

IN THE UNITED STATES COURT OF APPEAL
FOR THE THIRD CIRCUIT

COPY

MUMIA ABU-JAMAL,) No. 02-9001 APR 14 2006
)
Appellee/Cross-Appellant,)
)
vs.)
)
MARTIN HORN, Director, Pennsylvania De-) No. 01-9014
partment of Corrections; CONNER BLAINE,)
Superintendent, SCI Greene; DISTRICT AT-)
TORNEY OF PHILADELPHIA COUNTY;)
ATTORNEY GENERAL OF THE OF THE)
COMMONWEALTH OF PENNSYLVANIA,) *Death Penalty Case*
)
Appellant/Cross-Appellee.)
)

**MOTION FOR EXTENSION OF TIME TO FILE BRIEF OF
APPELLEE/CROSS-APPELLANT, MUMIA ABU-JAMAL**

COMES MUMIA ABU-JAMAL, Appellee/Cross-Appellant in the above-referenced matter who, through counsel, respectfully moves for a 90-day extension of time within which to file his Brief of Appellee/Cross-Appellant. The brief is currently due on April 14, 2006.

In support of this motion, the following is submitted:

1. Appellee/Cross-Appellant is under a death judgment in this matter, and is on death row.
2. The Brief for Appellants and Appendix was filed March 16, 2006. Two extensions of time were sought and granted. Motion for Extension of Time In Which

To File Commonwealth's Brief, Feb. 16, 2006; Order, Feb. 16, 2006; Motion for Extension of Time In Which To File Commonwealth's Brief, Jan. 11, 2006; Order, 13, 2006.

3. The Commonwealth's brief concerned issues raised on habeas corpus in Claim 25, a violation of *Mill v. Maryland*, 486 U.S. 367 (1988), which resulted in the district court reversing as to penalty. Memorandum and Order, Dec. 18, 2001, *Abu-Jamal v. Horn*, 2001 WL 1609690 (E.D. Pa. 2001.)

4. The Brief of Appellee/Cross Appellant will respond not only to the Commonwealth's brief as to the *Mills* issue, but must also present extensive briefing as to the following claims:

Claim 14 Whether appellant was denied his constitutional rights due to the prosecution's trial summation.

Claim 16 Whether the Commonwealth's use of peremptory challenges at trial violated appellant's constitutional rights under *Batson v. Kentucky*, 476 U.S. 79 (1986).

Claim 29 Whether appellant was denied due process during post-conviction proceedings as a result of alleged judicial bias.

Order, Dec. 6, 2005.

5. This case is of enormous complexity and involves a voluminous record, thereby necessitating the additional time sought. The Brief of Appellant/Cross-Appellant must not only respond to the Commonwealth's initial brief, but also present briefing on three separate guilt-phase issues, Claims 14, 16 and 29. The district court

opinion was lengthy, 272 pages, and complex. Memorandum and Order, *supra*. Further, because this is a case involving habeas corpus and the death penalty, the upcoming brief must respond both to arguments raised in Appellant/Cross-Appellee's brief and separately present argument as to Claims 14, 16 and 29, and also address other issues such as exhaustion, default, and the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA).

6. Additionally, counsel for Appellee/Cross-Appellant has obligations in other cases involving the death penalty, e.g., *Ervin v. California*, U.S. Sup. Ct. No. 05A818; *Panah v. Ornoski*, U.S. Dist. No. CV 05-7606 RGK; *In re Bacigalupo*, Calif. Sup. Ct. No. S079656 [*Bacigalupo v. Calderon*, U.S. Dist. No. C-94-2761 DLJ]; *In re Noguera*, Calif. Sup. Ct. No. S136826 [*Noguera v. Calderon*, U.S. Dist. No. CV 94-6417 AHS]; *People v. Lightsey*, Calif. Sup. Ct. No. SO48440.

7. In view of the foregoing, counsel needs an enlargement of time within which to prepare and file the brief of Appellee/Cross-Appellant. This request is made in good faith and is not predicated upon any intent to delay. This motion is being made because of the specific needs of this capital case and counsel's ethical obligations to provide professionally appropriate representation to the client.

8. The additional time sought will not prejudice the Commonwealth.

WHEREFORE, Appellee/Cross-Appellant respectfully requests that the Court grant a 90-day enlargement of the time, to and including July 13, 2006, for the filing of his initial brief.

Dated: April 9, 2006

Respectfully submitted,



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Associate counsel for Appellee/Cross-Appellant, Mumia Abu-Jamal


CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing Petitioner's Reply To Commonwealth's Motion To Summarily Deny Or Extend Time To Respond to be served by United States Mail, first class postage prepaid, upon the following person:

Hugh J. Burns, Jr., Esquire
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 9th day of April, 2006, at San Francisco, California.


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