

IN THE UNITED STATES COURT OF APPEAL

FOR THE THIRD CIRCUIT

MUMIA ABU-JAMAL,)

Appellee and Cross-Appellant,)

vs.) No. 01-9014 and 02-9001

MARTIN HORN, Director, Pennsylvania De-)
partment of Corrections; CONNER BLAINE,)
Superintendent, SCI Greene; DISTRICT AT-)
TORNEY OF PHILADELPHIA COUNTY;)
ATTORNEY GENERAL OF THE OF THE)
COMMONWEALTH OF PENNSYLVANIA,)

Appellants and Cross-Appellees.)

STATUS REPORT OF APPELLEE AND CROSS-APPELLANT

COMES MUMIA ABU-JAMAL, APPELLEE AND CROSS-APPELLANT, through his lead counsel, Robert R. Bryan, who submits this Status Report in the above-styled cause as to the progress and developments in *Commonwealth v. Mumia Abu-Jamal*, Pennsylvania Supreme Court No. 364 CAP, and related matters.

Developments During Reporting Period

1. Prior counsel for Appellee were replaced by the undersigned Robert R. Bryan. Appellee and Cross-Appellant Mumia Abu-Jamal's Substitution of Attorneys of Record, Aug. 12, 2003.
2. On October 8, 2003, the Pennsylvania Supreme Court affirmed the lower court's denial of relief. *Commonwealth v. Abu-Jamal*, A.2d , Pa. Sup. Ct. No. 364 CAP (Oct. 8, 2003).
3. Certiorari was recently granted in a case in which the death judgment was reversed because of the same error committed in Appellee's case. *Beard v. Banks*, U.S. Sup. Ct. No. 02-1603 (Sept. 30, 2003). *Beard* concerned sentencing phase instruction and verdict form

error that this Court found had violated standards enunciated in *Mills v. Maryland*, 486 U.S. 367 (1988) and *Boyde v. California*, 494 U.S. 370 (1990). See *Banks v. Horn*, 316 F.3d 228 (3rd Cir. 2003). The lower court in reversing the penalty phase in Appellee's case, concluded that the same error as in *Banks* had occurred:

Because the jury instructions and verdict form employed during the penalty phase of petitioner's case did not comport with the requirements delineated in *Mills v. Maryland* and *Boyde v. California*, Jamal's petition for a writ of habeas corpus will be granted as to claim 25.... The charge and verdict form created a reasonable likelihood that the jury believed it was precluded from considering any mitigating circumstance that had not been found unanimously to the exist....

Abu-Jamal Horn, F.Supp. , 2001 WL 1609690 (E.D. Pa. 2001).

Effect Of Certiorari Grant In *Banks v. Horn*

4. Due to certiorari being granted in *Beard v. Banks*, it is suggested that the order staying the proceedings herein should remain in effect until that matter is decided. See Order (Clerk), June 11, 2002; Order (Clerk), Sept. 24, 2002.

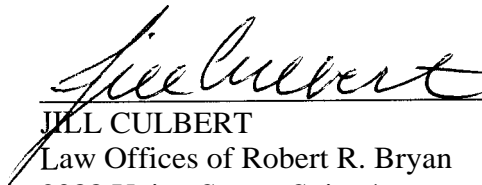
Dated: October 16, 2003

Respectfully submitted,



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Associate counsel for Appellee and Cross-Appellant

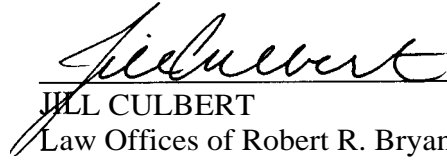
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing STATUS REPORT was duly served by United States Mail, first class postage prepaid, on the parties by placing same in a sealed envelop with first postage fully prepaid and affixed thereto and addressed as follows:

Hugh J. Burns, Jr.
Assistant District Attorney
District Attorney's Office
1421 Arch Street
Philadelphia, PA 19102

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 16th day of October, 2003, at San Francisco, California.


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