

IN THE
SUPERIOR COURT OF PENNSYLVANIA

No.

COMMONWEALTH OF PENNSYLVANIA

RESPONDENT,

V.

JAMIE LYNN SILVONEK,

PETITIONER.

PETITION FOR REVIEW FROM THE ORDER OF THE COURT OF
COMMON PLEAS OF LEHIGH COUNTY REFUSING TO AMEND ITS
ORDER PURSUANT TO Pa.R.A.P. 1311(b)

Permission to Appeal from Order of June 27, 2019, Denying Defendant's
Application to Amend Order of June 6, 2019 to Include Statement Specified in 42
Pa. C.S.A. § 702(b), in the Court of Common Pleas of Lehigh County,
Pennsylvania, Case No. CP-39-CR-0002141-2015

Tracy Zurzolo Quinn, 71072
HOLLAND & KNIGHT LLP
2929 Arch St., Ste. 800
Philadelphia, PA 19104
(215) 252-9522
tracy.quinn@hklaw.com

Marsha L. Levick, 22535
Karen U. Lindell, 314260
Brooke L. McCarthy, 325155
JUVENILE LAW CENTER
1315 Walnut Street, 4th floor
Philadelphia, PA 19107
(215) 625-0551
mlevick@jlc.org
klindell@jlc.org
bmccarthy@jlc.org

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

I. STATEMENT OF JURISDICTION AND PARTIES1

II. ORDER IN QUESTION2

III. STATEMENT OF THE CASE4

IV. CONTROLLING QUESTIONS OF LAW WHICH ARE THE SUBJECT OF THIS HONORABLE COURT’S REVIEW10

V. STATEMENT OF REASONS IN SUPPORT OF IMMEDIATE APPEAL11

 A. The Trial Court Abused Its Discretion In Denying Jamie’s Motion For Recusal11

 B. Each Question Presented Implicates A Controlling Question Of Law As To Which There Is A Substantial Ground For Difference Of Opinion14

 1. Whether recusal is required where a judge’s alleged improper conduct forms the basis for one of the claims for relief in a defendant’s PCRA Petition14

 2. Whether a judge can preside over a recusal motion in which she, herself, is a necessary fact witness where the judge refused to conduct an evidentiary hearing to develop the record16

 3. Whether the court’s conduct in the underlying action amounted to improper involvement in plea negotiations such that recusal is proper19

 C. Immediate Resolution Through Appeal Will Materially Advance The Litigation And The Ultimate Termination Of The Matter22

VI. CONCLUSION AND STATEMENT OF RELIEF SOUGHT22

CERTIFICATE OF COMPLIANCE24

I. STATEMENT OF JURISDICTION AND PARTIES

Petitioner Jamie Silvonek files this Petition for Review of the order of the Court of Common Pleas of Lehigh County denying her Application to Amend Order to Include Statement Specified in 42 Pa. C.S.A. § 702(b) pursuant to this Court’s jurisdiction under Pennsylvania Rule of Appellate Procedure 1311 and 42 Pa. C.S.A. § 702(b).

Rule 1311 of the Rules of Appellate Procedure provides, “[a]n appeal may be taken by permission under 42 Pa. C.S.A. § 702(b) from any interlocutory order of a lower court or other government unit.” According to 42 Pa. C.S.A. § 702(b):

When a court or other government unit, in making an interlocutory order in a matter in which its final order would be within the jurisdiction of an appellate court, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, it shall so state in such order. The appellate court may thereupon, in its discretion, permit an appeal to be taken from such interlocutory order.

“If a lower court refuses to certify an interlocutory order [pursuant to Section 702(b)], the refusal may be tested by means of a petition for review, which if granted permits [the Superior Court] to consider the merits of the underlying appeal.” *Toll v. Toll*, 439 A.2d 712, 715 (Pa. Super. Ct. 1981) (citations omitted); *see also* Note to Pa.R.A.P. 1311; Pa.R.A.P. 1501(a)(2), (b)(3), and Note to 18 Pa. C.S.A. § 704. Because this Court would “ultimately have jurisdiction if a final order were entered

in the matter,” its jurisdiction to “test the discretion of the trial court in refusing to certify its order for purposes of appeal” is proper. *Commonwealth v. Boyle*, 532 A.2d 306, 308 (Pa. 1987) (citations omitted).

II. ORDER IN QUESTION

Jamie seeks this Court’s review of a June 27, 2019 order by the Honorable Maria L. Dantos (the “June 27, 2019 Order”) in which Judge Dantos refused to certify a June 6, 2019 order (the “June 6, 2019 Order”) for appeal pursuant to Section 702(b).¹

On May 6, 2019, together with her Post-Conviction Relief Act Petition (“PCRA Petition”),² Jamie filed a motion to recuse Judge Dantos from hearing the PCRA Petition and to have the recusal motion heard by another judge, on the grounds that one of Jamie’s PCRA claims is directed to Judge Dantos’ improper involvement in the negotiation of Jamie’s plea agreement – an issue that Judge Dantos cannot adjudicate as an impartial factfinder.³ Judge Dantos heard argument on Jamie’s recusal motion on June 3, 2019,⁴ and subsequently denied both Jamie’s

¹ A copy of the June 27, 2019 Order denying Jamie’s Application to Amend is attached hereto as Appendix “A.”

² A copy of Jamie’s PCRA Petition, without exhibits due to size, is attached hereto as Appendix B.”

³ A copy of Petitioner Jamie Silvonek’s Motion for Recusal of the Honorable Maria L. Dantos and Motion to Have the Motion for Recusal Heard by Another Judge of the Court of Common Pleas [hereinafter Motion for Recusal], with corresponding exhibits, is attached hereto as Appendix “C.”

⁴ A copy of the transcript from the June 3, 2019, hearing is attached hereto as Appendix “D.”

request for recusal and her request to have the recusal issue decided by another judge in the June 6, 2019 Order.⁵

In the June 6, 2019 Order, Judge Dantos held that the argument that she had “voluntarily and intentionally injected [herself] into the plea negotiations between the Commonwealth and trial counsel . . . is factually flawed, because at no point did th[e] Court directly participate in plea negotiations in this matter.”⁶ *See* Appendix E, June 6, 2019 Order. Judge Dantos’ refusal to recuse herself is contrary to well-established law in this Commonwealth. Judge Dantos’ factual finding regarding her own role in Jamie’s plea negotiations is not supported by any evidence of record and amounts to improper unsworn testimony from the bench.

Jamie subsequently filed an Application to Amend the June 6, 2019 Order to include a statement pursuant to 42 Pa. C.S.A. § 702(b)⁷ that the order involved “a

⁵ A copy of the June 6, 2019 Order denying the Motion to Recuse is attached hereto as Appendix “E.”

⁶ Judge Dantos made this factual finding despite having refused Jamie’s request for an evidentiary hearing on this matter. With her PCRA Petition and recusal motion, Jamie submitted an affidavit from her former trial counsel attesting to Judge Dantos’ role in Jamie’s plea negotiations. *See*, Appendix C, Motion for Recusal’s Exhibit A [hereinafter “Recusal Ex. A”] At the June 3 hearing, Judge Dantos refused to allow Jamie’s counsel to call the Commonwealth’s Assistant District Attorney who was involved in the relevant plea discussions (and who was present in the courtroom) to testify regarding those discussions and corroborate the affidavit of her former counsel. *See generally*, Appendix D, June 3, 2019, Hearing Transcript. Judge Dantos also rejected the proposition that she herself might be a material witness on the issue of her role in those discussions. *Id.* Having denied Jamie the opportunity to make a factual record on the issue, Judge Dantos then proceeded to make factual findings contrary to the only evidence of record—the affidavit of Jamie’s former counsel—based solely on Judge Dantos’ own unsworn characterization of her role in the plea negotiations. *Id.*; *see also*,

⁷ A copy of the Application to Amend is attached hereto as Appendix “F.”

controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter,” thereby certifying the order for interlocutory appeal pursuant to Pa. R.A.P. 1311. On June 27, 2019, Judge Dantos denied Jamie’s Application to Amend and, although not dispositive to this Petition for Review, also noted: (a) she had not “entered a final order” such that an appeal could be taken as a matter of right, and (b) she did not find that “an immediate appeal would facilitate resolution of the entire case.” *See generally*, Appendix A, June 27, 2019 Order. It is from this Order that this Petition for Review flows.

III. STATEMENT OF THE CASE

In March 2015, at the age of fourteen, Jamie was arrested and charged with crimes relating to the death of her mother, Cheryl Silvonek. Attorney John Waldron (“Attorney Waldron”) represented Jamie in connection with a hearing on Jamie’s juvenile decertification hearing and other trial court proceedings in the Lehigh County Court of Common Pleas, Docket No. CP-39-CR-0002141-2015, and on direct appeal to the Pennsylvania Superior Court and Pennsylvania Supreme Court. Judge Dantos presided over the decertification hearing and trial court action. In February 2016, after the denial of her motion for decertification, Jamie pled guilty to the charges and was sentenced to thirty-five (35) years to life for first-degree

murder and concurrent terms on associated charges. *See generally*, Appendix B, PCRA Petition, Procedural History.

On May 6, 2019, Jamie timely filed her PCRA Petition raising a number of claims. *See* 42 Pa. C.S.A. § 9543(a)(1)-(3); *see also Commonwealth v. Collins*, 888 A.2d 564, 566 (Pa. 2005). Particularly relevant to this Petition for Review, the PCRA Petition argues, in part, that Attorney Waldron was ineffective in failing to seek appropriate relief as a result of Judge Dantos' improper involvement in the negotiations for Jamie's plea deal between the Commonwealth and Attorney Waldron. *See generally* PCRA Petition, Section VIII(A). The PCRA Petition also substantively challenges the validity of Jamie's guilty plea because that guilty plea was not knowing, intelligent, or voluntary, and thus is void as a result of Attorney Waldron's ineffectiveness and Judge Dantos' involvement in the plea process. *See generally* PCRA Petition, Section VIII.

In support of the PCRA Petition, Attorney Waldron provided a signed certification stating that he and the Commonwealth, through Senior Deputy District Attorney Jeff Dimmig ("DDA Dimmig"), engaged in plea negotiations in or about late 2015. *See*, Appendix C, Motion for Recusal's Exhibit A [hereinafter "Recusal Ex. A"]. DDA Dimmig advised Attorney Waldron that he would not reduce the charges from first degree murder. *See* Recusal Ex. A, ¶¶ 6-7. At some point during the negotiations, Attorney Waldron asked to meet with Judge Dantos to discuss

various aspects of the case including the terms of a possible plea. *See* Recusal Ex. A, ¶¶ 6-7. During this conference, Attorney Waldron recalls Judge Dantos being adamant that she would not approve a twenty-five (25) year sentence, the statutory minimum.⁸ *See* Recusal Ex. A, ¶¶ 6-7. Instead, Judge Dantos clearly, and improperly, stated to counsel that she would not accept any plea less than thirty-five (35) years. *See id.* Attorney Waldron’s recollection of Judge Dantos’ involvement in the plea negotiations is supported by a letter he sent to Jamie in September 2017 wherein he states that “[t]he 25 year minimum was discussed in your case but Judge Dantos would not accept the 25 year minimum . . . she would only accept the 35 year minimum.” *See*, Appendix C, Motion for Recusal’s Exhibit B.

At the time of Judge Dantos’ direct, improper participation in the plea negotiations, Judge Dantos had not heard any testimony from either party in connection with the plea. *See* Recusal Ex. A, ¶¶ 7-8. Yet, Judge Dantos never indicated that there was any chance for the parties to agree to any sentence, under any circumstance or any alternative terms, which did not involve a minimum of a thirty-five (35) year sentence. *See id.*

As a result of Judge Dantos’ pronouncement regarding a minimum acceptable plea, Attorney Waldron believed that he had no choice but to pursue plea

⁸ The punishment for a first-degree murder conviction in the Commonwealth is a statutory minimum sentence of twenty-five (25) years for children fourteen or younger. 42 Pa. C.S.A. § 1102.1(a)(2).

negotiations with a thirty-five (35) year sentence as the minimum floor. *See* Recusal Ex. A, ¶¶ 6-7. Accordingly, Attorney Waldron conveyed the Commonwealth's offer of thirty-five years to Jamie with the instruction that there was no room to negotiate the plea further due to Judge Dantos' explicit statements rejecting any potential sentence of less than thirty-five (35) years. *See id.* As a direct result, Jamie accepted the offer. *See id.*

As set forth in Section VIII of Jamie's PCRA Petition, Judge Dantos' direct participation in setting the terms of Jamie's plea bargain was contrary to the clear law of this Commonwealth and effectively rendered Jamie's plea involuntary. *See infra* Section VIII. Because the adjudication of that PCRA claim necessarily will require an assessment of the propriety of Judge Dantos' conduct in Jamie's plea negotiations, Jamie filed the Motion for Recusal contemporaneously with her PCRA Petition, attesting to the above facts and requesting that Judge Dantos be recused from all proceedings relating to the PCRA Petition. *See generally*, Appendix C, Motion for Recusal. The Motion for Recusal further requested that another judge hear the recusal motion, as Judge Dantos' direct involvement in the circumstances forming the basis for the recusal motion created a high risk of potential bias (or, at the very least, the appearance of bias) and made her a material witness to the essential facts. *Id.*

On June 3, 2019, the court held a hearing to discuss discovery questions and the Motion for Recusal.⁹ Both prior to and during the hearing, it was unclear whether there was a dispute of fact as to the events surrounding Judge Dantos' involvement in plea negotiations as described in the Motion for Recusal. *See generally*, Appendix D, June 3, 2019, Hearing Transcript. The Commonwealth refused to stipulate to the facts as stated in Attorney Waldron's declaration, but also refused to present testimony or even offer an unsworn statement as to any alternate version of events. *Id.* Instead, the Commonwealth asserted that no evidence was needed because "[t]he Judge obviously can make an evaluation right here and now whether or not she believes she acted inappropriately in that manner and make a decision whether or not she needs to recuse herself." *Id.* at 16:11-15. Similarly, although Judge Dantos "state[d] very firmly that nothing inappropriate was done," *id.* at 17:9-10, it was unclear whether this statement was a legal conclusion about the propriety of her actions as described by Attorney Waldron, or a factual assertion amounting to

⁹ The June 3, 2019, hearing was originally scheduled to resolve the disclosure of sealed documents in Jamie's case to which the trial court had previously denied access. However, it was then updated to also include a status on the PCRA Petition and recusal motion after they were filed. Both parties attempted to receive clarification from the court as to what it wanted to be presented at the hearing. Defense counsel particularly sought clarification as to whether there would be a factual dispute requiring an evidentiary presentation and whether the court would be reaching the substance of the recusal motion or simply the request for another judge to hear the recusal motion. The court was only willing to disclose that the discovery and recusal motion would be considered. A copy of the email exchange regarding the June 3, 2019, hearing is attached hereto as Appendix "G."

testimony from the bench disputing Attorney Waldron's account of the relevant facts.

In any event, Judge Dantos denied the Recusal Motion, which included the request that the motion be heard by a different judge, refusing to hear or allow any evidence despite Jamie's offer to call DDA Dimmig as a witness and without ever addressing the existing proffer from Attorney Waldron. *See generally*, Appendix D, June 3, 2019, Hearing Transcript; Appendix E, June 6, 2019 Order. Moreover, upon hearing that Jamie would seek to certify for interlocutory appeal the order denying the recusal motion, without ever hearing the factual and/or legal basis for the same, Judge Dantos stated she would deny such certification. Appendix D, June 3, 2019, Hearing Transcript at 18:9-16.

Judge Dantos' subsequent June 6, 2019 Order denying the Recusal Motion made clear that Judge Dantos disputed Attorney Waldron's recitation of the facts relating to Jamie's plea agreement. In a footnote to that order, Judge Dantos described Jamie's arguments as "factually flawed," and asserted that "at no point did this Court directly participate in plea negotiations in this matter" – effectively amounting to unsworn testimony from Judge Dantos that contradicted Attorney Waldron's sworn statement. Appendix E, June 6, 2019 Order at 2, n.1. Judge Dantos nevertheless acknowledged in the June 6, 2019 Order that there was "a meeting with the Court to determine if [it] would reject a potential plea," suggesting that Judge

Dantos did not consider such a meeting to amount to improper involvement in plea negotiations. *Id.*

On June 26, 2019, Jamie timely filed an Application to Amend Order of June 6, 2019 to Include Statement Specified in 42 Pa. C.S.A. § 702(b). *See* Appendix F, Application to Amend. Judge Dantos summarily denied this application in her June 27, 2019 Order, from which this Petition for Review originates. *See* Appendix A, June 27, 2019 Order.

IV. CONTROLLING QUESTIONS OF LAW WHICH ARE THE SUBJECT OF THIS HONORABLE COURT'S REVIEW

This Petition for Review presents three controlling questions of law:

1. Whether recusal is required where a judge's alleged improper conduct forms the basis for one of the claims for relief in a party's petition for post-conviction relief;
2. Whether a judge can preside over a recusal motion in which she, herself, is a material fact witness and where the judge refused to conduct an evidentiary hearing to develop the record; and
3. Whether Judge Dantos' conduct in the underlying action amounted to improper involvement in plea negotiations such that recusal is proper.

V. STATEMENT OF REASONS IN SUPPORT OF IMMEDIATE APPEAL

A. The Trial Court Abused Its Discretion In Denying Jamie's Motion For Recusal

Where a trial court refuses to amend its interlocutory order to certify it for appeal pursuant to Section 702(b), “a petition for review . . . is the proper mode of determining whether [the failure to amend] is so egregious as to justify prerogative appellate correction of the exercise of discretion by the lower tribunal.” Note to Pa. R.A.P. 1311. “If the appellate court determines that the lower court abused its discretion in not certifying the matter for appeal, the appellate court may then proceed to address the merits of the appeal.” *Commonwealth v. Tilley*, 780 A.2d 649, 651 (Pa. 2001) (citations omitted).

Judge Dantos’ refusal to amend her interlocutory June 6, 2019 Order constitutes an egregious abuse of discretion that justifies appellate correction because all of the following elements are satisfied: 1) the order involves a controlling question of law; 2) there is a substantial ground for difference of opinion regarding the question of law; and 3) an immediate appeal would materially advance the ultimate termination of the matter. *See id.*; *see also* Pa.R.A.P. 312; *Boyle*, 532 A.2d at 308.

As demonstrated in Subsections V(B) and V(C) below, each of the questions presented for review implicates “a controlling question of law as to which there is a

substantial ground for difference of opinion” and an “immediate appeal from the order may materially advance the ultimate termination of the matter.” 42 Pa. C.S.A. § 702(b). Here, Judge Dantos’ refusal to amend her June 6, 2019 Order pursuant to Section 702(b) is particularly egregious as it flies in the face of well-established Supreme Court precedent and confirms that Judge Dantos cannot preside impartially over the proceedings. *See infra*. Subsection V(B). If Judge Dantos discounts the facts averred in Attorney Waldron’s sworn certification, then she has made herself a material witness to the matter and cannot serve as the factfinder for that dispute. Independently, if the plea conversation occurred as Attorney Waldron asserted, then the law is settled that Judge Dantos must be recused from the matter. However, despite both scenarios leading to the need for recusal, Judge Dantos, showing her actual bias against Jamie and the merits of her claim, ignored the controlling law in the Commonwealth, placing Jamie in an untenable situation which violates her due process rights.

Furthermore, requiring Jamie to proceed with a PCRA hearing before Judge Dantos will materially inhibit her ability to develop necessary facts to carry her burden in showing that counsel was ineffective in his representation during her guilty plea and in showing that her plea could not have been voluntary. Judge Dantos, through the Recusal Motion, has effectively decided that Jamie’s ultimate claim in her PCRA Petition is without merit even though all of the evidence has not been

presented. In fact, Judge Dantos has, in direct violation of due process rights afforded to all criminal defendants, already prohibited Jamie from developing that record when, for example, Judge Dantos refused to allow Jamie's counsel to question DDA Dimmig on the stand regarding the facts asserted in Attorney Waldron's certification and instead effectively testified from the bench regarding her own assessment of what happened during Jamie's plea negotiations. *See generally*, Appendix D, June 3, 2019, Hearing Transcript. Judge Dantos' ruling on a Recusal Motion that is based on facts as to which she is one of three material witnesses, when she disputes the statement of those facts proffered by one of the other two witnesses and refuses to hear testimony from the third witness at all, is clearly improper. *See Municipal Publications, Inc. v. Court of Common Pleas of Philadelphia Cty.*, 489 A.2d 1286 (Pa. 1985) (a judge cannot rule on a recusal motion when she has personal knowledge of underlying and disputed facts).

Finally, this is a case where time is particularly of the essence. Judge Dantos' refusal to certify the June 6th Order further demonstrates an abuse of discretion because doing so would allow an appellate court to decide the controlling questions of law set forth and materially advance the final resolution of Jamie's case. If the issues set out in this Petition for Review are not addressed now, then the case will proceed resulting in an appeal requiring a second PCRA hearing in front of another judge, extending the final resolution of Jamie's case and resulting in a preventable

spend of unnecessary judicial and legal resources, and additional time in an adult prison for Jamie.

For these reasons and as set forth more fully below, Judge Dantos abused her discretion in her June 27, 2019 Order refusing to certify for interlocutory appeal her June 6, 2019 Order denying Jamie's Recusal Motion. The June 27, 2019 Order should accordingly be reversed, and the June 6, 2019 Order certified and accepted for immediate interlocutory appeal.

B. Each Question Presented Involves A Controlling Question Of Law As To Which There Is A Substantial Ground For Difference Of Opinion

As further set out below, each of the following questions presented to Judge Dantos in the Application to Amend involve a controlling question of law where there is a substantial ground for difference of opinion regarding the question of law. *See Tilley*, 780 A.2d at 651 (relief from an interlocutory order is appropriate where the order involves a controlling question of law with a substantial difference of opinion).

1. Whether recusal is required where a judge's alleged improper conduct forms the basis for one of the claims for relief in a defendant's PCRA Petition

The question of whether recusal is required in this case presents a clear question of controlling law as to which there is a substantial difference of opinion (at least between Judge Dantos and the precedent of this Commonwealth). *See id.*

This Court has made clear a trial court shall grant a recusal “whenever [it] has any doubt as to [its] ability to preside impartially” or when its “impartiality can be reasonably questioned.” *Commonwealth v. Goodman*, 311 A.2d 652, 654 (Pa. 1973) (quoting ABA Section 1.7: Standards Relating to Function of the Trial Judge) (internal quotation marks omitted). The party seeking recusal must “produce evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially.” *In re S.H.*, 879 A.2d 802, 808 (Pa. Super. Ct. 2005) (quoting *Arnold v. Arnold*, 847 A.2d 674, 680–81 (Pa. Super. Ct. 2004)).

Here, Jamie has proffered evidence—unrebutted by the Commonwealth—to show that Judge Dantos improperly injected herself into Jamie’s plea negotiations, rendering Jamie’s plea involuntary. *See generally*, Appendix C, Motion for Recusal; Appendix D, June 3, 2019, Hearing Transcript. As a matter of law, such evidence requires Judge Dantos’ recusal from a hearing regarding the propriety of her own conduct in those negotiations because, at a minimum, her impartiality can reasonably be questioned. *See generally*, *Municipal Publications*, 489 A.2d 1286. Judge Dantos’ refusal to recuse in the face of those facts—coupled with her refusal to allow Jamie to present corroborating evidence through the testimony of DDA Dimming and her further decision to present her own unsworn testimony from the bench—all

amply establish the requisite “bias, prejudice or unfairness which raises a substantial doubt as to the jurist’s ability to preside impartially.”¹⁰

However, contrary to supporting law, Judge Dantos still denied the Application to Amend, demonstrating even more bias and likely violating Jamie’s Due Process rights. Given Judge Dantos’ involvement in the underlying facts of this claim, the risk of bias—even if inadvertent—is unacceptably high. The law of this Commonwealth clearly mandates recusal. Therefore, there is substantial ground for disagreement with Judge Dantos’ conclusion that its “continued involvement in the case would not create an appearance of impropriety.” *See* Appendix E, June 6, 2019 Order at 2 n.1.

2. Whether a judge can preside over a recusal motion in which she, herself, is a necessary fact witness and where the judge refused to conduct an evidentiary hearing to develop the record

A second controlling question of law exists as to whether a judge can preside over a recusal motion in which she, herself, is a necessary fact witness, particularly where the judge has refused to allow an evidentiary hearing to develop the record. Fact-finding necessarily requires the presentation of evidence to, and consideration

¹⁰ Alternatively, the absence of any decisional precedent addressing the issues being raised on appeal may demonstrate the requisite “substantial ground for difference of opinion.” *See Tilley*, 780 A.2d at 651. Although there is controlling law on recusal, none of that controlling law is specific to a PCRA petition. A central claim in Jamie’s PCRA Petition is that Judge Dantos’ involvement in plea negotiations renders Jamie’s guilty plea involuntary.

of evidence by, an impartial adjudicator. Jamie, as a matter of due process, was entitled to develop the record as to why Judge Dantos could not, as a matter of law, preside over either of Recusal Motion or Jamie's PCRA Petition. *See generally, Municipal Publications*, 489 A.2d 1286. However, Judge Dantos refused to allow Jamie to call DDA Dimmig to the stand to corroborate the sworn statement from Attorney Waldron regarding Judge Dantos' role in Jamie's plea negotiations. Appendix D, June 3, 2019, Hearing Transcript at 16:17–18:19.¹¹ Then, having denied Jamie the opportunity to present evidence in support of her Recusal Motion, Judge Dantos went further, effectively testifying from the bench both during the June 3 hearing and in her June 6, 2019 Order as to Judge Dantos' own assessment of her role in Jamie's plea negotiations, while depriving Jamie of the opportunity to cross-examine that factual testimony. *See* Appendix D, June 3, 2019, Hearing Transcript at 17:7-10 (“I know what I did and what was said and whether a plea was hitched for my approval or not, but I will state very firmly that nothing inappropriate was done in this case.”); Appendix E, June 6, 2019 Order, at 2 n.1 (stating that Jamie's

¹¹ Jamie's counsel explained at the outset of the June 3 hearing that “[t]o decide [these] claims is going to require factfinding as to what happened in that conference between Your Honor, Jamie's prior counsel and the District Attorney,” which counsel argued must occur before a different judge; the court categorically denied that request. Appendix D, June 3, 2019, Hearing Transcript at 3:6-20. Although at times the court indicated a willingness to hear testimony, the court did not allow Jamie to call to the stand the District Attorney who participated personally in the conference at issue, despite his presence in the courtroom. Appendix D, June 3, 2019, Hearing Transcript at 17:2-18:8.

argument “is factually flawed, because at no point did this Court directly participate in plea negotiations in this matter”).

The Pennsylvania Supreme Court has held that a judge should not rule upon a recusal motion when the court “not only had personal knowledge of disputed facts but was in a position to rule on objections as to his own testimony and to assess his own credibility in light of conflicting evidence.” *Municipal Publications*, 489 A.2d at 1290. Thus, where the issue of disqualification “brings in question the credibility of the judge, it is obvious that the judge is not in the position to maintain the objective posture required to preside over the proceeding and to assume the role of the trier of fact in that proceeding.” *Id.* at 1293 (citations omitted). This case falls squarely within that fact pattern. As confirmed in the declaration by Jamie’s prior counsel submitted in support of the Recusal Motion, at the outset of the parties’ plea negotiations, Judge Dantos “made it clear that she would not accept a guilty plea agreement with a minimum sentence of 25 years in Jamie’s case,” and that “[t]he lowest sentence she was willing to accept was 35 years.” Recusal Ex. A, ¶ 7; *see also id.* ¶ 9 (“[T]he Judge had made her position clear[.]”).) Judge Dantos had personal knowledge of the facts regarding her role in Jamie’s plea negotiations, refused to allow Jamie to examine DDA Dimmig, effectively testified from the bench regarding her version of the relevant facts and then summarily credited her own unsworn testimony over the sworn statement from Attorney Waldron.

Judge Dantos’ refusal to allow Jamie to build a record in support of her Recusal Motion, and subsequent denial of that motion based on Judge Dantos’ own improper testimony from the bench and contrary to the clear law of this Commonwealth, reflects a substantial ground for difference of opinion on a controlling question of law that requires interlocutory review before Judge Dantos proceeds further with a hearing on the merits of Jamie’s PCRA Petition.

3. Whether the court’s conduct in the underlying action amounted to improper involvement in plea negotiations such that recusal is proper

With regard to the third question—whether Judge Dantos’ conduct in this case amounted to improper involvement in plea negotiations—the Pennsylvania Supreme Court has long held that a trial judge is prohibited from participating in a plea bargain with the parties, as such involvement renders the plea involuntary. *See Commonwealth v. Evans*, 252 A.2d 689, 691 (Pa. 1969) (reversing conviction and ordering new trial where court participated in plea negotiations); *see also Commonwealth v. McNeal*, 120 A.3d 313, 318 n.1 (Pa. Super. Ct. 2015) (stating that judges are prohibited from engaging in plea bargain discussions). “Indeed, a trial judge is forbidden from participating *in any respect* in the plea bargaining process prior to the offering of a guilty plea.” *Commonwealth v. Johnson*, 875 A.2d 328, 331-32 (Pa. Super. Ct. 2005) (emphasis added).

According to the Pennsylvania Supreme Court, the rule is unequivocal:

The unequal positions of judge and the accused, one with power to commit to prison and the other deeply concerned to avoid prison, at once raises a question of fundamental fairness. When a judge became a participant in plea bargain he brings to bear the full force and majesty of his office. His awesome power to impose a substantially longer or even maximum sentence in excess of that proposed is present whether referred to or not.

Evans, 252 A.2d at 691 (quoting *United States ex rel. Elksins v. Gilligan*, 256 F. Supp. 244, 254 (S.D.N.Y. 1966)). Indeed, “[a] defendant needs no reminder that if he rejects the [court’s] proposal, [and] stands upon his right to trial and is convicted, *he faces a significantly longer sentence.*” *Id.* (emphasis added). The only communication a trial court is permitted to have with the parties about plea negotiations is to “inquire of defense counsel and the attorney for the Commonwealth whether there has been any discussion of a plea agreement.” Pa. R. Crim. P. 590, Comment.

Here, in her June 6, 2019 Order Judge Dantos expressly confirmed Attorney Waldron’s testimony that, prior to the offering of Jamie’s guilty plea, there was “a meeting with the Court to determine if this Court would reject a potential plea.” Appendix E, June 6, 2019 Order, at 2 n.1. Judge Dantos did not specifically rebut Attorney Waldron’s recitation of what happened at that meeting. Instead, she stated only that “at no point did this Court *directly* participate in plea negotiations in this matter.” *Id.* (emphasis added). Based on the record, Judge Dantos appears to be clearly misinterpreting well-established Pennsylvania law regarding what

constitutes impermissible “participation” in the negotiation process. *See Johnson*, 875 A.2d at 331-32 (holding “a trial judge is forbidden from participating in any respect in the plea bargaining process prior to the offering of a guilty plea”). Judge Dantos’ refusal to acknowledge long-standing and controlling precedent that prohibits judicial participation in the plea negotiation process, and her apparent tacit admission that she engaged in such prohibited conduct, only reinforces the need for reversal of the June 27, 2019 Order denying certification for appeal so that this Court may timely review Judge Dantos’ June 6, 2019 Order denying Jamie’s Recusal Motion before an evidentiary hearing on Jamie’s PCRA Petition – at which Judge Dantos’ wrongful participation in Jamie’s plea will again be litigated – takes place.

C. Immediate Resolution Through Appeal Will Materially Advance The Litigation And The Ultimate Termination Of The Matter

Jamie’s PCRA Petition cannot (or should not) proceed on the merits without first resolving the threshold recusal issue that is basic to Jamie’s due process rights and the appearance of impartiality of the judiciary. Without an immediate appeal, there is a strong likelihood that Judge Dantos will schedule a hearing on Jamie’s PCRA Petition, requiring the parties and the Court to expend considerable time and resources preparing for and conducting an evidentiary hearing that ultimately will be moot if an appellate court later reverses Judge Dantos’ denial of Jamie’s Recusal Motion. This is precisely what this Petition for Review seeks to avoid.

Accordingly, interlocutory appeal of the June 6, 2019 Order is proper, as it involves multiple controlling questions of law as to which there is substantial ground for difference of opinion, and an immediate appeal will materially advance the ultimate termination of the matter. *See* 42 Pa. C.S.A. § 702(b). Judge Dantos, in direct display of bias towards Jamie by refusing to afford her due process and in an egregious abuse of discretion, willfully ignored such considerations when she refused to amend her order and intends to proceed with a costly and lengthy hearing that will likely require reversal and rehearing.

VI. CONCLUSION AND STATEMENT OF RELIEF SOUGHT

For the foregoing reasons, this Honorable Court should grant Jamie Silvonek's Petition for Review and direct the parties to brief this Court on the merits of Jamie's appeal from the June 6, 2019 Order.

Respectfully submitted,

/s/ Marsha L. Levick

Marsha L. Levick, 22535

Karen U. Lindell, 314260

Brooke L. McCarthy, 325155

JUVENILE LAW CENTER

1315 Walnut Street, 4th Floor

Philadelphia, PA 19107

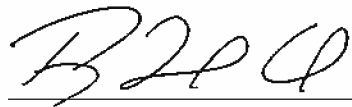
(215) 625-0551

(215) 625-2808 (Fax)

mlevick@jlc.org

klindell@jlc.org

bmccarthy@jlc.org



Tracy Zurzolo Quinn, 71072
HOLLAND & KNIGHT LLP
2929 Arch St., Ste. 800
Philadelphia, PA 19104
(215) 252-9522
tracy.quinn@hklaw.com

COUNSEL FOR PETITIONER

DATED: July 29, 2019

CERTIFICATE OF COMPLIANCE

I hereby certify this 29th day of July, 2019, that the foregoing Petition for Review complies with the requirements of Sections 7.0 and 8.0 of the Case Records Public Access Policy of the unified Judicial System of Pennsylvania (“Public Access Policy”) as set forth in Pa.R.A.P. 127.

/s/ Marsha L. Levick
Marsha L. Levick, (PA No. 22535)
Juvenile Law Center
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
(215) 625-0551
(215) 625-2808 (Fax)
mlevick@jlc.org