

October 24, 2012

The Honorable Mary Grace O'Brien
Prince William County Circuit Court
9311 Lee Avenue
Manassas, Virginia 20100

Re: Docket Number CR0505048900

Dear Judge O'Brien,

As former judges, prosecutors, and other members of the legal community, we are deeply disturbed by the misconduct of prosecutors that led a jury to sentence Justin Wolfe to death. We are equally troubled by the haste with which the newly appointed special prosecutor, Fairfax Commonwealth's Attorney Raymond Morrogh, has decided to re-try Mr. Wolfe. A case of this magnitude, involving findings of serious misconduct by the original prosecutors and a high level of media attention, must have every appearance of propriety in order to maintain public confidence in the fairness of these proceedings.

Mr. Wolfe has languished on Virginia's death row for 11 years for a murder that a federal court concluded he most likely did not commit. Wolfe's initial conviction in an alleged murder-for-hire scheme followed a trial in which, as found by the federal district court and the Fourth Circuit Court of Appeals, the prosecutors deliberately hid evidence from Mr. Wolfe's lawyers that could have established his innocence. Now, just a few short weeks after a federal appeals court threw out Mr. Wolfe's conviction because of these blatantly unconstitutional violations, he faces a new trial at the request of Mr. Morrogh.

A special prosecutor should conduct a meaningful, independent review of the case. Unfortunately, less than 24 hours after his appointment, Mr. Morrogh announced his intention to retry Wolfe. This suggests a hurried decision in which the special prosecutor did not carefully examine the evidence to reach an independent conclusion about the case, but instead relied on the earlier deliberation of the Prince William County prosecutors—prosecutors who were responsible for the misconduct and errors in judgment that left Mr. Wolfe on death row for more than a decade.

This apparent haste is even more troubling in light of the fact that Mr. Morrogh was appointed special prosecutor at the recommendation of Paul Ebert, in an ex parte proceeding, without opportunity for Mr. Wolfe's attorneys to be heard. Mr. Ebert is one of the Prince William County prosecutors who were forced to recuse themselves after both the federal district court and the Fourth Circuit Court of Appeals found them responsible for withholding evidence that Wolfe's attorneys could have used to defend himself and prove his innocence.

The federal courts found that the Prince William county prosecutors violated their constitutional obligation by failing to inform Mr. Wolfe's attorneys that Owen Barber, the admitted shooter in the case, implicated Mr. Wolfe only after the police told him he should accuse Mr. Wolfe of being involved and told him that if he did not implicate Mr. Wolfe, he would likely face the death penalty himself. Mr.

Barber has since recanted his testimony implicating Wolfe in the crime and has admitted that Mr. Wolfe had nothing to do with the murder. It is significant that both the federal district court and the appeals court found that the only direct evidence linking Mr. Wolfe to the crime was the testimony of Mr. Barber.

The federal district court made its findings of innocence and prosecutorial misconduct after conducting a four-day evidentiary hearing and reviewing thousands of pages of Mr. Wolfe's trial, appeal, and habeas records. These detailed and well-documented findings should have given the prosecution pause. Absent the discredited murder-for-hire theory of the original prosecution, and given Mr. Barber's subsequent admission that Mr. Wolfe was not involved in any way with the murder of Mr. Petrole, the special prosecutor should have carefully considered his decision to proceed with a new trial. Instead, less than 24 hours after his appointment, the special prosecutor announced his conclusion that Mr. Wolfe was "absolutely" involved in the murder and that he would be re-tried for capital murder. This apparent rush to judgment raises serious questions about the propriety of the re-trial proceedings now underway and the independence of the special prosecutor who has been appointed.

It is critical that any prosecutor appointed in this case conduct a thorough, independent investigation into Mr. Wolfe's case—a case that is now plagued with doubts shared by judges who have reviewed the earlier conviction and faces serious questions from a public disappointed by the previous prosecutor's conduct.

Respectfully,

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