

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

IN RE: : NO. 7 JD 2015

:  
THOMASINE TYNES :  
FORMER JUDGE :  
PHILADELPHIA TRAFFIC COURT :  
PHILADELPHIA COUNTY :

RECEIVED AND FILED  
COURT OF JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

PRETRIAL MEMO OF THE RESPONDENT, THOMASINE TYNES

The Respondent, Thomasine Tynes, by her counsel, Samuel C. Stretton, Esquire, hereby respectfully files the following pretrial memorandum:

A.) List of Character Witnesses

1. Thomasine Tynes, at any sanction hearing, would only call character witnesses unless her criminal convictions are reversed, and then she would call fact witnesses. Character witnesses who would be called on behalf of Thomasine Tynes are as follows:

- a.) Richard Hoy, Esquire
- b.) Retired Judge Richard Klein
- c.) Dr. Donna Laws
- d.) Michael Golder (a long-time friend of the Respondent).

There may be some additional character witnesses, but all of the above would be solely character.

B.) List of Fact Witnesses

1. Unless Thomasine Tynes' criminal convictions are overturned, Thomasine Tynes would have no fact witnesses. If the criminal convictions are overturned, then she would have numerous fact witnesses, including any and all witnesses referenced during the criminal trial and F.B.I. Agents and tapes that would need to be authenticated from the alleged gifting of the bracelet. At this point, these witnesses would be premature because her convictions have not been overturned. If the conviction for the bracelet was overturned, she would want the F.B.I. tapes showing she attempted to repay the funds for the bracelet, further showing that she never agreed to give anything in connection with the bracelet.

C.) Stipulations

1. The only stipulations currently would be the stipulation that Thomasine Tynes was convicted in federal court and that is presently on appeal, for her perjury conviction.

2. The second stipulation would be, if it is agreed upon, that Thomasine Tynes pled guilty in the Court of Common Pleas before the Honorable Thomas Gavin, a Senior Judge sitting by designation in Philadelphia, to a misdemeanor charge. The stipulation would include the fact that a Post Conviction Hearing Relief Petition is currently pending, awaiting a hearing.

D.) Certification

1. The defense has not furnished the Judicial Conduct Board any material since there is no material to furnish because of the two convictions. If the conviction is reversed, then there would be quite a bit of discovery, but that is premature.

2. Mr. Stretton has talked to Mr. Kleman about this case, but the essence of the conversations are, there is nothing that can be done while the convictions are pending.

E.) Additional Issues

1. This hearing should not go forward while the appeals are pending. Thomasine Tynes again requests that any hearing or trial be deferred for the following reasons:

a.) Her perjury conviction is presently pending before the United States Court of Appeals for the Third Circuit and has been pending now for several years. Recently her attorney filed a Supplemental Submission because the appellate record is not correct. Attached and marked as Exhibit "A" is the Supplemental Submission. Thomasine Tynes again requests a deference because her federal criminal conviction is on direct appeal and may people believe that this conviction will be reversed.

b.) Thomas Tynes' guilty plea in state court to accepting a bracelet is being vigorously challenged in a Post-Conviction Hearing Relief Petition, which is pending. Attached

and marked as Exhibit "B" is the Post Conviction Hearing Relief Petition filed by Attorney Joseph Valvo. That petition, in essence, alleges ineffective assistance of counsel due to the plea taking place. The essence of that is that her attorney told her to plead and assured her that she would maintain all her pension rights and not serve any jail time. Her attorney further ignored the evidence that Thomas Tynes, when given the bracelet, did not have any agreement to make any decision or do anything for the person, and immediately attempted to pay for the bracelet and actually called the person to arrange paying for the bracelet. All of these facts are potentially winnable issues on a Post Conviction Hearing Relief Petition, which is pending presumably before the same judge, the Honorable Thomas Gavin, a Senior Judge from Chester County who is sitting by designation in Philadelphia County.

c.) Although P.C.R.A.'s are not usually the basis for a deferral, in this case there is a strong underlying basis for the P.C.R.A. and, therefore, there is an excellent chance this conviction could be reversed very shortly. If this conviction is reversed, there would be no basis to discipline Thomasine Tynes at this time because her federal conviction for perjury is still on direct appeal.

d.) Thomasine Tynes is asking that these matters be further deferred. There is no harm in deferring since she is

retired and no longer on the bench and she had retired before any of the criminal matters took place. She is too old to serve any judicial office now since she is beyond the 70 year mandatory retirement time period. She is not in good health. Therefore, there is no concern that she would be seeking judicial office again and, in fact, there is no judicial office she, as a non-lawyer, could seek in Philadelphia County, where she resides. Therefore, there would be no harm or prejudice to the Judicial Conduct Board by waiting until either the Post Conviction Hearing Relief Petition is resolved one way or the other, or her federal appeal is resolved. But there would be grave prejudice to Thomasine Tynes if this Honorable Court had a hearing on discipline and sanctions because she would then be removed from the bench and that could well affect her pension. If the convictions were later reversed, then of course everything would be reinstated, but in the interim she would be in dire financial hardship. She would face a very difficult time. Thomas Tynes, therefore, is requesting that no hearing go forward until the appeal and the P.C.R.A. Petition concerning her criminal convictions are resolved. If, in fact, the criminal convictions are not resolved in her favor, then of course, Thomasine Tynes would be removed based on the federal felony criminal conviction of perjury. That has not occurred because there has been no final decision.

F.) Thomasine Tynes' Medical Condition

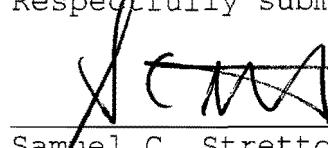
1. There is also an additional reason for delay since Thomasine Tynes is not well and is ill. There were some questions as to her mental clarity and serious memory issues. It is possible Thomasine Tynes is not competent to proceed. She is being treated by Dr. Mary Hofmann. Thomasine Tynes retired and has been on regular medication. She will also be treating with a psychologist, Dr. Ann Eichen. The doctors may be called to testify.

2. When Mr. Stretton talks with the Respondent, her mind seems clear. She appears to understand what Mr. Stretton is saying and responds directly to the issues questioned. But Mr. Stretton is not a psychologist. Further, he does not know and hasn't spent enough time with the Respondent to know the effect of her memory loss and particularly short term memory loss, and whether that would prevent her from being able to fully participate in any hearing. These are issues that have to be discussed at the prehearing conference.

WHEREFORE, the Respondent, Thomasine Tynes, by her counsel, Samuel C. Stretton, Esquire, in reference to this Pretrial Memo, respectfully raises the fact that this conference should be continued because there is a pending direct appeal on her federal conviction and there is a very active, but potentially meritorious Post Conviction Hearing Relief Petition pending on

her state criminal charge. Those documents are attached as Exhibits "A" and "B". Further, there is an issue as to the Respondent's health and clarity of thought and ability to recall due to her age and other infirmities.

Respectfully submitted,

  
\_\_\_\_\_  
Samuel C. Stretton, Esquire  
Attorney for Respondent,  
Thomasine Tynes  
301 South High Street  
P.O. Box 3231  
West Chester, PA 19381-3231  
(610) 696-4243  
Attorney I.D. No. 184

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

IN RE: : NO. 7 JD 15  
:  
**THOMASINE TYNES** :  
**FORMER JUDGE** :  
**PHILADELPHIA TRAFFIC COURT** :  
**PHILADELPHIA COUNTY** :

CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the Pretrial Memo of the Respondent, Judge Thomasine Tynes, in the captioned matter upon the following persons in the manner indicated below.

Service by Federal Express, overnight delivery addressed as follows:

1. Cathy Kane, Court Administrator  
Court of Judicial Discipline  
Pennsylvania Judicial Center  
601 Commonwealth Ave., Suite 5500  
P.O. Box 62595  
Harrisburg, PA 17106-2595  
Cathy.Kane@pacourts.us

Service by First Class Mail addressed as follows:

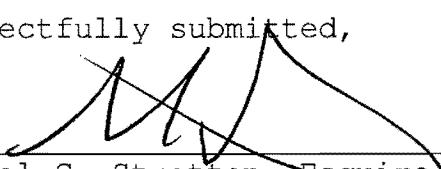
2. James Kleman, Esquire  
Court of Judicial Discipline  
Pennsylvania Judicial Center  
601 Commonwealth Ave., Suite 3500  
P.O. Box 62595  
Harrisburg, PA 17106-2595  
James.KlemanJr@jcbpa.org

3. Thomasine Tynes  
River Park House Condominiums  
Unit 1905  
3600 Conshohocken Avenue  
Philadelphia, PA 19131

Respectfully submitted,

9/26/16

Date

  
Samuel C. Stretton, Esquire  
Attorney for Respondent,  
Thomasine Tynes  
301 South High Street  
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West Chester, PA 19381-3231  
(610) 696-4243  
Attorney I.D. No. 18491

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

MICHAEL LOWRY,  
ROBERT MULGREW, and  
THOMASINE TYNES  
Defendants.

No. 2:13-CR-39-02, -03 & -05  
(Stengel, J.)

**SUPPLEMENTAL SUBMISSION IN SUPPORT OF MOTION TO CORRECT  
AND COMPLETE APPELLATE RECORD, AND  
MOTION FOR STATUS CONFERENCE**

Defendant-Appellants Michael Lowry, Robert Mulgrew and Thomasine Tynes (“Movants” herein), by undersigned appellate counsel, hereby (1) submit an additional Declaration of trial counsel in support of their Motion pursuant to Fed. R. App. P. 10(c); and (2) move this Court to schedule a status conference.

**1. Supplemental Submission**

In their August 9, 2016 Motion to Correct and Complete the Appellate Record (Doc. No. 607), Movants noted that they were awaiting a declaration from attorney Paul Hetznecker, and would file it when Mr. Hetznecker completed it rather than delay the filing of the Motion. Mr. Hetznecker has now supplied a Declaration, which is attached hereto as Exhibit “A.”

**2. Motion for Status Conference**

More than a year has passed since the defendant-appellants discovered, in August 2015 after detailed review of the voluminous record, that several portions of the trial transcript were

Exhibit A

missing. They have made substantial efforts since then to complete the record, including filing with this Court a Motion to Correct the Appellate Record pursuant to Fed. R. App. P. 10(e). (Doc. No. 584, filed Dec. 15, 2015.) Although the Clerk's Office had denied that any material was missing, defendant-appellants eventually succeeded in demonstrating that it was. On May 31, 2016 the Clerk filed several supplemental transcripts, which purportedly included all of the missing material identified in the Fed. R. App. 10(e) Motion. The Court denied the Rule 10(e) Motion as moot on June 10, 2016.

Unfortunately, as detailed in the Movants' August 9, 2016 Motion, portions of the record remain missing and portions are ambiguous (with, *e.g.*, inconsistent transcriptions of the same portions). The Movants again ask the Court's assistance to complete and correct the record, as Rule 10 calls upon the district court to do when such issues arise in a pending appeal. The government has indicated no opposition to the Court's doing so.

The appeals cannot move forward until this Court resolves the pending Motion. The Movants' appeals were docketed on December 23, 2014 (Tynes), December 29, 2014 (Mulgrew) and February 9, 2015 (Lowry). The passage of time, without even a briefing schedule, has caused the defendant-appellants great hardship and may risk casting a poor light on the justice system. Michael Lowry, for example, has completed his prison sentence and is on supervised release. Thomasine Tynes has been released from federal prison to home confinement and will complete her term on November 1, 2016. Similarly, Willie Singletary has been released from prison and will complete his term on November 19, 2016. Robert Mulgrew has now begun to serve the prison sentence that was imposed in this matter. Even the defendant-appellants who did not go to trial (Hird and Alfano) are suffering from the passage of time, because their appeals are consolidated with those of the defendant-appellants who did, and thus also in limbo.

Appellate counsel are duty-bound by Rule 10 to do their best to complete the appellate record. Their experience in this matter gives them cause to question whether material that is still missing is truly irretrievable; and the Court's assistance is still required to resolve the ambiguities in the current record. That said, at some point the Court will determine that the record is as complete as it is possible to make it. When the defendants-appellants who went to trial know that additional efforts to complete the record would be futile, they may conclude that the record is sufficient to permit meaningful review and forgo arguing that the omissions warrant a new trial pursuant to, e.g., *United States v. Sussman*, 709 F.3d 155, 171 (3d Cir. 2013). In any event that argument for a new trial will, if made, simply be one point in the merits briefing. The sooner the Court is able to assist the parties in resolving the issues that remain open, the sooner the Court of Appeals will be able to move the matter forward.

For all of these reasons, the Movants respectfully request that that the Court schedule a status conference to address the pendency of the Motion.

Respectfully submitted,

/s/ Peter Goldberger  
Peter Goldberger  
50 Rittenhouse Place  
Ardmore, PA 19003  
610-649-8200  
[peter.goldberger@verizon.net](mailto:peter.goldberger@verizon.net)  
Attorney for Defendant-Appellant Mulgrew

/s/ Michael J. Engle  
Michael J. Engle  
Greenblatt Pierce Engle Funt & Flores  
123 S. Broad Street, Suite 2500  
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215-985-4275  
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Attorney for Defendant-Appellant Lowry

/s/ Lisa A. Mathewson  
Lisa A. Mathewson  
The Law Offices of Lisa A. Mathewson, LLC  
123 S. Broad Street, Suite 810  
Philadelphia, PA 19109  
215-399-9592  
[lam@mathewson-law.com](mailto:lam@mathewson-law.com)  
Attorney for Defendant-Appellant Tynes

Dated: September 15, 2016

CERTIFICATE OF SERVICE

I certify that on this date I served the foregoing Supplemental Submission in Support of Motion to Correct and Complete Appellate Record, and Motion for Status Conference on all parties of record via this Court's electronic filing system.

/s/ Lisa A. Mathewson

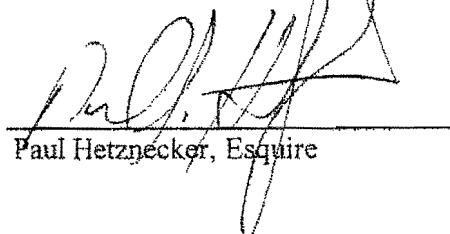
September 15, 2016

**EXHIBIT "A"**

AFFIDAVIT AND DECLARATION OF PAUL HETZNECKER, ESQUIRE

I, Paul Hetznecker, Esquire do hereby swear and declare that the following is true and correct to the best of my knowledge, information and belief subject to the penalties for unsworn falsification to authorities set forth in 28 U.S.C. § 1746.

1. I am an attorney licensed to practice in Pennsylvania.
2. I represented Robert Moy in *United States v. Sullivan et al.*, 2:2013-CR-00039, and I was present during the trial, which began on May 27, 2014.
3. Appellate counsel asked me to review portions of the trial transcripts for the purpose of determining whether I recall the substance of the purportedly missing sidebar discussions.
4. I do not recall taking notes regarding any of the sidebar discussions during the trial.
5. I do not recall the specifics of the conversations that occurred at sidebar during the aforementioned trial.
6. I declare and state under the penalty of perjury that the foregoing is true and correct.



Paul Hetznecker, Esquire

Executed on:

9/12/16

LAW OFFICES OF JOSEPH J. VALVO, ESQUIRE  
BY: JOSEPH J. VALVO, ESQUIRE  
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1500 John F. Kennedy Blvd. Ste. 520  
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Phone No.: 215-893-9555  
Fax No.: 215-893-9666

FILED

DEC 16 2015

Post Trial Unit

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COMMONWEALTH	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
	:	
	:	
v.	:	Criminal Trial Division
	:	
	:	
THOMASINE TYNES	:	CP-51-CR-0012304-2014
	:	Charges: Improper Influence

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RULE

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_ 2015, a Rule is hereby issued upon the Commonwealth to come forth and show cause why the relief requested here-in should not be Granted.

Rule returnable on the \_\_\_\_\_ day of \_\_\_\_\_, 2015 at \_\_\_.m in Courtroom \_\_\_\_\_ of the Criminal Justice Center.

By The Court,

J.

Exhibit "B"

LAW OFFICES OF JOSEPH J. VALVO, ESQUIRE  
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Phone No.: 215-893-9555  
Fax No.: 215-893-9666

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COMMONWEALTH	:	PHILADELPHIA COUNTY COURT OF COMMON PLEAS
v.	:	Criminal Trial Division
THOMASINE TYNES	:	CP-51-CR-0012304-2014 Charges: Improper Influence

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_ 2015, upon consideration of  
Defendant's counseled Petition for Post-Conviction Collateral relief, it is hereby ORDERED that  
said Petition is granted. Defendant may withdraw her Plea of Guilty and have her Right to a Jury  
Trial Re-Instated.

By The Court,

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J.

LAW OFFICES OF JOSEPH J. VALVO, ESQUIRE  
BY: JOSEPH J. VALVO, ESQUIRE  
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Philadelphia, PA 19102  
Phone No.: 215-893-9555  
Fax No.: 215-893-9666

COMMONWEALTH	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
	:	
v.	:	Criminal Trial Division
	:	
	:	
THOMASINE TYNES	:	CP-51-CR-0012304-2014
		Charges: Improper Influence

#### PETITION FOR POST-CONVICTION COLLATERAL RELIEF

AND NOW, Defendant/ Petitioner, Thomasine Tynes, by attorney Joseph J. Valvo, Esquire, hereby files the following petition for post-conviction collateral relief, and in support thereof, says as follows:

1. Petitioner is Thomasine Tynes Federal Inmate #68928-066, currently incarcerated at FMC Carswell Medical Center, Naval Air Station J Street Building 3000 Fort Worth, TX 76127.
2. Petitioner was arrested on 10/23/2014 in connection with an allegation that she accepted improper benefits/ or wielded improper influence as a Government Official.
3. On 10/28/2014, Petitioner waived her Preliminary Hearing before the Honorable Charles Hayden of the Municipal Court of Philadelphia County. She was represented at said Preliminary Hearing by Louis Buscio, Esq.
4. On 11/18/2014, Petitioner was arraigned on the charges.
5. On 11/18/2014, The Honorable Judge Gavin accepted a Plea of Guilty to 65§1103(A): Restricted Activities.
6. On 11/18/2014, Petitioner was sentenced by Judge Gavin to 11.5-23 months for the conviction, to run concurrent with the pending Federal Sentence.
7. There is no further activity on the Court Docket.
8. Respective of 42 Pa C.S.A § 9545, she has until 12/17/15 to file her PCRA.

9. On or about 12/15/15, Petitioner hired instant Counsel to file this Petition.
10. Respective of the foregoing, Counsel has not yet had the opportunity to fully evaluate the case and claims.
11. Upon review of the information available/ known, it appears Petitioner has meritorious issues regarding:
  - A. Ineffective Assistance of Counsel
  - B. Illegal Sentence
  - C. Non knowing/ Intentional/ Voluntary Guilty Plea
  - D. After Discovered Evidence
12. Petitioner brings this proceeding pursuant to 42 Pa.C.S. A§ 9543(a) which provides for relief for where a prisoner's conviction has resulted from:
  - A. A violation of the Constitution of this Commonwealth or the Constitution of laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
  - B. Ineffective assistance of Counsel which, in the circumstances of the particular case, so undermined the truth-determined process that no reliable adjudication of guilt or innocence could have taken place.
13. Petitioner had the right to effective assistance of counsel [See e.g: United States Constitution, Amendments 6 and 14, and the Pennsylvania Constitution, Article I, §9 and Article V, §9. See also Evitts v. Lucey, 469 U.S. 387 (1985)].
14. The within PCRA petition is the first opportunity afforded Petitioner to raise the issue of **Ineffective Assistance of Counsel** alleged herein, and the issue has not been previously litigated or waived.
15. The within PCRA petition is the first opportunity afforded Petitioner to raise the issue of **Illegal Sentence** alleged herein, and the issue has not been previously litigated or waived.
16. The within PCRA petition is the first opportunity afforded Petitioner to raise the issue of **Non-Knowing/Intentional/Voluntary alleged Guilty Plea** alleged herein, and the iss
- 17.

17. The within PCRA petition is the first opportunity afforded Petitioner to raise the issue of **After Discovered Evidence** alleged herein, and the issue has not been previously litigated or waived.
18. Petitioner requests a 90-day status at which time the background investigation may be complete and the issues narrowed/expanded depending on said results.
19. Petitioner reserves the right to supplement this Petition within additional grounds/theories of relief as the investigation illuminates same.

WHEREFORE, Petitioner respectfully requests that the Honorable Court grant relief under the Post-Conviction Relief Act- that is, leave to Withdraw her Plea of Guilty and Re-Instate her Right to Jury Trial.

Respectfully Submitted,

  
82475  
Joseph J. Valvo, Esq.

Attorney for Petitioner

Date: 12/15/15