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February 15, 2019

Via Electronic Filing

Honorable Leon W. Tucker
Philadelphia Court of Common Pleas
1301 Filbert Street, Suite 1201
Philadelphia, PA 19107

Re: Commonwealth v. Wesley Cook, a/k/a Mumia Abu-Jamal
No. CP-51-CR-0113571-1982

Dear Judge Tucker:

The Commonwealth's appeal from this Court's December 27, 2018 Order and Opinion is founded on its concern with the breadth of some aspects of the Opinion, and therefore its potential ramifications for an untold number of other cases. In particular, language to the effect that an appellate judge's merely having been a chief prosecutor at a time when a case passed through the office requires recusal is problematic. The Commonwealth files the attached Rule 1925(b) Statement both in accordance with the Court's January 28, 2019 Order and also to advise the Court of its specific concerns regarding the scope and potential impact of the Court's Opinion (see attached 1925(b) Statement, at paragraphs 1, 2, 3).

In the event the Court were to modify its opinion, the Commonwealth would re-evaluate its appellate options at that time.

Respectfully,

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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : CP-51-CR-0113571-1982
 :
 WESLEY COOK, a/k/a MUMIA ABU-JAMAL :

STATEMENT OF ERRORS COMPLAINED OF ON APPEAL

Pursuant to this Court’s January 28, 2019 order and Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure, the Commonwealth identifies the following appellate issues:

1. Whether the PCRA court erred to the extent it reached an overly broad conclusion that recusal was necessary based on the simple fact alone that a member of the Pennsylvania Supreme Court was District Attorney when defendant’s case was on appeal, thereby potentially requiring any lead prosecutor who becomes a judge to recuse in every case that was pending in that person’s office when the now-judge was the lead prosecutor (*see Op. at 33*);
2. Whether the PCRA court erred to the extent it reached an overly broad conclusion that a judge must recuse himself merely because—as inevitably will happen to many or even all judges at some point—he is presented with a case that is similar to other cases on which he expressed views during his prior time as an attorney (*see Op. at 31-32*);
3. Whether, to the extent the PCRA court based its decision on a perceived violation of the Canons of Judicial Ethics, it erred because the Canons cannot themselves establish a cause of action or provide a basis for a PCRA court to grant relief;

4. Whether the lower court erred in finding a due-process violation where defendant's evidence failed to establish, as an objective matter, that there was an unconstitutional potential for bias; and
5. Whether the PCRA court acted without jurisdiction where defendant's most recent petition was untimely filed.

Respectfully submitted,

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