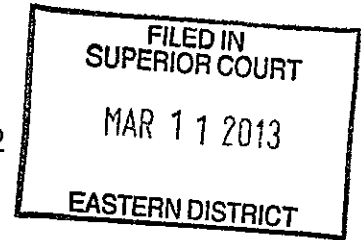


IN THE
SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA : NO. 3059 EDA 2012

V.

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



COMMONWEALTH'S MOTION TO SUBMIT APPEAL ON BRIEFS

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

R. SETH WILLIAMS, District Attorney of Philadelphia County, by his Assistants, RONALD EISENBERG, Deputy, Law Division, and HUGH J. BURNS, JR., Chief, Appeals Unit, respectfully moves to submit the instant appeal on the briefs, and thus states:

1. Defendant was convicted of first degree murder in July 1982. The instant appeal seeks to dispute a ministerial act of the Court of Common Pleas in correcting defendant's death sentence to a life sentence on the docket, in compliance with the order of a federal court after 30 years of litigation.

2. Defendant has returned the standard form indicating that he wishes the case to be scheduled for oral argument.

3. Defendant's claims are governed by the PCRA. Contrary to his view, that his sentence was altered does not re-start the direct appeal process. Rather, years after that process was completed, the Common Pleas Court merely entered on the docket a sentence of life imprisonment for his first degree murder conviction in compliance with the order of a federal court. *Abu-Jamal v. Horn*, 2001 U.S. Dist. LEXIS 20812 (E.D. Pa. Dec. 18, 2001) ("After 180 days, should the Commonwealth of Pennsylvania not have conducted a new sentencing hearing, the writ shall issue and the Commonwealth shall sentence petitioner to life imprisonment"); *aff'd*, *Abu-Jamal v. Sec'y, Pa. Dep't of Corr.*, 643

F.3d 370 (3d Cir.2011).¹ This case therefore remains governed by the PCRA. *Commonwealth v. Soto*, 983 A.2d 212, 213 (Pa. Super. 2009) (claims purportedly raised under Pa.R.Crim.P. 720 but filed “after completion of the direct appeal process” were governed by the PCRA); *Commonwealth v. Wrecks*, 931 A.2d 717, 720 (Pa. Super. 2007) (same).²

4. Because this is a PCRA matter, Rule of Appellate Procedure 2311(b) required defendant to submit it on the briefs.

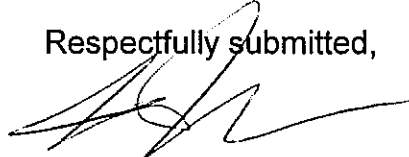
5. Even if this were not a PCRA appeal, it should be submitted on briefs in this Court’s discretion. When this case was twice argued before the federal Third Circuit (in its ceremonial en banc courtroom with a seating capacity of 300), it attracted overflow crowds of onlookers and demonstrators, requiring the Court to impose elaborate and costly security measures (See, e.g., *Philadelphia Inquirer*, article of November 10, 2010, estimating number of “supporters” outside the courtroom at 500). The facilities and resources available to this Court for oral argument are unlike those available to the federal court of appeals, which among other things could call upon the United States Marshals service to provide whatever crowd control assistance was warranted. The issues in this case are not exotic, oral argument is not necessary for sound appellate review, and the potential administrative and other burdens on the Court that oral argument would entail are prohibitive.

¹ Defendant obtained this order in a 2001 federal habeas corpus proceeding, in which he sought either a new trial or a new sentencing hearing in which he could potentially be sentenced to life in prison. The order became final upon the completion of the federal appellate process in October 2011, and required the Commonwealth to either convene a new sentencing hearing or impose a life sentence. Because the Commonwealth elected not to convene a new sentencing hearing, the order of the federal court compelled entry of a life sentence.

² See 42 Pa.C.S. § 9542 (PCRA is the “sole means of obtaining collateral relief”); *Commonwealth v. Hall*, 771 A.2d 1232, 1234-1236 (Pa. 2001) (no jurisdiction for post-conviction collateral relief outside the PCRA); *Commonwealth v. Chester*, 557 Pa. 358, 733 A.2d 1242, 1250-51 (Pa. 1999) (same); *Commonwealth v. Ahlborn*, 699 A.2d 718, 721 (Pa.1997) (same).

WHEREFORE, this Court should order the instant appeal to be submitted on briefs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "HJB", with a long horizontal flourish extending to the right.

HUGH J. BURNS, JR.
Chief, Appeals Unit

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PROOF OF SERVICE

I hereby certify that I am on this day serving the attached document upon the person(s) and in the manner indicated below which service satisfies the requirements of Pa.R.A.P. 121:

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