

# What's Next in the Courts for Mumia Abu-Jamal

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*What follows is an updated version of an article first published in May of 1998 before the Pennsylvania Supreme Court denied Mumia's appeal for a new trial.*

The Pennsylvania Supreme Court has now ruled in the case of Mumia Abu-Jamal, denying him a new trial in the state courts. It is not possible to predict what happens next with complete accuracy for three reasons: First, this case has come to concentrate a major political struggle in society over the whole reactionary agenda emphasizing police powers and speeded-up executions. Second, the courts have many different options in fixing the outcome at each stage. Third, there are tactical decisions that will have to be made by Mumia and his legal defense team at each step along the way.

But neither is the legal terrain totally unknowable. There are laws, procedures and precedents which the state currently observes to some degree, because many of its supporters believe in "the rule of law" and their continued faith in the system is important to the state.

## **The Pennsylvania Supreme Court Decision**

What was before this court was an appeal of Judge Sabo's refusal to grant a new trial. There were at least five ways the court could have ruled: First, they could have found the hearings before Judge Sabo to have been so flawed by his conduct that they sent the case back to the trial court level for a whole new hearing on the motion for a new trial. (Judge Sabo has now been forcibly retired, so this hearing would have been before a new judge.) Second, the court could have found that the entire case against Mumia was so flawed by prosecutorial and judicial misconduct, that they ordered Mumia freed and the charges against him dropped. Third, they could have found that the prosecution of Mumia was sufficiently flawed to require a new trial, and the case would have been sent back to the trial court level. Fourth, they could have found that only the sentencing portion of Mumia's original trial was flawed, and sent the case back to the trial court level for a new sentencing hearing. But instead the court ruled that Mumia's case had no merit at all and they denied his appeal for a new trial entirely.

Mumia's attorneys filed a request for a re-argument of the case, but that was denied by the court on November 25.

Pennsylvania's Supreme Court is more "politically driven" than most. Its justices are elected in partisan elections, and some receive official endorsements from the same police organizations that are campaigning for Mumia's death. Amazingly, in his separate decision refusing to recuse himself (not participate in the decision), Justice Ronald Castille admitted that fully five out of the seven justices ruling on Mumia's appeal had been endorsed by the Fraternal Order of Police in their campaigns for the high court.

## **The Governor and a Death Warrant**

Because former Governor Casey held off on signing death warrants for Mumia and a number of other death row inmates, the Pennsylvania state legislature changed the law to require the governor to sign a death warrant within a fixed number of days after final action by the state courts. Governor Tom Ridge has promised in the past to sign a death warrant for Mumia as soon as the Pennsylvania Supreme Court takes its final action. The death warrant is an order to the prison authorities to carry out the execution. But under the new law, even if Ridge fails to sign the warrant, the head of the Department of Corrections is now empowered to carry out the execution anyway without a warrant. Executions have become administrative functions of the prison authorities. The Governor's right to delay for a more careful look at the case has been eliminated.

Back in 1995 Judge Sabo actually stayed Mumia's execution while all his appeals were carried out up through the U.S. Supreme Court. But the governor may choose to ignore this stay, and claim that it applied only to a previous death warrant that has now expired.

If a new death warrant is issued, Mumia's legal team will be compelled to file documents with the federal courts very quickly to obtain a new stay of the execution order. Under the federal habeas corpus law, this stay is mandatory. That is, the federal court must grant a stay of execution while it considers Mumia's federal appeal. Here it is important to say a few things about a death warrant. First, even though the issuance of a death warrant will be followed within a week or two by a federal court order staying the execution, a stay is nothing but a temporary postponement. The signing of this death warrant would be a major turning point in Mumia's case. It would signal that a political decision has been made to push ahead with Mumia's execution. The decision of the state of Pennsylvania to execute Mumia will have been finalized, and all the new evidence brought forward in the various hearings since 1995 will have been officially rejected. This must be met with massive and international protests. Second, at moments like this Mumia's case will be back in the media and public consciousness, and we must make every effort to keep it there. Third, it means that Mumia's case would now be into the federal courts with their new political agenda of speeded up appeals and swift executions.

Mumia's case spent 17 years in the state courts. That will not be the case in the federal courts. In the new "rush to execution" climate, Mumia's appeals in the federal courts will be acted on in months (not years) at each stage.

## **The "Effective Death Penalty Act"**

In April of 1996, the Congress passed and President Clinton signed into law the "Anti-Terrorism and Effective Death Penalty Act of 1996" (EDPA). This law was pushed

through in the hysterical atmosphere following the bombing of the federal building in Oklahoma City. One purpose of this law is to severely restrict the ability of federal courts to overturn death sentences handed down in state courts. The effect of the "habeas corpus reform" contained in this new law is to throw the U.S. judicial system back to the era of "states rights," where federal courts did not interfere with judicial misconduct by the states. It was the mass protest movements of the 1960s Civil Rights Movement that finally compelled the federal courts to step in and put an end to "cracker justice" in the South. The 1996 legislation restores cracker justice to the north and south alike.

The "problem" the new habeas corpus law is meant to correct is that since 1977 the federal courts have overturned approximately 35% of all death sentences handed down by state courts, usually for flagrant violations of the defendants' rights. If it were not for this extra review process, there would be over 5,000 people on death row today.

A motion for habeas corpus (Latin for "let's have the body") in English common law was an appeal to a court to review whether the King's detention of somebody was legal. In granting the motion, the court told the King's sheriff to "bring the body" into court and justify why you are holding him. This concept developed into a general mechanism by which federal courts are asked to review criminal convictions by state courts. What it means in practice is that state governments do not have an absolute right to take away a person's freedom or life.

Some of the vicious new provisions of the 1996 law apply to Mumia's case and some do not. One provision of the new law limits prisoners to a single federal habeas corpus motion that must be filed within 6 months in death penalty cases. In Mumia's case, this is not an issue at this point, because this will be his first federal habeas motion, and he will have to file for it quickly in order to obtain a stay of the death warrant.

Another aspect of the new federal law is to offer the states a real "devil's bargain." The new law offers to set strict time limits for (i.e. speed up) appeals of death sentences coming from any state that has also acted to speed up its own state appeals process. It's like the government saying "we'll give you more highway money if you keep the speed limit at 55." Only here they are saying, "if you will rush death penalty cases through your state courts, we'll rush them through the federal courts." These federal speed-up provisions require the federal district courts to decide on habeas petitions within 120 days, and give the federal Court of Appeals only 120 days to review the district court's decision. It is death on the fast track.

Pennsylvania, like many other states, quickly passed new laws changing its appeals process in order to get in on this "deal" with the federal government. These new strict time limits were the prospect facing Mumia in the federal courts. However, quite unexpectedly, the Pennsylvania Supreme Court struck down the new Pennsylvania law in August of 1997, ruling that the state constitution gives the state Supreme Court alone the power to establish appeals procedures in the state courts.

Thus for the moment the new horrendous time limits do not apply to Mumia's case in the federal courts. But this does not mean the case will be dragged out over a long period of years. As mentioned above, its progress in the federal courts will be measured in months at each stage. Also the current political climate is one of swift, and ugly, changes in all legal procedures concerning evidence admissibility, constitutional safeguards, sentencing, and appeals procedures. The action of the Pennsylvania Supreme Court in knocking down the speeded up procedures may itself be "reconsidered."

### **The Effects of EDPA on Mumia's Case**

Some parts of the new federal law DO apply to Mumia's case. EDPA requires the federal courts to assume that findings of fact by the state courts are true. In the past, the federal courts conducted a new and independent examination of the facts in the case. Now the federal courts are NOT supposed to reassess the evidence. They are to presume as true whatever the state court found to be true. This turns the whole process around. It puts the burden on the prisoner to prove he is clearly innocent, rather than the state having to prove he is guilty beyond a reasonable doubt.

Let's be clear on what this means. It means that all the new evidence that was presented in the three hearings for a new trial is out-not to be considered by the federal courts-because Judge Sabo and the Pennsylvania Supreme Court have found that it was not credible. It means that Veronica Jones coming forward and recanting her false testimony at Mumia's trial is not to be considered. It means that Pamela Jenkins' testimony on how police coerced witnesses is out. It means that the testimony of William Singletary, an eye-witness who testified that Mumia was not the shooter, is not to be considered. It means that the new information on Robert Chobert, who was allowed to drive a cab for 10 years without a license in return for changing his testimony, is to be forgotten. It means that Cynthia White is presumed dead because Judge Sabo said she is. It means that the fairy tale about witnesses suddenly "remembering" two months after the fact that Mumia made a public confession the night of the shooting is to be accepted as true, and the testimony of the emergency room personnel to the contrary is to be ignored. It means that all of Judge Sabo's refusals to subpoena key documents and testimony are O.K.

Even on issues of law (as opposed to the facts in the case), the federal courts are now instructed to accept errors made by the state courts on the constitutional rights of defendants, so long as the errors are not "unreasonable!" One can only wonder what a "reasonable" constitutional error is when a man's life is at stake.

### **The Path Through the Federal Courts**

Any motion for habeas corpus would be heard by the federal district court in Philadelphia. One of the judges in this court is the wife of Ed Rendell, Philadelphia's mayor and former D.A. (small world, isn't it?). In the federal district court, Mumia's legal team would most likely file

motions for discovery (seeking to get at the evidence that Judge Sabo suppressed) and for an evidentiary hearing. These motions would be “briefed,” that is, there would be written arguments by both Mumia’s legal team and the state of Pennsylvania. All this would take some time, but the court would set deadlines for the briefs that are measured in days, not in months. If the motions are granted, this would take more time. But again, just because there are no fixed deadlines doesn’t mean that this process will go slowly.

There are several ways the federal district court could rule on the habeas motion. One thing that it could do is to put Mumia’s appeal “on hold,” and send it back to the state courts. The federal court cannot accept Mumia’s appeal until all state remedies have been exhausted. Since Sabo refused to hear certain evidence, the federal court could say that the state remedies have not been exhausted, and send it back to the state courts to hear this evidence. This would be in keeping with the new federal policy of having state courts do all the hearing of evidence. Then, after such hearings, the case would bounce back to federal court to rule on the habeas motion.

But the federal district court could also refuse all motions for discovery and a hearing, and rule on the case simply by reading the transcripts and other documents. In this case, a ruling could come very quickly-perhaps in just a few months.

Besides the route of a federal habeas corpus motion, Mumia also has the option of seeking a “writ of certiorari” from the U.S. Supreme Court. A motion for “cert” is different from a habeas motion. It is not asking the court to hear new evidence, but to simply look at the written record and rule on some particular points of law-usually federally protected rights. While the Supreme Court normally grants a stay while such motions are being considered, these motions are routinely denied by the U.S. Supreme Court without oral arguments. Only occasionally will the Supreme Court hear such a case when an important issue of law is involved.

If the federal district court turns down Mumia’s habeas appeal, the next step is the federal 3rd Circuit Court of Appeals, a court that also sits in Philadelphia. The federal court of appeals normally hears cases with a panel of three judges. They may or may not allow oral arguments, but they will mainly review the record of the federal district court proceedings. If the ruling by these three judges is negative, Mumia can then petition to have a panel consisting of all the judges of the 3rd Circuit Court hear the case. Such requests are not frequently granted, but the request itself will take some time to rule on.

At this point it should be evident that there is going to be a lot of action in Philadelphia over the next year or two, and that city remains an important focus for the political campaign for justice for Mumia.

The final stop in the federal appeals process is the U.S. Supreme Court. The Supreme Court accepts very few death penalty cases for review-usually only those that present new questions of law, or those involving conflicting rulings by different Circuit Courts of Appeal. However, one thing to watch is how the Supreme Court rules on the

constitutionality of the “Effective Death Penalty Act.” There could be some old-fashioned turf warfare between the Supreme Court and the Congress over whether Congress has the power to restrict the appeals process. Regardless, the political leaders of both major parties are united around expanding and speeding up the death penalty.

The entire federal judiciary is now packed with conservative judges from the Reagan-Bush-Clinton presidencies. The trend has been to rubber stamp the decisions of state courts, and speed up executions. The ruling elites in this country have a political agenda that revolves around more police, more prisons, and more executions. Freeing a Black revolutionary writer who was convicted of killing a police officer flies in the face of that agenda. That is why the case of Mumia Abu-Jamal has become such a major issue in society. There is a great deal at stake for both sides. For them, the issue is so important that they find it preferable to execute innocent people than to contribute to any vacillations about the need for the expanded death penalty. EDPA is the logical next step after the Supreme Court’s infamous 1993 Herrera decision that ruled states could execute prisoners who were actually innocent as long as the state courts did not violate constitutionally protected procedures.

### **In Conclusion**

Even if Mumia were to be denied justice in the federal appeals up through the U.S. Supreme Court, Pennsylvania state law does allow for yet another PCRA hearing for a motion for a new trial. Pennsylvania law allows such a second motion “if the petitioner can demonstrate either: (1) that the proceedings resulting in the petitioner’s conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or (2) that the petitioner is innocent of the crimes charged.” If ever there was a case so unfair that a miscarriage of justice occurred which no civilized society can tolerate it has been the case of Mumia Abu-Jamal. The fact that something so simple as a fair and honest hearing of the facts, before a court that is not out to kill Mumia for political reasons, has been so utterly unattainable should remind us every day of the nature of the system we are up against.

In conclusion I want to stress that what is discussed here is the legal aspect of our struggle. It is a critical arena for this struggle, but it is also their arena, run by their rules. The people are going to fight in that arena, but we also have a broader arena where WE set some of the rules. The courts are always gauging just how much injustice they think they can get away with. We have to create a public response that causes the courts to feel their only option is to find a legal pretext for backing off from the execution of our brother Mumia Abu-Jamal. And we must be prepared to take the struggle to a new level any time they rule against him.

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