Received 6/27/2018 5:24:27 PM Supreme Court Eastern District

Filed 6/27/2018 5:24:00 PM Supreme Court Eastern District
71 EM 2018

IN THE SUPREME COURT OF PENNSYLVANIA

_____ EM 2018

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff-Respondent

VS.

ROBERT WILLIAMS,

Defendant-Petitioner

RENEWED APPLICATION FOR KING'S BENCH JURISDICTION IN LIGHT OF PROCEEDINGS SUBSEQUENT TO THIS COURT'S JUNE 12, 2018 ORDER

Criminal Trial Division of the Court of Common Pleas of Philadelphia County at Docket No. CP-51-CR-00011614-2007 (Brinkley, J.)

Kim M. Watterson
M. Patrick Yingling
REED SMITH LLP
225 Fifth Avenue
Pittsburgh, PA 15222
412-288-3131

Brian J. McMonagle
MCMONAGLE, PERRI, MCHUGH & MISCHAK
1845 Walnut St., 19th Fl.
Philadelphia, PA 19103
215-981-0999

Peter Goldberger
LAW OFFICE OF PETER GOLDBERGER
50 Rittenhouse Place
Ardmore, PA 19003
610-649-8200

Joshua M. Peles
REED SMITH LLP
Three Logan Square
1717 Arch Street
Suite 3100
Philadelphia, PA 19103
215-241-7939

Of Counsel:
James C. McCarroll
Jordan W. Siev
REED SMITH LLP
599 Lexington Ave.
New York, NY 10022
212-521-5400

Of Counsel:
Joseph Tacopina
Chad D. Seigel
TACOPINA & SEIGEL
275 Madison Ave. 35th Fl.
New York, NY 10016
212-227-8877

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Other Authorities

RENEWED APPLICATION
FOR KING'S BENCH JURISDICTION IN LIGHT OF PROCEEDINGS
SUBSEQUENT TO THIS COURT'S JUNE 12, 2018 ORDER

This Court has given the Honorable Genece Brinkley multiple chances to step aside on this matter in the interests of justice, but she repeatedly has refused to do the right thing—instead continuing to engage in conduct that undermines the public perception of the integrity of this Commonwealth's judicial system. Indeed, Judge Brinkley's improper conduct has only become more egregious with time, to the detriment of everyone, especially Defendant-Petitioner Robert Rihmeek Williams.

INTRODUCTION

On April 24, 2018, this Court ruled on Mr. Williams' first King's Bench application that sought Judge Brinkley's removal from this case, declining to order such removal "[a]t this juncture." At the same time, this Court cited Pennsylvania Rule of Criminal Procedure 903(C)'s "interests of justice standard" and "not[ed] that [Judge Brinkley] may opt to remove herself from presiding over this matter." The Court also ordered Mr. Williams' immediate release on bail and directed that his PCRA petition be adjudicated by June 25, 2018.

Rather than honor this Court's restrained suggestion, Judge Brinkley doubled down—for instance, making comments through her lawyer on Mr. Williams' pending motions and going so far as to say to the media through her lawyer that she "knows Meek's case inside and out, and the Supreme Court

Justices do not."[1] As a consequence, Mr. Williams filed a second application in this Court, this one seeking disqualification of Judge Brinkley pursuant to Pennsylvania Rule of Criminal Procedure 903(C). That application was denied by operation of law by Order filed June 12, 2018 when this Court split 3 to 3 on the request. Notably, a three-Justice dissenting opinion stated that Judge Brinkley should have disqualified herself in the interests of justice because "her continued involvement in this case has created an appearance of impropriety that tends to undermine the confidence in the judiciary." And one of the Justices who voted to deny the application (Justice Wecht) noted that he "would deny relief without prejudice to [Mr. Williams'] right to raise the matter anew following his June 18, 2018 [PCRA] evidentiary hearing." Construing that vote as representing the narrowest ground of decision, Mr. Williams now returns to this Court in light of the proceedings held before Judge Brinkley on June 18, 2018 and the decision she issued on June 25, 2018 denying Mr. Williams' PCRA petition.

Judge Brinkley has "tripled down" and engaged in stunning and egregious conduct during the June 18 hearing—a hearing that was not even needed in the first place—which has further damaged public confidence in the integrity of the judicial system, not to mention the real and tangible harm it has caused to Mr. Williams. Indeed, it was plain from the beginning to the end of the hearing that Judge Brinkley intended on June 18, as before, to do whatever she could (whether or not authorized by controlling law) to stand as an obstacle to justice for

[1] Petitioner is known professionally as "Meek Mill."

Mr. Williams. This is despite the fact that the District Attorney had concluded that the sole witness for the prosecution at Mr. Williams' trial—who, among other things, failed an FBI polygraph and was unanimously found guilty by his own police department's disciplinary authority of theft and lying, leading to a recommendation that he be dismissed from the force[2]—was not credible. Because the Commonwealth could not stand by his testimony, it therefore consented to Mr. Williams' PCRA petition and the granting of a new trial. Under these circumstances, pursuant to Pennsylvania Rule of Criminal Procedure 907(2), no evidentiary hearing was needed. Yet, Judge Brinkley insisted on one—taking an unprecedented approach to Mr. Williams' PCRA petition that treated him far differently than thousands of other similarly situated petitioners.[3]

Judge Brinkley's antics at the June 18 hearing included a stunning admission when counsel for Mr. Williams objected to her hostile cross-examination of Bradley Bridge—a well-respected 35-year veteran of the Philadelphia Defender

---

[2] The officer at issue—Reginald Graham—resigned rather than be dismissed. As detailed below, this is the man Judge Brinkley went to great lengths to defend during the hearing and in her later-filed decision, while at the same time attacking a well-respected public servant and member of the Bar of this Court.

[3] Judge Brinkley's examination further revealed that she was going out of her way to find a basis to deny Mr. Williams' petition. The questions she asked of Mr. Williams' witness and of the Assistant District Attorney indicated that she believed it was up to her to determine whether disgraced former officer Graham was credible (or more credible that his accusers, including the FBI and his own police department) instead of asking what the law requires—namely, whether there was newly discovered evidence that, if available at Mr. Williams' new trial and believed by the jury, would likely produce a different verdict. *See* 43-45, *infra.*

Association and nearly 40-year public servant. During the testimony of this first witness and before the presentation of the bulk of the evidence, Judge Brinkley blurted out that this matter was headed to the appellate court—suggesting that she already had made up her mind to deny the petition:

> MR. McMONAGLE: Judge, let me say this to you: At this point in time I want to make a record, you are acting as an extrajudicial officer. You're acting like a prosecutor in this case. The District Attorney's Office in this case hasn't seen fit to cross-examine this witness, potentially denigrate this respected officer of the court. I ask you to stop. I respectfully ask you to stop.
>
> THE COURT: Well, sir, let me respond to you by saying this: My responsibility, because this is my case, is to make sure that the record is clear ***because obviously we know that it's going to go to another court after here***. So –
>
> MR. McMONAGLE: Obviously we know that? You mean you've made your mind up?
>
> THE COURT: No, I haven't made my mind up.
>
> MR. McMONAGLE: Well, how else would it go to another court?
>
> THE COURT: It doesn't matter what I do.
>
> MR. McMONAGLE: Let the record reflect –
>
> THE COURT: It doesn't matter –
>
> MR. McMONAGLE: Hold on. Let the record –
>
> THE COURT: Excuse me. Let the record reflect that I'm still speaking and you may sit down until I'm finished.
>
> MR. McMONAGLE: I'll wait till you're done.
>
> THE COURT: Thank you very much.

> MR. McMONAGLE: You're welcome. I want to make sure she got that down, too.
>
> THE COURT: ***No. She's not going to take down what you're saying because she's only going to take down what I'm saying***.

Exhibit A at 67-69 (June 18, 2018 transcript) (emphasis added).[4]

As if these statements do not tell this Court everything it needs to know about Judge Brinkley's lack of impartiality and pre-judgment of the issues here, on top of that, she acted like a prosecutor, not a judge, throughout the June 18 hearing. She grilled (and even laughed derisively at) Mr. Bridge and posed questions to the Assistant District Attorney that sounded more like an adversarial examination (and intrusion into the discretion that is essential to the prosecutorial function) than a judicial inquiry. What's more, Judge Brinkley would not allow Mr. Williams to make a record on the threshold disqualification question, and instructed (unsuccessfully) the court reporter not to "take down" for the record objections made by Mr. Williams' counsel. In the end, the hearing was a far cry from a fair and impartial one—and did nothing to promote public faith in the Commonwealth's judiciary.

This is not simply Mr. Williams' view of the June 18 proceedings. Multiple news outlets have described the hearing as "contentious" and "tense,"[5] reporting

[4] Judge Brinkley's suggestion that the matter would go up on appeal whichever way she ruled is transparent nonsense. If she granted the petition, Mr. Williams would not be aggrieved (and would therefore lack standing to appeal), while the Commonwealth, by virtue of having consented to that very relief, would have waived its right to appeal. Thus, Judge Brinkley's assertion during the hearing that the case was "going to go to another court after here" was necessarily a direct admission of prejudgment.

that Judge Brinkley "repeatedly clashed" with counsel and "laughed at [Mr. Williams' witness, the Defender Association veteran] during his testimony." Exhibit D (Philly.com article); Exhibit C (Bloomberg Law article). The articles noted that Judge Brinkley refused to address the "800 pound gorilla in the hearing room"—her own improper conduct and Mr. Williams' request that she disqualify herself—and said that she "grilled" Mr. Bridge with "frequent questions" as she ridiculed and degraded what the veteran Defender had to say about the handling of similar cases by other judges over a long period of time. Exhibit B (Legal Intelligencer article); Exhibit C (Bloomberg Law article); Exhibit D (Philly.com article). The headline of one article reported that the hearing had "devolve[d] into a laughing matter." Exhibit D (Philly.com article). For his part, Mr. Bridge tried to be "judicious" when Judge Brinkley challenged him on whether she had laughed at him, and said she had only "smirked." Exhibit A at 70; *see also* Exhibit C (Bloomberg Law article) (Bridge saying he was being "judicious"). But when Judge Brinkley asked "Do you believe I have been ridiculing you," Mr. Bridge responded that "[t]here were a couple moments where I sensed that was true." Exhibit A at 69. Mr. Bridge candidly told reporters afterwards that Judge

---

continued from prior page

[5] Max Mitchell, *Meek Mill's Post-Conviction Hearing Grows Heated As Judge Pushes Back On Rapper's Claim*, The Legal Intelligencer (June 18, 2018) (Exhibit B); Mindy L. Rattan, *Meek Mill's New Legal Gambit May Help Get New Judge, Trial*, Bloomberg Law (June 21, 2018) (Exhibit C); Mensah M. Dean & Claudia Irizarry-Aponte, *Meek Mill Hearing Before Judge Genece Brinkley Devolves Into A Laughing Matter*, Philly.com (June 18, 2018) (Exhibit D).

Brinkley's "examination of him was 'hostile, incredulous and dismissive.'" Exhibit C (Bloomberg Law article).

All of this—both what happened in the courtroom and the accurate reporting on it by multiple news outlets—has further undermined the public's perception of the integrity of the judiciary. Legal ethics experts and experienced practitioners share this view. An Indiana University Law School legal ethics professor stated that there is "indication after indication" that Judge Brinkley has become "personally invested in this case" and that she needs to "think seriously about stepping down" given the appearance of impropriety. Exhibit C (Bloomberg law article). A Northwestern Law School legal ethics professor addressed Judge Brinkley's media statements about this Court and stated that it is wrong for Judge Brinkley or her lawyer to "disparage the ruling of a higher court." *Id.* A Pennsylvania attorney who frequently has defended judges against allegations of misconduct characterized Judge Brinkley's statements as "highly unusual." *Id.*

In sum, the June 18 hearing only confirmed that Judge Brinkley's disqualification is warranted—indeed, urgently needed. The proceeding was flawed from the start—there was no need for an evidentiary hearing as a matter of law because there could be no material issue whether Mr. Williams had met his PCRA burden in light of the District Attorney's admission that the witness at the core of its prosecution was not credible and he could no longer stand behind the witness's testimony. And Judge Brinkley went further and flouted the bounds of proper judicial conduct—acting as a prosecutor, disparaging Mr. Bridge, and virtually cross-examining the Assistant District Attorney.

Late on June 25, 2018, the deadline this Court had set on April 24, Judge Brinkley issued an order and 47-page opinion denying Mr. Williams' PCRA petition. Exhibit E. The opinion is stunning—not simply because of the outcome in light of the parties' agreement on relief and the substantial evidence supporting such relief, but also because of the lengths to which Judge Brinkley went to try to justify an unjustifiable result. In what might be the most egregious stretch of law and logic, Judge Brinkley suggested (if not outright stated) that the 23-year practice of President Judges Legrome Davis and Sheila Woods-Skipper, in cooperation with five successive District Attorneys, as well as the Defender Association of Philadelphia, to correct wrongful convictions due to police perjury is akin to America's heritage of condoning slavery and violence against women. Exhibit E at 26 n.8.

Other egregious statements are discussed below, not because Mr. Williams is trying to use this application as vehicle for a direct appeal of Judge Brinkley's ruling, but instead to further demonstrate the injustice that has been done, the embarrassment to this Court's judicial system, and why disqualification is necessary. Indeed, it is imperative that this Court take action to repair the harm that already has been done to the integrity of the judiciary and prevent future harm.

In the end, this is a case that where both the defendant and the prosecutor agreed on the result required by the law and by considerations of justice and fairness. It should have been resolved as a routine manner like thousands of other PCRA petitions have been resolved. Judge Brinkley, however, made this a nightmare for everyone involved. This Commonwealth's judiciary is a venerated

institution. Judge Brinkley's conduct has made a mockery of it and undermined the public's perception of the judiciary. While a direct appeal might rectify Judge Brinkley's error, it will do nothing to vindicate the integrity of the judicial system. That is why an order from this Court requiring Judge Brinkley's disqualification is urgently needed.

Accordingly, Mr. Williams respectfully requests that this Court (1) disqualify Judge Brinkley, (2) vacate Judge Brinkley's June 25, 2018 order denying Mr. Williams' request for PCRA relief, and (3) either (a) direct the Court of Common Pleas of Philadelphia County to grant his PCRA petition, or (b) reassign the petition to Hon. Sheila Woods-Skipper who presides over the other similar PCRA petitions arising from the conduct of the now-discredited Narcotics Field Unit officers in Philadelphia County.

BACKGROUND

Mr. Williams' previously filed applications have set forth in detail the procedural and factual background of this case and the years-long history of the proceedings before Judge Brinkley.[6] Here, Mr. Williams provides a brief overview.

[6] Mr. Williams relies on each of the exhibits submitted to this Court in Case Nos. 29–30 EM 2018, and each of the exhibits submitted to this Court already in Case No. 59 EM 2018.

A. Original Conviction, Sentence, Probation, And Revocation Of Probation

On August 19, 2008, following a non-jury trial before Judge Brinkley, Mr. Williams was convicted of carrying a firearm without a license, carrying a firearm in public in Philadelphia, possession of an instrument of crime, simple assault, and possession of a controlled substance with intent to deliver. Mr. Williams testified in his own defense at trial and asserted his innocence on all but the gun possession charges. Philadelphia police officer Reginald Graham was the only Commonwealth witness, and he also was the affiant on the application for the search warrant that yielded the evidence used to support several charges at trial. Judge Brinkley relied on Graham's affidavit for the finding of probable cause that justified her denial of a pretrial motion to suppress. And the guilty verdicts were expressly based on Judge Brinkley's crediting Officer Graham's testimony over that of Mr. Williams on most points. Judge Brinkley sentenced Mr. Williams to serve concurrent terms of 11½ to 23 months' county confinement, to be followed by 10 years' probation.

Mr. Williams was released on parole on December 15, 2009, and his probation commenced about a year later. On November 6, 2017, Mr. Williams appeared before Judge Brinkley on alleged technical probation violations. Even though Mr. Williams' probation officer and the Commonwealth both recommended against incarceration, Judge Brinkley imposed a state prison sentence of 2 to 4 years' confinement. Judge Brinkley denied Mr. Williams' request for bail pending appeal.

B. Mr. Williams Asks Judge Brinkley To Disqualify Herself

On November 14, 2017, Mr. Williams filed in the trial court a motion asking Judge Brinkley to recuse herself based on the appearance of impropriety arising from her conduct and rulings, and supplemented that motion on December 4, 2017. Judge Brinkley's improper and unjudicial conduct is described in detail in Mr. Williams' King's Bench Application and Reply/Supplement (Case No. 31 EM 2018), filed on March 19, 2018 and April 16, 2018, respectively.

To this day, Judge Brinkley has not ruled on Mr. Williams' motion to recuse. Indeed, as explained below, she refused to address the issue at the recent June 18 PCRA hearing.

C. Evidence Is Revealed Showing That Mr. Williams' Conviction Was Based On Untruthful Statements, And Judge Brinkley Refuses To Release Mr. Williams On Bail Pending A PCRA Hearing

While Mr. Williams' recusal motion was pending, he learned of grounds supporting relief under the Pennsylvania Post-Conviction Relief Act. More specifically, on February 6, 2018, former Philadelphia Police Officer Jerold Gibson provided a sworn affidavit to a licensed private investigator stating that he (Gibson) was present with Officer Graham when Mr. Williams was arrested on January 24, 2007. Officer Gibson was part of the same squad as Graham (the Narcotics Field Unit) from 2004 to 2013. Gibson's affidavit demonstrated that Graham lied as to nearly every material fact in his testimony at trial. A day after Gibson provided his affidavit, former Philadelphia Police Officer Jeffrey Walker provided a sworn affidavit to an investigator stating that he (Walker) was in the

Narcotics Field Unit from 1999 to 2013, and worked with Officer Graham in that Unit from 2003 to 2005 or 2006 and then again in 2012. Walker was a cooperating witness for the federal government in a prosecution of certain members of the Unit on criminal charges. Walker's affidavit strongly corroborated Gibson's.

Then, on February 13, 2018, the *Philadelphia Inquirer* and *philly.com* published an exclusive investigative report from which Mr. Williams learned for the first time that Officer Graham's name appears on a list, first created in early 2017 according to the article and previously secret and unknown outside the District Attorney's Office, of Philadelphia police officers and former officers who are not to be used as witnesses for the Commonwealth, as the District Attorney's Office will not stand behind their credibility.

In light of all this, on February 14, 2018, Mr. Williams filed a PCRA petition asserting that newly discovered evidence of police perjury support his long-maintained actual innocence of most of the charges in his underlying case. That petition was routinely assigned to the calendar of Judge Brinkley.

Based on the strong showing of a likelihood of success on the merits, the District Attorney's Office, on March 14, 2018, filed a written response to Mr. Williams' bail motion, representing that the Commonwealth did not oppose his immediate release on bail pending adjudication of the petition. By written opinion and order filed March 29, 2018, Judge Brinkley nevertheless refused to grant the unopposed bail application.

After that, on April 16, 2018, the District Attorney's Office, in open court at the first status conference on the PCRA petition, stated that after review of the

file—and consistent with its position in numerous similar cases—the Commonwealth consented to an immediate grant of PCRA relief in the form of an order allowing a new trial. Exhibit F at 8-9, 13 (April 16, 2018 transcript). The District Attorney's Office later restated its position in writing to Judge Brinkley on May 29, 2018:

> The Commonwealth agrees to PCRA relief in the form of a new trial. Here, Officer Graham was the sole witness to testify at defendant's trial. In light of recent disclosures regarding this officer's misconduct, the Commonwealth is not able to stand behind the credibility of his trial testimony at this time. Accordingly, the Commonwealth concedes that a new trial is necessary.

Exhibit G (May 29, 2018 Commonwealth Letter).

Judge Brinkley nevertheless refused to grant PCRA relief and also refused to entertain a renewal of the bail motion. She further refused Mr. Williams' suggestion that she transfer this case voluntarily "in the interests of justice," pursuant to Pennsylvania Rule of Criminal Procedure 903(C), to President Judge Woods-Skipper, who currently presides over hundreds of similar (and later filed) cases from the dockets of many different trial judges, to assure consistency of treatment and disposition. Exhibit F at 13-14 (April 16, 2018 transcript).

Making matters even worse, Judge Brinkley insisted that PCRA relief could not be granted without an evidentiary hearing, despite that Pennsylvania Rule of Criminal Procedure 907(2) provides that no hearing is required where material facts are not in dispute and those undisputed facts would entitle the defendant to relief, and despite the long-standing practice in the First Judicial District of granting PCRA relief without an evidentiary hearing where the District Attorney's

Office has conceded the legitimacy of such relief—a transparent practice that has ensured due process and fair and equal treatment. Exhibit H (stipulation that was submitted during the June 18, 2018 hearing, which includes Bridge affidavit ¶ 10); *see also* Exhibit A at 27-29 (June 18, 2018 transcript). Judge Brinkley then scheduled a further status conference for June 18, 2018. Exhibit F at 10, 14 (April 16, 2018 transcript).

On April 20, 2018, the Defender Association brought cases similar or identical to Mr. Williams' (that is, based on the previously undisclosed perjury of Officer Graham) before Judge Woods-Skipper. In three of those cases, Judge Woods-Skipper summarily granted relief under the PCRA, without a hearing (evidentiary or otherwise) based on the District Attorney's agreement that that relief was necessary. Exhibit H (stipulation that was submitted during the June 18, 2018 hearing, which includes transcripts from Judge Woods-Skipper cases). Each of those convictions, like Mr. Williams', depended solely on Graham's credibility either at a preliminary hearing or at trial. This series of events is consistent with the practice of the District Attorney's Office, the Defender Association, and the Philadelphia Judiciary over two-plus decades. Exhibit H (stipulation that was submitted during the June 18, 2018 hearing, which includes Bridge affidavit ¶¶ 10-11); *see also* Exhibit A at 27-29 (June 18, 2018 transcript).[7]

[7] More such cases are scheduled to be heard and resolved on June 29, 2018. Exhibit A at 38-39 (June 18, 2018 transcript).

On April 20, 2018, Mr. Williams' counsel wrote to Judge Brinkley again asking her to reassign Mr. Williams' case to the President Judge consistent with all of the "Officer Graham" cases (regardless of who the trial judge had been) so that his unjust conviction could be treated the same as the others. Judge Brinkley did not respond to this letter and suggestion, despite having earlier stated in open court on April 16 that she would "address this with Judge Woods-Skipper." Exhibit F at 15 (April 16, 2018 transcript).

D. This Court Exercises Its King's Bench Power And Orders The Trial Court To Release Mr. Williams On Bail

In March 2018, Mr. Williams filed applications in this Court seeking release on bail pending adjudication of his PCRA petition and asking that Judge Brinkley be removed from presiding over his case. On April 24, 2018, this Court exercised its King's Bench power and unanimously ordered Mr. Williams' immediate release on bail pending determination of his PCRA petition, directing that bail was to continue "until final resolution of the PCRA matter, including any appellate review" (that is, even if the trial court were to deny the PCRA motion). Exhibit I. This Court further ordered Judge Brinkley to reach a final decision on Mr. Williams' PCRA petition within 60 days, that is, not later than June 25, 2018. *Id.*

As for Mr. Williams' request that Judge Brinkley be removed from presiding over his case, this Court declined that request "[a]t this juncture," but "noted that the presiding jurist may opt to remove herself from presiding over this matter. *See*

Pa. R. Crim. P. 903(C)," referencing that Rule's "interests of justice" standard. Exhibit I.

E. Judge Brinkley Doubles Down, Refuses To Reassign The Case, And Makes Comments On This Court's Ruling And Mr. Williams' Pending Case To The Press Through Her Lawyer

On remand, on April 24, 2018, Judge Brinkley granted bail as this Court directed, and Mr. Williams was released from state prison after more than five months' incarceration. But Judge Brinkley declined this Court's invitation to voluntarily reassign the case. In an amended order filed April 25, 2018 (as further amended on April 27, 2018), Judge Brinkley scheduled an evidentiary hearing on the PCRA petition for June 18, 2018. She also interjected herself into the routine matter of bail supervision, insisting on day-to-day notice to her (and to the District Attorney) of Mr. Williams' plans and whereabouts.

Also on April 24, 2018, within hours of this Court's decision and order, Judge Brinkley's personal lawyer, Mr. Peruto, spoke to *TMZ.com* on her behalf and stated that she will not grant immediate relief as requested by the parties, will not recuse herself, and will not necessarily overturn the conviction. Exhibit J. In particular, Mr. Peruto made the following statements on Judge Brinkley's behalf: "[T]he judge does not feel the Supreme Court in any way repudiated her rulings when it ordered that Meek go free without bail, pending the next hearing in June ... Peruto suggested Judge Brinkley will not necessarily side with the prosecutor and Meek's lawyer, both of whom are asking the judge to toss the conviction." *Id.*

Mr. Peruto also told the *New York Post* that Judge Brinkley did not feel that this Court was "rebuking" her and that she was standing her ground despite the District Attorney's position that Mr. Williams is entitled to a new trial. Exhibit K. Mr. Peruto relayed that "Judge Brinkley knows Meek's case inside and out, and the Supreme Court Justices do not." *Id.* Neither Mr. Peruto nor Judge Brinkley has ever repudiated or disputed these press reports.

F. This Court Splits 3 To 3, Without Prejudice, On Mr. Williams' Second King's Bench Application

On June 1, 2018, Mr. Williams filed an Emergency Application for King's Bench relief, requesting that this Court order the reassignment of his PCRA proceedings to Judge Woods-Skipper.[8] The Application explained that since this Court ruled on Mr. Williams' earlier King's Bench application, Judge Brinkley unfortunately had not acted to advance "the interests of justice." She not only had declined this Court's pointed invitation to remove herself from the case, but had doubled down by continuing to engage in the type of conduct on which Mr. Williams' original King's Bench application was based—*e.g.*, assuming a

[8] Mr. Williams first tried to achieve an administrative resolution within the Court of Common Pleas by filing a Motion for Administrative Reassignment of Petition for Post-Conviction Relief directed to Judge Tucker as Administrative Judge for the Criminal Section of the First Judicial District pursuant to Pennsylvania Rule of Criminal Procedure 903(D), explaining why the "interests of justice" required reassignment. Judge Tucker declined to remove Judge Brinkley, reasoning that he lacked authority to do so under Rule 903(D) as "a judge of coordinate jurisdiction" and that only this Court can provide the remedy that Mr. Williams seeks. Exhibit L (June 5, 2018 Order).

prosecutorial role and making (through her lawyer) public comments about Mr. Williams' case.

What's more, Mr. Williams pointed out, Judge Brinkley was handling his PCRA petition far differently than all the other hundreds of pending petitions arising out of the conduct of now-discredited Narcotics Field Unit Officers in Philadelphia County (including former Officer Graham), which are being heard by President Judge Woods-Skipper. Mr. Williams explained that his PCRA petition was the only Officer Graham-related PCRA not assigned to President Judge Woods-Skipper, and Judge Brinkley was insisting on an evidentiary hearing despite the Commonwealth's position that Mr. Williams' PCRA petition should be granted. That stood in stark contrast to every other case in which the Commonwealth has agreed that a PCRA petition should be granted. Mr. Williams supported this assertion with the affidavit of Mr. Bridge, Assistant Defender with the Defender Association of Philadelphia since 1983, stating unequivocally that in the over 2,000 PCRA cases in which he has been involved, he "never had a judge order an evidentiary hearing where the prosecution has conceded the legitimacy of PCRA relief." Exhibit H (stipulation that was submitted during the June 18, 2018 hearing, which includes Bridge affidavit ¶ 10).

Mr. Williams' Application also pointed out that his counsel had learned that Judge Brinkley, by her own sworn admissions, is apparently unable to properly perform her occupational duties and preside over this matter. Judge Brinkley stated under penalty of perjury in a federal court pleading that, as a result of her involvement in an automobile accident on April 26, 2016, she has suffered "severe

head trauma, concussion, holes and tears in retina of both eyes," and other "neurological" injuries, that these "injuries are or may be serious, severe, and permanent," and that "she has in the past been and may in the future be disabled from performing her usual duties [and] occupation" presumably as a judge. Exhibit M ¶ 11 (*Brinkley v. Gittens*, No. 2:18-cv-01410, Doc. No. 1 (D. Ariz.)).

On June 12, 2018, this Court issued an Order stating that "the Court being equally divided, the Emergency Application for King's Bench Jurisdiction is DENIED by operation of law." Exhibit N (June 12, 2018 Order and Dissenting Statement). The Order noted that "Justice Wecht would deny relief without prejudice to Petitioner's right to raise the matter anew following his June 18, 2018 evidentiary hearing." *Id.* In light of Justice Wecht's position, the denial was effectively "without prejudice."[9] Justice Baer, in a dissenting statement joined by Justice Todd and Justice Donohue, stated:

> I believe Judge Genece Brinkley should have disqualified herself pursuant to Pa.R.Crim.P. 903(C) (providing PCRA trial judge should disqualify themselves in the interests of justice) as her continued involvement has created an appearance of impropriety that tends to undermine public confidence in the judiciary. See *Commonwealth v. White*, 910 A.2d 648, 657 (Pa. 2006) (explaining that, even in those instances where a jurist can impartially consider a case, the judge must also consider whether his or her continued involvement "creates an appearance of impropriety and/or would tend to undermine public confidence in the judiciary").

[9] Further confirming Mr. Williams' understanding of the non-final effect of this Court's June 12 Order, this Court did not relinquish jurisdiction at that time, as it had on April 24.

Exhibit N.

G. Judge Brinkley Insists On Holding An Evidentiary Hearing And Engages In Further Egregious Misconduct

Since the matter would remain before Judge Brinkley, Mr. Williams' counsel wrote to her in connection an earlier order directing counsel to "advise the Court as to the number of witnesses to be called on or before June 11, 2018, so that sufficient time can be allotted for any testimony." Exhibit O (June 11-13, 2018 email exchange). Counsel stated:

> Since the issuance of that order, the Commonwealth has filed an answer to our Amended PCRA petition in which they have stated that they agree to a new trial. I have consulted with the Assistant District Attorneys [K]avanagh and Riley, and am pleased to inform your Honor that the parties do not request or require an evidentiary hearing as the matter is no longer contested, and we jointly request that this Court grant a new trial as requested by the parties.

Id. The letter continued: "In the event that your Honor is unable or unwilling to honor the request of the parties and order a new trial, we respectfully urge the Court to transfer this case to our President Judge so that Mr. Williams' case can be treated in the same manner in which thousands of cases have been disposed of in the First Judicial District." *Id.*

Judge Brinkley replied, stating that "the Evidentiary Hearing listed for Monday, June 18, 2018 will take place as scheduled" and "[w]hatever evidence you choose to submit in support of Defendant's claims raised in his counseled PCRA Petition and Supplemental Petition must be presented during said evidentiary hearing as there is no evidence in the record as yet." Exhibit O.

H. Judge Brinkley Convenes An Unnecessary Hearing On July 18, 2018 And Engages In Conduct Confirming That She Should Be Disqualified In The Interests Of Justice And To Protect Public Confidence In The Integrity Of The Judiciary

A close read of the transcript from the June 18 hearing (Exhibit A) is necessary to fully appreciate the basis for Mr. Williams' present application—and Mr. Williams respectfully urges this Court to read the entire transcript.[10] Nonetheless, Mr. Williams summarizes below some of the more egregious moments. Judge Brinkley (1) refused to even address the issue of her disqualification or allow Mr. Williams' counsel to make a record on the issue—going so far as to threaten to adjourn the hearing if counsel persisted; (2) continued to insist on an evidentiary hearing even though none was needed under Rule 907(2) because the District Attorney had agreed that PCRA relief was necessary because it could no longer stand by the credibility of the sole prosecution witness at Mr. Williams' trial—and thus Mr. Williams had plainly met his burden to show by a preponderance of the evidence that new evidence existed that would likely compel

[10] Judge Brinkley not only engaged in improper conduct as it related to Mr. Williams, but also sought to interfere with the ability of the press to cover the proceedings. Only a "limited number of reporters were allowed into the 71-capacity courtroom. Court personnel told Bloomberg Law that Brinkley opted to remain in her courtroom, as she has done for all Williams's other hearings." Exhibit C (Bloomberg Law article). Numerous accredited journalists were excluded. Moreover, before the hearing, reporters were ordered to hand over their cellphones to deputy sheriffs, a point which Judge Brinkley later re-emphasized while on the bench, saying that "the media is not supposed to be using anything but handwriting and note pads." Exhibit A at 14-15 (June 18, 2018 transcript). One newspaper noted that collection of cell phones is not standard practice. Exhibit D (Philly.com article) ("Reporters were ordered to hand over their cellphones to deputy sheriffs, which is not standard practice in Philadelphia courtrooms.").

a different verdict; (3) took on an adversarial and prosecutorial role by relentlessly cross-examining Mr. Bridge, the 35-year veteran of the Defender Association whose testimony established Judge Brinkley's disparate treatment of Mr. Williams; (4) stated that she knew this case would be going to a higher court (thus suggesting she had already made up her mind to deny the petition); (5) told Mr. Williams' counsel he could not object and instructed the court reporter (unsuccessfully) to not take down the objections from Mr. Williams' counsel; and (6) essentially cross-examined the District Attorney's Office on the stipulation of facts submitted by the parties.

1. Judge Brinkley's Opening Statement Suggests Adversity Toward Mr. Williams' Position, As Well As An Intention To Apply An Erroneous Legal Standard Under Which She Would Decide Officer Graham's Credibility Rather Than Ask Whether There Was Evidence That Would Likely Lead A Reasonable Jury To A Different Verdict

Judge Brinkley came onto the bench on June 18 ready to make the "record" ***she*** wanted. She immediately attempted to justify her decision to convene an evidentiary hearing by saying that Mr. Williams had initially requested one in his petition. But, as Mr. Williams' counsel pointed out, the amended petition (the only pleading then before the court) requested an evidentiary hearing ***only if*** the District Attorney's Office denied the allegations—which it had not. Exhibit A at 4. Judge Brinkley also stated something that would become a theme of sorts during the hearing—namely, that the District Attorney's agreement to a new trial is "only a recommendation" and thus she could further insist that, despite the District Attorney's agreement that PCRA relief was necessary, testimony must be taken to

gauge "credibility." *Id.* at 6-7.[11] Judge Brinkley then took the position that no evidence had theretofore been introduced into the record (despite the many unchallenged exhibits attached to the amended petition), and also "incorporated by reference" the notes of testimony from all prior hearings in the case. *Id.* at 8.

2. When Mr. Williams' Counsel Asks Judge Brinkley To Recuse Or Disqualify Herself—Noting That She Had Never Ruled On Mr. Williams' Prior Written Requests—She Refuses To Allow Counsel To Make A Record And Threatens To Adjourn The Hearing

Even though Judge Brinkley's lawyer had made statements to the press on the issue, she had never addressed recusal or disqualification from the bench—neither ruling on Mr. Williams' recusal motion nor responding formally to this Court's suggestion that she could elect to disqualify herself. Accordingly,

---

[11] As explained below, the point is not that the District Attorney's Office has "recommended" the grant of PCRA relief, but rather that the District Attorney Office's ***conclusion*** that it cannot stand behind the credibility of former Officer Graham is a ***fact*** establishing that Mr. Williams has met his PCRA burden. *See Commonwealth v. Rollins*, 3499 EDA 2016 (Pa. Super. Dec. 20, 2016) (summarily reversing denial of PCRA relief where the Commonwealth had agreed to relief). Judge Brinkley also stated during the hearing—in what also became a theme—that former Officer Graham had not been indicted. Exhibit A at 17-18; *see also id.* at 91, 102. The lack of the indictment, however, is beside the point because, as the District Attorney explained, there was ample basis for it to conclude that it could not stand behind Graham's testimony. Exhibit A at 104. Nor was Judge Brinkley correct to assert that Mr. Williams' case was different because of the lack of an indictment. As Mr. Bridge testified, PCRA relief had been granted in light of the District Attorney's agreement in many cases where the officer in question had not been indicted or otherwise criminally charged. Exhibit A at 24.

Mr. Williams' counsel attempted to raise this threshold issue at the start of the June 18 hearing.

Counsel was rebuffed. Judge Brinkley refused to even address Mr. Williams' request that she either recuse or disqualify herself in the interests of justice, stating repeatedly that "[w]e're here for the PCRA issues. We're not here for any other issues other than the PCRA issues." Exhibit A at 11-14. When counsel objected that Judge Brinkley was preventing him from making a record, Judge Brinkley threatened to adjourn the hearing:

> THE COURT: Excuse me, sir. Okay. We're going to have to adjourn the hearing because we're here for one thing and one thing only. The only issue before this Court is the issue of the PCRA.
>
> MR. TACOPINA: And not your fitness?
>
> THE COURT: The Supreme Court has spoken.[12] Their decision is in writing. Anyone who wants to read it, can print it out and read it.
>
> MR. TACOPINA: Right.
>
> THE COURT: So there's no basis for that to be raised here because the Supreme Court of Pennsylvania has already addressed it. So the only issue that we're here for today is the PCRA evidentiary hearing.
>
> MR. TACOPINA: So what your lawyer said regarding the hearing –
>
> THE COURT: My lawyer? Excuse me, sir. We are not going to discuss anything today other than the evidentiary issues for your

[12] As already noted, this Court's June 12 ruling, by virtue of Justice Wecht's controlling vote, was without prejudice and therefore in no way precluded Judge Brinkley from disqualifying herself on June 18. Mr. Williams' counsel tried to make that very point, but Judge Brinkley cut him off. Exhibit A at 11-14.

> PCRA petition that you filed. That is the only thing that is before the Court today.
>
> MR. TACOPINA: And I'm now going to sit down but object to Your Honor preventing me from making a record.

Exhibit A at 13-14. Mr. Williams—and the interests of justice generally—deserved Judge Brinkley's attention on this issue, but he did not get it.

3. Judge Brinkley Insists On An Evidentiary Hearing Despite Rule Of Criminal Procedure 907(2) And The Uniform Practice In Other Cases Following This Rule

Mr. Williams' counsel then drew Judge Brinkley's attention to the "most significant thing that has happened in this case which was the answer that the Court had directed the district attorney's office to file." In that response, the Commonwealth agreed that Mr. Williams should be granted PCRA relief. Exhibit A at 16 (June 18, 2018 transcript); Exhibit G (May 29 Commonwealth Letter). Counsel explained that because Pennsylvania Rule of Criminal Procedure 907(2) authorizes PCRA relief to be "granted without a hearing when the petition and the answer show that there is no genuine issue concerning any material fact and that the Defendant is entitled to relief as a matter of law," Judge Brinkley should "do what Judge Skipper and previous president judges have done time and time and time again and in well over 1500 cases and upon getting the district attorney's answer in this case now grant[] PCRA relief." Exhibit A at 16 (June 18, 2018 transcript)

Judge Brinkley, however, assumed the role of adversary of both Mr. Williams and the District Attorney's Office and denied the request because, in

her words, the Commonwealth's "agreement to a new trial is only a recommendation to this Court," criticizing President Judge Woods-Skipper's handling of numerous similar cases (and that of former President Judge Legrome D. Davis before her) because she "took no evidence" and "made no findings of facts or conclusions of law." Exhibit A at 16-17; *see also id.* at 58 (insisting that "this record" will be complete).

4. Mr. Williams' Counsel Calls A Witness To Provide Testimony Showing Judge Brinkley's Disparate Treatment Of Mr. Williams And Then Judge Brinkley Relentlessly Cross-Examines The Witness And Even Scoffs At His Testimony

Because Judge Brinkley insisted on hearing evidence, Mr. Williams' counsel called Senior Assistant Public Defender Bradley Bridge as a witness to establish the "different and disparate treatment [Mr. Williams] has received." Exhibit A at 18. Mr. Bridge then testified as to the established procedure for PCRAs over the past 23 years spanning the administration of two prior President Judges and several prior District Attorneys (Lynne Abraham, Seth Williams, Kathleen Martin, Kelly Hodge, and Lawrence Krasner) in cases where the Commonwealth agrees that relief is warranted:

> Q. … So with respect to what you've just described, you and the District Attorney's Office would discuss the particular PCRA, yes?
>
> A. Yes.
>
> Q. The District Attorney's Office would let you know in which cases they would agree to relief?
>
> A. That's correct.

Q. You would notify our President Judge if there's an agreement between the parties that relief by agreement should be granted, correct?

A. That is right.

Q. And our President Judge would grant relief?

A. That is right.

Q. Without requiring an evidentiary hearing?

A. Without requiring an evidentiary hearing.

Q. Without requiring the presentation of evidence?

A. Without requiring any evidence being presented.

Exhibit A at 28-29; *see also id.* at 27-28 (Mr. Bridge: "Typically each case lasted about 10 to 15 seconds where a number of cases were called and at the conclusion of calling the list of cases -- it could be anywhere from 20, I think the most we did one day was 150 -- the Judge [Woods-Skipper and before her, then-President Judge Davis] would enter orders nolle prossing those cases. I would have a draft order prepared for her signature. She would sign the orders and that would conclude our business that day."); *id.* at 59 (Mr. Bridge: "Well, you have to understand that this is part of a process that's been going on for 23 years and this has been the resolution of the process. It's been distilled.").[13]

[13] Although the fact that this has been the consistent practice for at least the last 23 years certainly leads one to question Judge Brinkley's contrary procedure, but Mr. Williams' position that no evidentiary hearing is needed is not based solely on tradition. To the contrary, it is based on Pennsylvania Rule of Criminal Procedure 907(2) and common sense. If the Commonwealth agrees that a new evidence is of such a nature and character that a new trial would likely result in a different outcome, then there is no issue of fact for the court to decide.

Mr. Bridge confirmed that this same process has been followed in cases involving Officer Graham, including the three where Officer Graham was the sole prosecution witness and President Judge Woods-Skipper granted a new trial without the need for an evidentiary hearing after the District Attorney agreed that PCRA relief was necessary (cases that also were nolle prossed by the District Attorney). Exhibit A at 31-36.

Mr. Bridge also explained why Judge Brinkley's handling of Mr. Williams' petition was "troublesome":

> Q. What's happening here must be very unusual to you?
>
> A. Well, it's beyond unusual. It's ***troublesome***.
>
> Q. Why?
>
> A. Well, we've set up a process for the past 23 years that I personally think effectuates procedural due process to a significant degree. The parties have come to an agreement, we placed the matter before the judiciary, and we go forward. When the parties have come to a resolution, it seems to me that that should be essentially the end of the matter because there's nothing yet really to decide.

Id. at 29 (emphasis added); *see also id.* at 72-73 (Mr. Bridge: "What we've done through multiple iterations in development of the procedure is I think established a transparent due process protection where there's procedural due process for all parties. And the reason I think that's important is that that by setting up a regimented routine that is utilized irrespective of who the parties are helps to protect and ensure that there be due process.").

Mr. Bridge's testimony also established that Judge Brinkley was simply incorrect when she has tried to justify her refusal to transfer this case to Judge

Woods-Skipper by saying that the only cases that have been transferred are those where the judge who presided over the proceedings relating to the petitioner's underlying trial or guilty plea no longer was a sitting criminal court judge. Exhibit A at 24, 62 (June 18, 2018 transcript); *see also* Exhibit F at 12 (April 16, 2018 transcript); Exhibit C (Bloomberg Law article; Peruto statement).

More specifically, Mr. Bridge testified that the standard procedure of having all cases heard by the President Judge is currently in the works for one of Mr. Williams' own co-defendants, Nina Harth, who had plead guilty before and been sentenced by Judge Brinkley:

> Q. And I'm correct that it reflects that in fact Ms. Harth had pled guilty before Her Honor, the Honorable Genece E. Brinkley on January the 22nd of 2008?
>
> A. That's what it indicates, yes.
>
> Q. And then on Her Honor's probation for a period of time?
>
> A. Yes.
>
> Q. And then ultimately upon you learning of this list, you filed a PCRA petition on her behalf?
>
> A. I did.
>
> Q. And that PCRA petition is now pending in front of Judge Woods-Skipper?
>
> A. That's correct.

Exhibit A at 38; *see also* Exhibit P (docket report from Harth case, submitted as an exhibit at the June 18, 2018 hearing).[14]

In sum, Mr. Bridge's testimony established that, in thousands of other cases, courts have concluded that the burden of proof needed to grant post-conviction relief had been met where the District Attorney's Office determined that there were serious questions about the credibility of the police officer who had testified at the petitioner's trial. Exhibit A at 36 (Mr. Bridge: "Anytime the prosecutors office and I have been in agreement, and this has happened some 1500 times, we have gone to court and PCRA relief was granted and the charges were nolle prossed.").[15] A stipulation to that effect meets the burden for obtaining post-conviction relief "and then some" and also "correct[s] an injustice that occurred." Exhibit C (Bloomberg Law article).

---

[14] Further evidencing her adversarial approach, Judge Brinkley remarked initially regarding the Nina Harth docket that "technically speaking the court history docket needs to be authenticated by court personnel," and when counsel informed Judge Brinkley that she could take judicial notice of the docket, Judge Brinkley stated, "Well, no. I haven't seen it, first of all. I didn't see it. Second of all, let me show it to our court officer and see if she can reprint the same thing." Exhibit A at 84. In an (unfortunately unsurprising) turn, Judge Brinkley's June 25 opinion stated: "D-2 [the docket] was never authenticated by the Court Clerk and was obtained by Defendant via an online docket." Exhibit E at 11 n.3. The outrageous suggestion that undersigned counsel would fabricate an official court record to use as evidence will be allowed to stand without the dignity of a direct response.

[15] As Mr. Bridge later explained, the District Attorney's Office here has determined that it "cannot in good conscience maintain this conviction … so the judge doesn't have "a particular role to play." Exhibit C (Bloomberg Law article). He added, "[t]he prosecutor recognizes Graham's lack of credibility makes it inappropriate to maintain a conviction, and the prosecutor is "being thwarted by Judge Brinkley." *Id.*

None of this made any difference to Judge Brinkley. Refusing to budge and digging in her heels, Judge Brinkley put on a prosecutor's hat and relentlessly cross-examined Mr. Bridge for a large chunk of the hearing (34 pages of the 107 page transcript). Exhibit A at 41-63, 67-73, 75-81.[16] Judge Brinkley, in fact, insisted on grilling Mr. Bridge at multiple points throughout the hearing and after each examination of him—*i.e.*, after the District Attorney's examination, after Mr. Williams' re-direct, and then a third time after the District Attorney's re-examination. *Id.*

When Judge Brinkley questioned Mr. Bridge about his basis for filing PCRA petitions,[17] Mr. Bridge explained that the inclusion of an officer's name on a prosecution Do Not Call list is sufficient a basis to file a PCRA petition because it constitutes a prima facie case for PCRA relief, and Judge Brinkley responded by laughing incredulously (or perhaps derisively) while sarcastically stating, "A Do Not Call list constitutes – preponderance of the evidence?" Exhibit A at 61. Later, on redirect by Mr. Williams' counsel, Mr. Bridge indicated that he had never

---

[16] In contrast, Mr. Williams' counsel's direct and re-direct examination of Mr. Bridge took up only 26 pages of the 107 page transcript, Exhibit A at 19-39, 63-67, 82-83, and the District Attorney's Office examination took up only 4 pages, *id.* at 40-41, 74-75.

[17] Judge Brinkley was preoccupied throughout the hearing with the information known to Mr. Bridge before he filed the multitude of PCRA petitions (which needed to be filed within a strict deadline) and his "investigation" before filing to the exclusion of the undisputed evidence showing what his and the District Attorney's Office's further investigation revealed. *See, e.g.*, Exhibit A at 65-66, 82-83 (Mr. Williams' re-direct examination); *id.* at 74-75 (District Attorney's re-examination of Mr. Bridge).

before been questioned or laughed at by a judge, Exhibit A at 63-64, and acknowledged that he sensed Judge Brinkley was ridiculing him. Exhibit A at 69. And then in response to Judge Brinkley's question on re-cross, "Do you believe that I was laughing at you in the course of this serious case?," Mr. Bridge politely stated, "I wouldn't call it a laugh. I would call it a smirk … And the answer is yes." Exhibit A at 70.[18]

The record is replete with exchanges between Judge Brinkley and Mr. Bridge showing that her agenda was to attempt to undermine Mr. Bridge (and seemingly Judge Woods-Skipper and the predecessor President Judge too) rather than asking the type of questions judges typically ask in an effort to gather information or clarify a witnesses testimony. One stands out—where Judge Brinkley attempted to undermine Mr. Bridge's testimony by putting him through a memory test, questioning him about his affidavit but refusing to provide him with a copy of it until Mr. Williams' counsel objected to this departure from standard trial procedure involving a prior statement[19] and pressed the point.

---

[18] Judge Brinkley denied laughing at the witness, but appeared to concede smirking, which is hardly better. Exhibit A at 70-71. That said, three attorneys present felt compelled to state for the record that they had in fact heard the judge laugh out loud at Mr. Bridge during his testimony. *Id.* at 69-70, 106. And, as noted, Mr. Bridge later explained that he was being "judicious" when Judge Brinkley challenged him as to whether she had laughed at him and said that Judge Brinkley's "examination of him was 'hostile, incredulous and dismissive'" and that "'there were a couple of moments' where he sensed Brinkley was ridiculing him." Exhibit C (Bloomberg Law article).

[19] *See Robert v. Chodoff*, 393 A.2d 853, 867 (Pa. Super. 1978) (discussing the "Rule in Queen Caroline's Case"); Pa. R. Evid. 613(b)(1).

THE COURT: Okay. So going to Exhibit K, which is your affidavit on page –

MR. McMONAGLE: Do you have that?

THE WITNESS: I don't, no.

MR. McMONAGLE: Your Honor, would you like me to provide him a copy of it?

THE COURT: Well, I can just read it. I can read it and you can tell me if you remember saying this.

THE WITNESS: Okay.

MR. McMONAGLE: Well, that's not fair, Your Honor. Let him see it.

THE COURT: Okay.

MR. McMONAGLE: Why would you do that?

THE COURT: It's not a problem. If he remembers -- well, it's sort of like if you remember doing it, you kind of remember what you wrote, right, if you wrote it yourself?

THE WITNESS: I wrote it myself.

THE COURT: He can see it, but he wrote it.

Exhibit A at 57-58.

On re-examination, the District Attorney's Office sought to make sure the basis for the PCRA petition and the District Attorney's agreement to such relief was perfectly clear:

Q. Mr. Bridge, I just have a few questions to clarify some of your testimony. You stated you were on a 60 day time frame from receiving evidence until you had to file a PCRA; is that right?

A. That's right.

Q. And that 60 days started when you were provided certain information from the District Attorney's Office?

A. That's correct.

Q. And that information was a few different pieces of information. One was that Officer Graham was not being called by the District Attorney's Office as a witness as of September of 2014, correct?

A. That's right.

Q. And that was based on information from his partner that he had been taken off the street by the police department, correct?

A. That's correct. Yes.

Q. And that also Officer Graham was a part of the U.S. Attorney and FBI's investigation of a number of narcotics officers, correct?

A. From what I understand, that's also true.

Q. And that was narcotics officers that eventually were charged and additional officers that were not charged; is that correct?

A. That's correct.

Q. Okay. And that part of our disclosure to you in earlier this year was that the FBI had determined that Officer Graham had lied to them, correct?

A. I understand that that's true.

Q. And that he had in fact had failed a polygraph test?

A. I understand that also.

Q. And that was with respect to him being under investigation for stealing money, correct?

A. That's right.

Q. Okay.

Exhibit A at 74-75.

Then, further revealing the extreme and inexplicable measures Judge Brinkley took to defend Officer Graham in the face of the undisputed evidence that he lacked credibility and the District Attorney's Office conclusion that it could not in good faith stand behind his testimony, Judge Brinkley immediately resumed cross-examination:

> THE COURT: … So the questions that he asked you indicate that you were aware or believed that Graham had taken a polygraph test and lied. Is that what you understand?
>
> THE WITNESS [Mr. Bridge]: That's what I understand.
>
> THE COURT: Okay. And you know polygraph results are never admissible in our courts?
>
> MR. McMONAGLE: Objection, Judge.
>
> THE COURT: You're a lawyer, right?
>
> THE WITNESS: I'm a lawyer.
>
> MR. McMONAGLE: Judge, objection.
>
> THE COURT: Excuse me.
>
> MR. McMONAGLE: You're trying to sabotage this, Your Honor.
>
> THE COURT: No. Sir, I'm doing what I need to do to make sure the record is absolutely complete.

Exhibit A at 76. And again:

> THE COURT: Okay. And you are aware based upon the information attached to the stipulations that retired Police Officer Graham was interviewed by federal authorities in 2014. As a result of this cooperation, Graham was not indicted by either the federal court, state court, or local court?
>
> MR. RILEY: I am aware of that, Your Honor.

Exhibit A at 91. And again:

> THE COURT: Obviously the feds believed him. They didn't charge him.
>
> MR. McMONAGLE: Oh, no, Judge. Let's not be –
>
> THE COURT: I'm just saying.
>
> MR. McMONAGLE: Let's not –
>
> THE COURT: I'm just saying.
>
> MR. McMONAGLE: Let's not corrupt the record.
>
> THE COURT: They didn't charge him with anything, right?
>
> MR. McMONAGLE: The feds didn't charge him because in order to charge somebody, you need a little bit more than that. And so they decided not to charge him. But he did get charged by his own police department, was found guilty of lying to his own police department and lying to the FBI and committing theft he was found guilty of by his police department.

Exhibit A at 102-03.

5. When Mr. Williams' Counsel Objects During Judge Brinkley's Cross-Examination, Judge Brinkley Makes Statements Suggesting She Has Prejudged The Case And Also Instructs The Court Reporter Not To Record Counsel's Objections

Once, when Mr. Williams' counsel objected to her conduct, Judge Brinkley let slip that she knew this case would be going to a higher court—implying that she already had made up her mind to deny the agreed-to relief—and then, remarkably, instructed the court reporter (unsuccessfully) to not take down the objections from Mr. Williams' counsel:

MR. McMONAGLE: Judge, let me say this to you: At this point in time I want to make a record, you are acting as an extrajudicial officer. You're acting like a prosecutor in this case. The District Attorney's Office in this case hasn't seen fit to cross-examine this witness, potentially denigrate this respected officer of the court. I ask you to stop. I respectfully ask you to stop.

THE COURT: Well, sir, let me respond to you by saying this: My responsibility, because this is my case, is to make sure that the record is clear because obviously we know that it's going to go to another court after here. So –

MR. McMONAGLE: Obviously we know that? You mean you've made your mind up?

THE COURT: No, I haven't made my mind up.

MR. McMONAGLE: Well, how else would it go to another court?

THE COURT: It doesn't matter what I do.

MR. McMONAGLE: Let the record reflect –

THE COURT: It doesn't matter –

MR. McMONAGLE: Hold on. Let the record –

THE COURT: Excuse me. Let the record reflect that I'm still speaking and you may sit down until I'm finished.

MR. McMONAGLE: I'll wait till you're done.

THE COURT: Thank you very much.

MR. McMONAGLE: You're welcome. I want to make sure she got that down, too.

THE COURT: ***No. She's not going to take down what you're saying because she's only going to take down what I'm saying***.

Exhibit A at 67-69 (emphasis added). Judge Brinkley's attempt to manipulate the record continued:

MR. McMONAGLE: Judge, may I –

THE COURT: Sir –

MR. McMONAGLE: -- before you ask your next question, let me make an objection.

THE COURT: ***No, you can't*** –

MR. McMONAGLE: I can't make an objection?

THE COURT: Sir –

MR. McMONAGLE: Let the record reflect, I –

THE COURT: ***No, the record is not reflecting anything that you say because I'm still talking. The record does not reflect anything that you*** –

MR. McMONAGLE: I have an objection to that.

THE COURT: No. No. Sir, you have to sit down and wait your turn now.

MR. McMONAGLE: I object.

THE COURT: Excuse me. ***The objection is not -- anything that you just said is not being recorded.***

Exhibit A at 77-78 (emphasis added). Obviously, the court reporter, to her credit, honored her oath and did not follow Judge Brinkley's lawless directive.

6. After Mr. Williams' Counsel Offers A Stipulation And Supporting Exhibits Agreed To By The District Attorney's Office, Judge Brinkley Essentially Cross-Examines The Assistant District Attorney

After Mr. Bridge's testimony was completed, Mr. Williams' counsel read into the record a stipulation of facts (with supporting documentary evidence) agreed to by Mr. Williams' counsel and the District Attorney's Office. This

stipulation contained all of the facts necessary for PCRA relief.[20] Exhibit A at 84-88 (June 18, 2018 transcript); Exhibit H (stipulation, which was submitted as an exhibit during the June 18, 2018 hearing).

Judge Brinkley, however, declined to grant relief—which was not a surprise at this point—and took up where she left off with her cross-examination of Mr. Bridge by essentially cross examining the Assistant District Attorney (that is, Liam Riley, whose title is Counsel to the District Attorney). Exhibit A at 90-102. In the end, however, the District Attorney's Office stood fast:

> MR. RILEY: Your Honor, we are agreeing to the stipulations as proposed.
>
> THE COURT: Okay.
>
> MR. RILEY: We are conceding this case warrants PCRA relief.
>
> THE COURT: Okay.
>
> MR. RILEY: And we have done so based on examining the nature of the corruption that was found, Officer Graham. The FBI determined he lied and Internal Affairs determined he lied. And looking at all the evidence in total, we do not have confidence in his testimony both going forward as was decided by the DA's Office in 2014, and going back as long as we have evidence there was some misconduct.

Exhibit A at 104.

---

[20] *Falcione v. Cornell Sch. Dist.*, 557 A.2d 425, 428 (Pa. Super. 1989) ("Stipulated facts are, quite simply, a statement of facts to which the parties are in agreement. Because the parties are in agreement as to those facts contained in the stipulation, they are controlling. No further determination by the fact-finder is necessary since the parties have already agreed that those facts have occurred."); *Kershner v. Prudential Ins. Co.*, 554 A.2d 964, 966 (Pa. Super. 1989) ("[S]tipulations are binding upon the court as well as on the parties agreeing to them.").

Judge Brinkley closed the hearing by saying that she would "issue [her] decision in due course." Exhibit A at 107.

I. Judge Brinkley's June 25, 2018 Opinion Further Evidences Her Results-Driven Approach And Stains The Integrity Of The Commonwealth's Judicial System

On June 25, 2018, Judge Brinkley issued an order and opinion denying Mr. Williams' PCRA petition. Because the relevant ***facts***—which were ***uncontroverted***—so clearly call for PCRA relief, Judge Brinkley had to engage in a succession of egregious overreaches to try to justify an unjustifiable result, and that is exactly what she did. Mr. Williams and his counsel appreciate that asserting that a judge of the Commonwealth has engaged in a results-oriented analysis is a serious matter, mainly because such conduct in the judiciary is so far outside the norm, and thus they do not make the claim lightly. Unfortunately, Judge Brinkley's conduct in this case, including in the written opinion, can only be characterized as an egregious overreach.

The examples of Judge Brinkley's outrageous statements are summarized below. These statements further demonstrate the injustice that is being done and why disqualification is warranted. Indeed, it is imperative that this Court take action to repair the harm that already has been done to the integrity of the judiciary and prevent future harm.

Judge Brinkley equates settled judicial practice in the First Judicial District to slavery and sexual abuse and harassment. In what might be a perfect example of the stretch Judge Brinkley had to make to justify her ruling against Mr.

Williams—which treats him differently than thousands of other PCRA petitioners in materially identically situations, Judge Brinkley stunningly stated that the 23-year practice of President Judges Legrome Davis and Sheila Woods-Skipper, in cooperation with past and present District Attorneys Lynne Abraham, Seth Williams, Kathleen Martin, Kelly Hodge, and Lawrence Krasner, as well as the highly respected Defender Association of Philadelphia, to correct wrongful convictions due to police perjury is akin to America's sad pre-Civil War heritage of condoning slavery:

> This Court was constrained to recognize that history is full of practices that existed for years without correction. The institution of slavery persisted in this country for over 300 years. The continuation of these practices depended upon the complicity of those who had the power to change it and believed that the practice was beyond reproach due to the longevity. The longevity of this practice repeatedly was legitimized by those who supported it. In addition, recently the #MeToo Movement has exposed the unequal power dynamics in society that effectively subjugated a class of citizens for hundreds of years.

Exhibit E at 26 n.8. It should go without saying that the practice of granting PCRA relief when the prosecution agrees that a new trial is necessary to correct a miscarriage of justice is not even on the same planet as sexual abuse and harassment, much less slavery. This settled practice of granting a new trial under these circumstances is to be applauded because it does justice for those who likely had been wrongfully convicted, not abhorred. Justice and injustice are not equivalent conditions.

Judge Brinkley manufactures a fiction that Mr. Williams is "attempting to pit one female trial judge against another." Almost as remarkably, Judge Brinkley asserts that the issue of whether an evidentiary hearing was necessary is "irrelevant" and that Mr. Williams is simply "attempting to pit one female trial judge against another" by pointing out the settled practice for handling these agreed-to petitions, all of which are before Judge Sheila Woods-Skipper. Exhibit E at 17 n.5. Judge Brinkley's assertion is way off base. First, the legal issue is not irrelevant—to the contrary, it is dispositive. Second, Mr. Williams' argument has nothing to do with gender and, indeed, is not based solely on Judge Woods-Skipper's practice; it is based on the practice of every President Judge in Philadelphia over the past 23 years, including Judge Legrome Davis—as well as every District Attorney during that past 23-year time period (a position held by both men and women during that time period). *See* Exhibit A at 20-41 (June 18, 2018 transcript). Again, Judge Brinkley's statement is reflective of her desperate and embarrassing attempts to justify the unjustifiable.

Judge Brinkley relies on out-of-court statements by a disgraced police officer, while at the same time she discredits a well-respected veteran of the Defender Association, to whose testimony the District Attorney has stipulated. Judge Brinkley spends eight pages of her opinion attempting to rehabilitate the reputation of former officer Graham, who resigned in disgrace after he lied to the FBI and his own police department about theft on the job, and whose credibility the Commonwealth is unwilling to stand behind. Exhibit E at 31-38. She finds—contrary to the Philadelphia Police Department, the FBI, and the District

Attorney—that "the totality of the evidence contained in Graham's statement point to his truthfulness in dealing with a difficult atmosphere of corruption in his immediate work environment." *Id.* at 38. Notably, Judge Brinkley had no trouble finding Officer Graham "credible" based on raw investigative memoranda and his statements, and, by contrast saying that she cannot assess the credibility of his accusers because only their sworn and certified affidavits were available to her. Exhibit E at 43. At the same time, Judge Brinkley relies on immaterial factual discrepancies in a PCRA petition the Defender Association mistakenly filed on Mr. Williams' behalf (and then immediately withdrew) to conclude that Mr. Bridge's undisputed testimony regarding settled practice for PCRA petitions cannot be relied upon. *Id.* at 20.[21] This is despite the fact that the District Attorney ***stipulated*** to the ***facts*** about which Mr. Bridge testified. Exhibit A at 104 (June 18, 2018 transcript); Exhibit H ¶ 9 (stipulation submitted during the June 18, 2018 hearing). Unfortunately, this overreach is just more of the same for Judge Brinkley.

Judge Brinkley's "analysis" demonstrates an effort to overreach or misdirect. While, as noted, Mr. Williams is not trying to use this application as a direct appeal, Judge Brinkley's analysis shows just how determined she was to deny Mr. Williams' PCRA petition. Judge Brinkley's opinion includes a section entitled "The After-Discovered Evidence Would Not Have Changed The Verdict

[21] Interestingly, Judge Brinkley never asked Mr. Bridge about this during her lengthy and far-reaching cross-examination.

At Trial." Exhibit E at 43-47. But the relevant inquiry is not what would have happened at the original trial (a bench trial before Judge Brinkley)—instead, it is whether the new evidence is of such nature and character that "a different verdict will likely result if a new trial is granted." *Commonwealth v. McCracken*, 659 A.2d 541, 545 (Pa. 1995).[22] Here, a different verdict would likely result if a new trial is granted because the Commonwealth cannot stand behind the credibility of its key witness. Judge Brinkley, however, believes that Graham's credibility at the first trial is the critical issue. Not so. The dispositive point is that District Attorney's Office (bound by the canons of ethics) is not willing to stand behind Graham—and thus he will not be testifying at any hypothetical new trial no matter what Judge Brinkley might think about him.

Again trying to go out of her way to find a basis to reject the truth that PCRA relief is necessary, Judge Brinkley says that she is "free to believe all, part, or none of the testimony of any witnesses, whether by testimony in court or by stipulation." Exhibit E at 43. That is flat wrong. *Falcione v. Cornell Sch. Dist.*, 557 A.2d 425, 428 (Pa. Super. 1989) ("Stipulated facts are, quite simply, a statement of facts to which the parties are in agreement. Because the parties are in agreement as to those facts contained in the stipulation, they are controlling. No further determination by the fact-finder is necessary since the parties have already agreed that those facts have occurred."); *Kershner v. Prudential Ins. Co.*, 554 A.2d

[22] Notwithstanding that Mr. Williams agreed to a bench trial in 2007, he would be entitled to a trial by jury in the hypothetical new trial.

964, 966 (Pa. Super. 1989) ("[S]tipulations are binding upon the court as well as on the parties agreeing to them."). Absent some suggestion of improper collusion or corruption—of which here there is none whatsoever—a stipulation is binding on the factfinder, other than on a jury at a criminal trial.

* * *

As noted, the parties agreed on the result required by the law—a fair and just one—and this matter should have been resolved just like thousands of others have been resolved. Judge Brinkley's conduct has both deprived Mr. Williams of a fair adjudication and undermined the integrity of this Commonwealth's judiciary. Accordingly, Mr. Williams now returns to this Court, requesting that this Court (1) disqualify Judge Brinkley, (2) vacate Judge Brinkley's June 25, 2018 order denying Mr. Williams' request for PCRA relief, and (3) either (a) direct the Court of Common Pleas of Philadelphia County to grant his PCRA petition, or (b) reassign the petition to Hon. Sheila Woods-Skipper who presides over the other similar PCRA petitions arising from the conduct of the now-discredited Narcotics Field Unit officers in Philadelphia County.

BASIS FOR THIS COURT'S JURISDICTION

Mr. Williams' prior filings in this Court have detailed the basis for this Court's King's Bench and extraordinary jurisdiction. *See In re Bruno*, 101 A.3d 635, 670 (Pa. 2014); *Commonwealth v. Chimenti*, 507 A.2d 79, 81 (Pa. 1986). In accordance with the governing statutes and case law, this Court has exercised jurisdiction in Mr. Williams' case in Nos. 29–31 EM 2018, which resulted in the

Court's April 24, 2018 Order. This Court also exercised jurisdiction in Case No. 59 EM 2018, which resulted in the Court's June 12, 2018 Order, in which the Court did not relinquish jurisdiction over the case.

ARGUMENT

A. This Court Should Disqualify Judge Brinkley And Vacate The Order Denying Mr. Williams' PCRA Petition

The June 18 hearing was more of the same—further demonstrating the "usual" way in which Judge Brinkley has handled Mr. Williams' case. *See* Case No. 31 EM 2018 (King's Bench Application). Judge Brinkley's conduct plainly has disqualified her from presiding over this case—in fact, the "interests of justice" demand her disqualification. Pa. R. Crim. P. 903.[23] Indeed, Judge Brinkley's conduct confirms what three Justices of this Court already have concluded—she should be disqualified because her conduct is undermining public confidence in the integrity of the judicial system.

[23] Disqualification under Rule 903 is not limited to situations where a judge "has been" disqualified (that is, the term is not used as a verb in the past perfect tense), but expressly extends to those cases where a judge "is" in the state or condition of being "disqualified" (that is, the term is used as an adjective or participle), as where, as here, no reasonable jurist would dispute the need for the case to be reassigned. In any event, this Court is not limited in exercising its King's Bench or extraordinary authority to the precise terms of that Rule. The "interests of justice" standard under Rule 903 contemplates allows for disqualification even where the common law "recusal" standard for lack of impartiality is not met. *Commonwealth v. King*, 839 A.2d 237, 241 (Pa. 2003) (finding no abuse of discretion where trial judge "concluded that he was not required to recuse himself" but nevertheless determined that the "interests of justice" required reassignment of a PCRA).

For starters, Judge Brinkley demonstrated her inability handle this case fairly when she insisted on an evidentiary hearing where none was needed because the District Attorney's Office has stated (repeatedly) that it agrees PCRA relief is necessary here because it cannot stand behind the credibility of the sole prosecution witness who testified at Mr. Williams' trial and has stipulated to the material ***facts*** needed to show that Mr. Williams is entitled to PCRA relief as a matter of law. Pa. R. Crim. P. 907(2) ("A petition for post-conviction collateral relief may be granted without a hearing when the petition and answer show that there is no genuine issue concerning any material fact and that the defendant is entitled to relief as a matter of law.").

And, by insisting on an evidentiary hearing—and then denying the petition in the face of the undisputed facts requiring such relief—Judge Brinkley has treated Mr. Williams' case far differently than other cases. Indeed, requiring an evidentiary hearing where the Commonwealth concedes PCRA relief is required is unprecedented and "troublesome"—as Mr. Bridge's testimony established. Exhibit A at 29. Mr. Bridge testified that in 1,500 similar PCRA cases in which he has been involved, he has never had a judge order an evidentiary hearing where the prosecution has conceded the legitimacy of PCRA relief. Exhibit A at 39; *see also* Exhibit H ¶ 9 (stipulation that was submitted during the June 18, 2018 hearing, which includes Bridge affidavit). And, on April 20, 2018, in three materially identical cases where the Commonwealth conceded the requested PCRA relief because—like here—the convictions depended solely on Officer Graham's testimony—Judge Woods-Skipper granted a new trial without an evidentiary

hearing. Exhibit A at 31-36, 87 (June 18, 2018 transcript); Exhibit H ¶ 10 (stipulation that was submitted during the June 18, 2018 hearing, which includes transcripts from Judge Woods-Skipper cases).

The fact that Mr. Williams is being treated differently from all other defendants who have petitioned for PCRA relief with the consent of the Commonwealth is not just troublesome, it demonstrates Judge Brinkley's lack of impartiality, thereby undermining public confidence in the integrity of the judiciary. Indeed, given her public comments to the press (through her attorney), and her behavior during the hearing (like her behavior before), it is fair to say that Judge Brinkley's insistence on an evidentiary hearing that neither party wanted or believed was needed again reflected her pattern of taking on a prosecutorial role and smacked of an attempt by to conjure up a record, perhaps bolstered by her "credibility" findings, to dispute Mr. Williams' uncontested right to PCRA relief. *See Interest of McFall*, 617 A.2d 707, 713 (Pa. 1992) (holding that "[a] judge should respect and comply with the law and should conduct [her]self at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and that "the appearance of bias or prejudice can be as damaging to public confidence in the administration of justice as would be the actual presence of either of these elements") (citation omitted).

And, as detailed above, there is far more showing Judge Brinkley's inability to preside fairly over this case. She refused to even address the issue of her recusal or disqualification; threatened to adjourn the hearing if counsel persisted in making a record for such disqualification; assumed an adverse prosecutorial role wherein

she relentlessly cross-examined (and laughed derisively at) Mr. Williams' witness; falsely denied that injudicious laughter; essentially cross-examined the Assistant District Attorney and implicitly accused that Office of recklessly agreeing without basis to the dismissal of valid final convictions; stated that she knew this case would be going to a higher court (which it could only if she ruled against Mr. Williams, thus revealing prejudgment), and instructed the court reporter (unsuccessfully) to not take down the objections from Mr. Williams' counsel. Then, in her written opinion, Judge Brinkley baselessly attacked the integrity and veracity of a career public defender (of unimpeachable reputation and peerless achievements) and accused undersigned counsel of focusing on her gender and of offering fabricated evidence, while equating counsel with the defenders of slavery for endorsing longstanding practices for the correction of wrongful conviction. *See, e.g.*, *Commonwealth v. Darush*, 459 A.2d 727, 732 (Pa. 1983) ("[C]onsidering all the circumstances, especially the trial court's inability to affirmatively admit or deny making remarks from which a significant minority of the lay community could reasonably question the court's impartiality, we feel the largely unfettered sentencing discretion afforded a judge is better exercised by one without hint of animosity toward appellant.").

Perhaps most significantly, Judge Brinkley's treatment of Mr. Williams violates Mr. Williams' fundamental right to a fair hearing and equal treatment. *Commonwealth v. Melnyk*, 548 A.2d 266, 269 (Pa. Super. 1988) (equal protection guarantee guards against "'disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable'") (quoting *Ross v.*

Moffitt, 417 U.S. 600 (1974)).[24] Indeed, Judge Brinkley's conduct at the hearing confirms that her disqualification is required not only under Rule 903's interests of justice standard and this Court's precedents governing recusal, but also under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

The United States Supreme Court has long recognized that a fair hearing before an impartial judge is a minimum requisite of due process under the U.S. Constitution. *See Tumey v. Ohio*, 273 U.S. 510 (1927). Due process entitles a defendant to "'a proceeding in which he may present his case with assurance' that no member of the court is 'predisposed to find against him.'" *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1910 (2016) (quoting *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980)). The due process principle extends to both actual bias and the appearance of bias. *See Taylor v. Hayes*, 418 U.S. 488 (1974) (judge who becomes personally embroiled with litigant and cannot maintain cool detachment must recuse); *Johnson v. Mississippi*, 403 U.S. 212, 215–16 (1971) (extrajudicial comments by judge and civil rights lawsuit against him by defendant combined to require recusal as a matter of due process); *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971) (due process barred judge from adjudicating citation of contempt based on defendant's reviling of the judge).

If the Due Process Clause of the Fourteenth Amendment prevents the former supervising prosecutor of a certain case from later serving as an appellate judge in

[24] Here, Judge Brinkley has literally made Mr. Williams into the proverbial Equal Protection "class of one." *See Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1327 n.27 (2016).

the same matter, *see Williams*, 136 S. Ct. 1899, then surely a person cannot function simultaneously as both prosecutor and judge in a case, as Judge Brinkley attempted to do in this case on June 18 (and before). *See also Young v. U.S. ex rel. Vuitton et Fils*, 481 U.S. 787 (1987) (discussing prosecutorial independence as essential to due process).

Not only should this Court disqualify Judge Brinkley, but it also should vacate her order denying Mr. Williams' PCRA petition. That is the only way Mr. Williams can be afforded the full extent of the relief to which he is entitled. This Court's King's Bench powers are broad, and so it may order whatever relief is needed to prevent injustice. That power extends to vacating orders entered by a trial court judge whose impartiality can be questioned. *See, e.g.*, *Joseph v. Scranton Times L.P.*, 987 A.2d 633, 637 (Pa. 2009) ("Because the appearance of judicial impropriety was established here, no showing of actual prejudice need be made …. [W]e agree with President Judge Platt's recommendation that the verdict and judgment entered in the *Joseph* case 'as well as all substantive orders' entered by Conahan and Ciavarella be vacated, and this matter returned to the Court of Common Pleas of Luzerne County for assignment to a new judge for a new trial.").

B. This Court Should Direct That Mr. Williams' PCRA Petition Be Granted

A defendant is entitled to PCRA relief (a new trial) as a matter of law when new evidence, if believed by a jury, would likely result in a different verdict at a hypothetical new trial. *McCracken*, 659 A.2d at 545; *Commonwealth v. Perrin*, 59 A.3d 663, 669 (Pa. Super. 2013) (Wecht, J., concurring) (stating that the issue of

whether the new evidence would likely result in a different verdict if a new trial were granted "tends to dominate the entire inquiry"). It is not necessary that the newly discovered evidence would justify complete acquittal, only that it would likely affect the outcome of the trial. *Commonwealth v. Bonaccurso*, 625 A.2d 1197 (Pa. Super. 1993). The question is not, as Judge Brinkley seemed to think, whether the factfinder at the first trial, upon consideration of new evidence, now believes she erred.

Where the Commonwealth agrees to a new trial or concludes that the credibility of a prosecution witness is fatally undermined because the new evidence contradicts its sole witness, then there is no genuine issue as to whether the new evidence (if believed by the jury at a hypothetical new trial) would likely result in a different verdict. *See Commonwealth v. Fiore*, 780 A.2d 704 (Pa. Super. 2001) (after a trial judge denied PCRA relief based on the "questionable credibility" of the new evidence, the Superior Court reversed because the new evidence "contradicts the Commonwealth's case-in-chief" and "a jury should be presented with the testimony of [the new witness] to permit it to determine whether his version of the events is more credible than that of [the Commonwealth's witnesses]"); *Commonwealth v. Rollins*, 3499 EDA 2016 (Pa. Super. Dec. 20, 2016) (per curiam) (summarily reversing denial of PCRA petition where Commonwealth had agreed to relief in the court below).

Newly discovered evidence suggesting that that a conviction was based almost entirely on perjury of the Commonwealth's only witness cannot be characterized as "merely impeaching" or as offered "for impeachment purposes"

McCracken, 659 A.2d at 550; *Commonwealth v. Perrin*, 108 A.3d 50, 52-54 (Pa. Super. 2015) (affidavit showing key witness lied at defendant's trial is not mere impeachment); *Perrin*, 59 A.3d at 668 (Wecht, J., concurring, at earlier stage of case; explaining that "merely impeaching" doctrine is no more than an application of the rule that newly discovered evidence must be such that it would likely change the outcome). This is not a recantation case. Indeed, post-trial discovery that a conviction rests entirely (or nearly so) on the testimony of a witness who perjured himself ***in other trials*** suffices to award a new trial on a motion for post-conviction relief. *Commonwealth v. Mount*, 257 A.2d 578 (Pa. 1969) (PCHA; police forensic scientist found to have misrepresented her credentials).

Here, Mr. Williams and the District Attorney presented a stipulation with documentary evidence that establishes a sufficient factual record for PCRA relief. Nothing further is needed to show that there is newly-discovered evidence that would contradict the Commonwealth's previous case-in-chief, which depended solely on the testimony of Officer Graham. Thus, there is no dispute that the new evidence regarding Officer Graham, if believed by a jury, would likely result in a different verdict. The parties have stipulated that, among other things: Officer Graham was the affiant on the search warrant and the only witness called by the Commonwealth in Mr. Williams' trial; the Commonwealth does not have confidence in the credibility of Officer Graham's testimony; sworn affidavits of former police officers detail Officer Graham's criminal misconduct and contradict Officer Graham's testimony concerning Mr. Williams' arrest; the Philadelphia

Police Department Internal Affairs found Officer Graham guilty of lying and theft; Officer Graham failed an FBI polygraph on the question of his stealing cash seized as evidence; and that PCRA relief is warranted in the form of a new trial. Exhibit H (stipulation that was submitted during the June 18, 2018 hearing).

The District Attorney's Office explained the basis for the stipulations and agreement to PCRA relief at the June 18 hearing:

> And we have done so based on examining the nature of the corruption that was found, Officer Graham. The FBI determined he lied and Internal Affairs determined he lied. And looking at all the evidence in total, we do not have confidence in his testimony both going forward as was decided by the DA's Office in 2014, and going back the as long as we have evidence there was some misconduct.

Exhibit A at 104; *see also* Exhibit G (May 29, 2018 Commonwealth Letter).

RELIEF REQUESTED

In the "interests of justice" under Pennsylvania Rule of Criminal Procedure 903, in the interest of vindicating Mr. Williams' rights, and in order to restore any loss of public confidence in the integrity and impartiality of the judiciary, this Court should (1) disqualify Judge Brinkley, (2) vacate Judge Brinkley's June 25, 2018 order denying Mr. Williams' request for PCRA relief, and (3) either (a) direct the Court of Common Pleas of Philadelphia County to grant his PCRA petition, or (b) reassign the petition to Hon. Sheila Woods-Skipper who presides over the other similar PCRA petitions arising from the conduct of the now-discredited Narcotics Field Unit officers in Philadelphia County.

Respectfully submitted,

By: /s/ *Kim M. Watterson*

Kim M. Watterson
M. Patrick Yingling
REED SMITH LLP
225 Fifth Ave.
Pittsburgh, PA 15222
412-288-3131
kwatterson@reedsmith.com

/s/ *Peter Goldberger*

Peter Goldberger
LAW OFFICE OF PETER GOLDBERGER
50 Rittenhouse Place
Ardmore, PA 19003
610-649-8200

/s/ *Brian J. McMonagle*

Brian J. McMonagle
MCMONAGLE, PERRI, MCHUGH &
MISCHAK, P.C.
1845 Walnut St., 19th Fl.
Philadelphia, PA 19103
215-981-0999

/s/ *Joshua M. Peles*

Joshua M. Peles
REED SMITH LLP
Three Logan Square
1717 Arch St., Suite 3100
Philadelphia, PA 19103
215-241-7939

Of Counsel:
James C. McCarroll
Jordan W. Siev
REED SMITH LLP
599 Lexington Ave.
New York, NY 10022
212-521-5400

Of Counsel:
Joseph Tacopina
Chad D. Seigel
TACOPINA & SEIGEL
275 Madison Ave. 35th Fl.
New York, NY 10016
212-227-8877

Dated: June 27, 2018

Counsel for Robert Williams

CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I certify pursuant to Pa. R. App. P. 127 that this filing (including the contemporaneously-filed exhibits) complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (eff. 1/5/2018) that require filing of confidential information and documents differently than non-confidential information and documents.

/s/ Kim M. Watterson

Kim M. Watterson
REED SMITH LLP
225 Fifth Ave.
Pittsburgh, PA 15222
412-288-3131
kwatterson@reedsmith.com

PROOF OF SERVICE

On June 27, 2018, I caused a copy of the foregoing to be served on the Philadelphia County District Attorney's Office and Criminal Division of Philadelphia via the electronic filing system, PACFile.

/s/ Kim M. Watterson

Kim M. Watterson
REED SMITH LLP
225 Fifth Avenue
Pittsburgh, PA 15222
412-288-3131
kwatterson@reedsmith.com