) authorizes discovery in PCRA proceedings in "exceptional circumstances." This standard is met where (1) a "somewhat unusual case history"; combines with (2) "the reasonable possibility" that Petitioner's claim for relief will be sustained; and with (3) "the reasonable belief" that records in the Commonwealth's possession "may reveal evidence supporting one or more of [petitioner's] PCRA theories." *Commonwealth v. Frey*, 41 A.3d 605, 613 (Pa. Super. 2012). Exceptional circumstances can also be present where a United States Supreme Court decision gives rise to a new or modified claim for relief. *See Commonwealth v. Miller*, 888 A.2d 624, 627 (Pa. 2005). Discovery is appropriate here under either formulation.

The “unusual case history” here, is set forth in the Petition, PCRA Pet. ¶¶ 17-26. In *Williams* the Court established a standard for when due process requires a judge’s recusal. *See Williams* at 1905. Mr. Abu-Jamal’s Petition alleges facts that demonstrate that under this standard his due process rights were violated. He requires discovery in order to uncover additional evidence of Justice Castille’s personal involvement with the handling of his Mr. Abu-Jamal’s direct appeal. This is obviously an exceptional circumstance.

There is a reasonable possibility that Petitioner’s due process claim will prove meritorious and a reasonable belief that records in the Commonwealth’s possession “may reveal evidence supporting one or more of [petitioner’s] PCRA theories.” The Supreme Court in *Williams* held, first, that due process requires recusal of a judge who had significant, personal involvement in a defendant’s case as a prosecutor; and, second, that the failure of such a judge to recuse “constitutes structural error even if the judge in question did not cast a deciding vote.” *Id.* at 1907, 1909. Mr. Abu-Jamal’s case was likely the most high profile case prosecuted by the Philadelphia District Attorney’s Office. Regardless of how many cases the DA’s Office handled, Mr. Abu-Jamal’s case unquestionably stood out in the crowd. It is simply not credible that the popularly elected District Attorney was wholly uninvolved in the decisions around the response to Mr. Abu-Jamal’s appeal. The stakes were especially high given the strong public opinion on both sides of the case, the passionate call for execution of Mr. Abu-Jamal by the Fraternal Order of Police and by the deceased’s widow. Moreover, during his campaign for a seat on the Pennsylvania Supreme Court, Justice Castille stated that, as District Attorney, he “sent 45 people to death rows,” *id.* at 1907 (quotation omitted), a number that included Mr. Abu-Jamal. The Supreme Court has recognized that these statements “indicate that . . . [Castille] played a meaningful role” in those cases. *Id.* at 1908. Mr. Abu-Jamal should be permitted to discover

any evidence regarding Justice Castille's involvement with his case because discovery is likely to reveal involvement beyond the level Justice Castille would have in a more typical criminal case or appeal. In fact, it was because discovery was ordered in Mr. Williams' PCRA case, that the most determinative piece of evidence was uncovered. *See Williams*, at 1904.

Finally, *Williams's* holdings announced a new standard for assessing due process requirements in a recusal context and a new rule that such a violation is structural error. As mentioned above, exceptional circumstances warranting discovery can also be present where a United States Supreme Court decision gives rise to a new or modified claim for relief.

**WHEREFORE**, based on the foregoing and on the allegations set forth in the Petition for Habeas Corpus and Post-conviction Relief, Petitioner respectfully requests that this Court order the Philadelphia District Attorney's Office to deliver its complete files, including press releases and other communications about this case, to the Court's chambers, after which counsel for the parties can review the files, under the Court's supervision, for evidence of District Attorney Castille's personal involvement in this case. Alternatively, Petitioner requests that the Court review the files *in camera* for evidence of District Attorney Castille's personal involvement in this case. A proposed Order is attached.

Respectfully submitted,

*/s/ Judith L. Ritter*

JUDITH L. RITTER  
Pennsylvania Attorney ID# 73429  
Widener University-Delaware Law School  
P.O. Box 7474  
4601 Concord Pike  
Wilmington, Delaware 19801  
Telephone: (302) 477-2121

Facsimile: (302) 477-2227  
E-mail: JLRitter@widener.edu

CHRISTINA SWARNS  
Pennsylvania Attorney ID# 83616  
NAACP Legal Defense & Education Fund,  
Inc.  
40 Rector Street, 5<sup>th</sup> floor  
New York, New York 10006  
Telephone: (212) 965-2200  
E-mail: cswarns@naacpldf.org  
Counsel for Mumia Abu-Jamal

**VERIFICATION**

I, JUDITH L. RITTER, verify that the statements made in this document are true and correct to the best of my knowledge. I understand that false statements herein are made subject to penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

DATE: Aug. 7, 2016

*/s/ Judith L. Ritter*

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**JUDITH L. RITTER, ESQUIRE  
WIDENER UNIVERSITY-DELAWARE LAW SCHOOL  
PENNSYLVANIA CRIMINAL DEFENSE CLINIC  
4601 Concord Pike, P.O. Box 7474  
Wilmington, DE 19803  
(302) 477-2096  
Attorney for Defendant**

**CERTIFICATE OF SERVICE**

I, JUDITH L. RITTER, ESQ, certify that on August 7, 2016, I served a copy of this Motion upon the Office of the District Attorney, Philadelphia County by electronically filing said Motion with the Philadelphia Courts E-Filing System.

DATE: Aug. 7, 2016

*/s/ Judith L. Ritter*

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**JUDITH L. RITTER, ESQUIRE  
WIDENER UNIVERSITY-DELAWARE LAW SCHOOL  
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4601 Concord Pike, P.O. Box 7474  
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**ORDER**

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AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2016, it is hereby ORDERED:

1. Petitioner’s Motion for Discovery is GRANTED;
2. Counsel for the Commonwealth shall, within \_\_\_\_\_ days of this Order, deliver to the Court’s chambers the complete files, including press releases and other communications about this case, of the Philadelphia District Attorney’s Office regarding the prosecution of this case; and
3. Counsel for the parties will be permitted to review the files, in chambers, for evidence of District Attorney Ronald Castille’s personal involvement in the case at a time to be determined by the Court.

BY THE COURT:

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