IN THE
SUPREME COURT OF THE UNITED STATES

Terrance Williams, *Petitioner*	:	No. 15-5040
v.	:	
Commonwealth of Pennsylvania, *Respondent*	:	(Capital Case)

CERTIFICATE OF SERVICE

I, RONALD EISENBERG, a member of the Bar of this Court and counsel for respondent, hereby certify that on this 24th day of July, 2015, a copy of the Brief in Opposition to the Petition for Writ of Certiorari was served by first class mail, postage prepaid, on counsel for petitioner:

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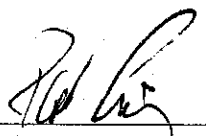
I further certify that all parties required to be served have been served.



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TERRANCE L. WILLIAMS,
Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Pennsylvania

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Was one of the state supreme court justices who joined the unanimous decision against petitioner in his fourth round of state post-conviction proceedings required, under the Due Process Clause and the Eighth Amendment, to grant petitioner's motion for recusal?

II. Does this case present an unsuitable vehicle for deciding whether to apply the harmless-error doctrine to constitutionalized recusal claims where that issue was not presented below, there was no error, and the state supreme court consequently did not address harmlessness?

AUTHORITIES

Cases

Statutes

STATEMENT OF THE CASE

Petitioner Terrance Williams was convicted of capital murder in 1986 for beating a man to death with a tire iron—the second brutal murder he committed. Williams's guilt is undisputed, and the propriety of his conviction and sentence have been upheld through six separate rounds of state and federal review. He currently seeks this Court's review of the recusal decision of one of the Pennsylvania Supreme Court justices to join the unanimous decision against him in his most recent round of post-conviction proceedings. However, his recusal claim is meritless and not worthy of certiorari.

Facts

While gambling on a Philadelphia street corner late on the afternoon of June 11, 1984, Williams and his close friend Marc Draper, both eighteen years old, lost their money. Williams told Draper that he knew a man who lived nearby from whom he could extort money by threatening to tell the man's wife he was a homosexual. Leaving Draper behind, Williams went to the home of fifty-six-year-old Amos Norwood, and later returned with ten dollars. This money too was soon gambled away. A short time later, Norwood drove by in his blue Chrysler LeBaron. Williams exclaimed, "There goes my uncle," walked up to the car, and got in. The car drove off, but returned minutes later. Williams got out and advised Draper to "[p]lay it like you going home, like you want a ride home," so they could "take some money" from

Norwood. *Williams v. Beard ("Williams V")*, 637 F.3d 195, 200 (3d Cir. 2011); *Commonwealth v. Williams ("Williams I")*, 570 A.2d 75, 77-78 (Pa. 1990).

Williams introduced Draper to Norwood as a cousin who needed a ride home. The two got in the car, and Draper provided directions that ostensibly were supposed to lead to his house, but in fact took them to a dark, secluded area adjacent to Ivy Hill Cemetery. There, Williams and Draper grabbed Norwood, led him into the cemetery, and demanded that he lie facedown near a tombstone. A quick search of Norwood's person revealed twenty dollars hidden in his sock. As Norwood pleaded for his life, Williams and Draper removed his clothing and used it to restrain him; his hands were tied behind his back with his shirt, his legs were bound together with his pants, and his socks were jammed into his mouth. With the robbery accomplished and the victim incapacitated, Draper said, "Let's get out of here," but Williams refused, saying, "We're getting ready to do something." As Williams went to the car, Draper kept watch over the bound victim while taunting him for "liking boys." *Williams V*, 637 F.3d at 200-01; *Commonwealth v. Williams ("Williams VI")*, 105 A.3d 1234, 1241 (Pa. 2014); *Williams I*, 570 A.2d at 78.

Williams returned with a tire iron and a socket wrench, the latter of which he gave to Draper. Williams repeatedly hit Norwood in the head with the tire iron while urging Draper to join in the bludgeoning. Draper complied, and joined Williams in beating Norwood to death. After the murder, the conspirators deposited the victim's

body between two tombstones, and left together in his car. Williams subsequently returned to the cemetery, doused Norwood's body in gasoline, and set the remains on fire. *Williams*, 637 F.3d at 201; *Williams I*, 570 A.2d at 78.

On the evening of June 14, 1984, a passerby discovered what was left of Norwood's body in the cemetery. In the time between the murder and the discovery of the remains, Williams had driven Norwood's car around town and on a trip to Atlantic City, told two friends about the murder, allowed his friends to use Norwood's telephone calling card, and personally used Norwood's credit card to buy jewelry. Police eventually traced the stolen credit and calling cards to Williams, Draper, and their friends, prompting Williams to temporarily flee for California and commence a protracted campaign to try to persuade Draper and the others to lie about his involvement in the murder. *Williams*, 637 F.3d at 201; *Williams I*, 570 A.2d at 79-80.

Trial and sentencing

At trial, Williams testified that he not only did not kill Amos Norwood, he did not know the man and had no reason to do him any harm. *Williams VI*, 106 A.3d at 1244. However, the Commonwealth proved its case through the testimony of: Williams's cooperating co-conspirator; the friends to whom Williams had admitted his role in the murder; people who had seen him driving the victim's car and using the victim's credit card after the killing; police officers who recovered the victim's

jacket from Williams's bedroom after the crime; and witnesses to Williams's various acts of flight and cover-up.

On February 3, 1986, the jury found Williams guilty of first-degree murder, robbery, and criminal conspiracy. At the penalty phase, the Commonwealth presented evidence of two aggravating circumstances: that Williams committed the instant murder while in the perpetration of another felony (robbery); and that he had a significant history of violent felony convictions. That significant criminal history included the equally brutal murder of Herbert Hamilton, a 51-year-old man to whom Williams had been prostituting himself.[1] After hearing the evidence, the jury unanimously found both aggravating circumstances and returned a sentence of death.

Procedural history: 1987-2011

During the first quarter-century after Williams's trial and sentencing, he unsuccessfully litigated: a direct appeal in state court; three petitions for state post-conviction relief and appeals from the denial of such relief; and a petition for federal habeas corpus relief and appeal from the denial of that petition. *See Williams V, supra* (affirming denial of federal habeas corpus relief); *Commonwealth v. Williams ("Williams IV")*, 962 A.2d 609 (Pa. 2009) (affirming dismissal of Williams's third state

[1] The details of the Hamilton murder and a separate robbery that Williams committed are vividly recounted in the opinion of the court of appeals affirming the denial of habeas relief. *Williams V*, 637 F.3d at 198-200.

post-conviction petition); *Common-wealth v. Williams ("Williams III")*, 909 A.2d 297 (Pa. 2006) (affirming dismissal of Williams's second state post-conviction petition); *Commonwealth v. Williams ("Williams II")*, 863 A.2d 505, 519-21 (Pa. 2004) (affirming dismissal of Williams's first state post-conviction petition); *Williams I*, *supra* (affirming judgments of sentence on direct appeal).

At various stages of that litigation, Williams accused his trial counsel of having provided ineffective assistance by not investigating and presenting evidence at sentencing that—contrary to his perjured trial testimony claiming not to have known Norwood—he and Norwood had been in a sexual relationship. However, the state and federal courts concluded that such evidence would not have been reasonably likely to change the outcome of the sentencing proceeding. *Williams V*, 637 F.2d at 229-37; *Williams II*, 863 A.2d at 519-21.

Procedural history: 2012-present

In March 2012, Williams filed a fourth petition for state post-conviction relief in which he alleged that the Commonwealth violated *Brady v. Maryland*, 373 U.S. 83 (1963), by not disclosing prior to sentencing evidence suggesting that, as Williams would have personally known, Norwood was a "homosexual ephebophiliac" who had sexual encounters with male teenagers. The state post-conviction judge granted sentencing relief on that claim, and the Commonwealth subsequently appealed to the Pennsylvania Supreme Court.

During the pendency of the Commonwealth's appeal, Williams filed a petition seeking the recusal of the Honorable Ronald D. Castille, then Chief Justice of the Pennsylvania Supreme Court, on the ground that Castille had been the district attorney of Philadelphia at the time of the trial in this case.[2] Chief Justice Castille denied the motion.

On December 15, 2014, the Pennsylvania Supreme Court issued a decision, with Justice Michael Eakin writing for a unanimous court, reversing the grant of sentencing relief. The state supreme court found that Williams's fourth state post-conviction petition did not comply with a jurisdictional state-law filing deadline, and that his *Brady* claim was meritless in any event because he did not establish the materiality of the redundant evidence of Norwood's alleged "homosexual ephebophilia." *Williams VI*, 105 A.3d at 1240-45. Specifically, as to the *Brady* claim, the court found that Williams was aware at trial "of potential witnesses and information that would establish Norwood's homosexual attraction to teenage males," but elected not to offer that evidence to the jury and instead to present a defense built

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[2] Chief Justice Castille served as the District Attorney of Philadelphia from 1986 until 1991, joined the Pennsylvania Supreme Court in 1993, and retired from the court at the end of 2014. P.J. D'Annunzio, *After 21 Years on Pennsylvania Supreme Court Bench, Ronald D. Castille Retires*, Pittsburgh Post Gazette, Jan. 6, 2015. The Commonwealth refers to him as "Chief Justice" in this brief because he held that office at the time of the challenged recusal decision.

around his perjured testimony that he and Norwood did not know one another. *Id.* At 1244-45. Williams subsequently filed a petition for reargument, which the Pennsylvania Supreme Court denied on February 18, 2015.[3]

ARGUMENT

The petition for a writ of certiorari should be denied.

This Court should deny Williams's request for review. Chief Justice Castille acted properly—and consistently with the practices of this Court's own members—when he decided that Williams did not have a due process right to his recusal. To the extent that Williams alleges the existence of a jurisdictional split on the separate question of whether the harmless-error doctrine applies to such recusal claims, he raises an issue that was not neither presented nor addressed below and is not relevant to his case.

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[3] In the meantime, on January 13, 2015, then-Governor Thomas W. Corbett, Jr., signed a warrant of execution. On February 13, 2015, Governor Thomas W. Wolf granted Williams an indefinite reprieve as part of a statewide death penalty moratorium. In announcing the moratorium, Governor Wolf repeatedly emphasized that there is "no question" of Williams's guilt, and also stated that those, like Williams, who are guilty of heinous murders "must be held to account" and "deserve no compassion." Wolf Mem., p. 1, *http://www.scribd.com/doc/255669059/Governor-Tom-Wolf-Announces-a-Moratorium-on-the-Death-Penalty-in-Pa.* The Commonwealth has filed an action in the Pennsylvania Supreme Court, docketed in that court at No. 14 E.M. 2015, seeking to overturn the death penalty moratorium because it exceeds Governor Wolf's authority under state law.

A. **Petitioner's claim that he was constitutionally entitled to the recusal of a state supreme court justice who joined the unanimous opinion in the most recent post-conviction appeal in his case is meritless and unworthy of review.**

Williams's principal contention is that Chief Justice Castille was constitutionally required to grant his motion for recusal. That claim has no basis in this Court's precedent, and, moreover, does not present any of the ordinary factors, such as a jurisdictional split, that might warrant certiorari review.

"The Due Process Clause demarks only the outer boundaries of judicial disqualifications," such as cases in which a judge has a very significant personal or financial relationship with one of the parties, or previously has presided in the matter under review. *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 889 (2009) (citation omitted); *see, e.g., Tumey v. Ohio*, 273 U.S. 510 (1927) (recusal required where judge, by virtue of fact that he also served as town mayor, received portion of fees and costs assessed to defendant in event of conviction); *Ward v. Monroeville,* 409 U.S. 57 (1972) (similar, except that fines imposed by mayor-judge went to town treasury); *In re Murchison*, 349 U.S. 133 (1955) (recusal required where judge presided at hearing in case in which he previously had served as *de facto* grand juror); *Caperton, supra* (recusal required where party to case had donated more than $3 million to judicial campaign of state justice who provided decisive vote reversing

verdict of more than $50 million against donor).[4] "Most matters relating to judicial disqualification [do] not rise to a constitutional level." *Federal Trade Comm'n v. Cement Inst.*, 333 U.S. 683, 702 (1948); *see also Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 821 (1986) ("Certainly only in the most extreme cases would disqualification on [the basis of bias or prejudice] be constitutionally required.").

Here, Williams contends that, despite the absence of a personal or financial relationship between Chief Justice Castille and any of the litigants, recusal was required because the chief justice had been the district attorney at the time of his prosecution, and therefore had been named *ex officio* on certain documents and had formally approved his assistants' decision to seek the death penalty. However, as Chief Justice Castille's decisions denying identical recusal requests over the years have cogently explained, the recusal decisions of this Court's own members demonstrate otherwise. *See, e.g., Commonwealth v. Beasley*, 937 A.2d 379 (Pa. 2007) (Castille, J., denying recusal); *Commonwealth v. Rainey*, 912 A.2d 755 (Pa. 2006)

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[4] In addition to citing the Due Process Clause of the Fourteenth Amendment, Williams at times makes passing citations to the Eighth Amendment—"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted," U.S. Const. amend. VIII—as a basis for his recusal argument. However, he does not develop an argument under the Eighth Amendment, and any attempt to do so would be futile. Chief Justice Castille was not Williams's sentencer, and no punishment was inflicted when Chief Justice Castille denied recusal during the fourth round of state post-conviction litigation. *Cf. Farmer v. Brennan*, 511 U.S. 825, 837-38 (1994) (explaining that state official's conduct must constitute "the infliction of punishment" to implicate Eighth Amendment).

(Castille, J., denying recusal); *Commonwealth v. Abu-Jamal*, 720 A.2d 121 (Pa. 1998) (Castille, J., denying recusal), *cert. denied*, 528 U.S. 810 (1999); *Commonwealth v. Jones*, 663 A.2d 142 (Pa. 1995) (Castille, J., denying recusal), *cert. denied*, 516 U.S. 835 (1995).

For instance, in *Laird v. Tatum*, 409 U.S. 824 (1972), which Chief Justice Castille has often cited when denying identical recusal requests,[5] then-Justice (later Chief Justice) William H. Rehnquist determined that the fact that he had held a high-level supervisory position in the Department of Justice while Laird was being investigated and prosecuted, and had publicly expressed views on the underlying legal issue, did not warrant even discretionary disqualification, because he did not personally participate in Laird's prosecution. Similarly, in *Schneiderman v. United States*, 320 U.S. 118 (1943), which Justice Rehnquist cited in *Laird*, Justice William F. Murphy declined to disqualify himself even though the case had been brought and tried by the Department of Justice while Justice Murphy was the attorney general. And, of course, the seminal decision in *Marbury v. Madison,* 5 U.S. 137 (1803), was authored by Chief Justice John Marshall even though he had been, in his prior capacity as the secretary of state, formally involved in the underlying controversy.

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[5] *See, e.g., Rainey*, 912 A.2d at 759; *Abu-Jamal*, 720 A.2d at 123-24; *Jones*, 663 A.2d at 144.

In the case at hand, Chief Justice Castille's situation was like that of Justice Rehnquist in *Laird* and Justice Murphy in *Schneiderman*. Although obviously not as large as the Department of Justice, the Philadelphia District Attorney's Office was a very substantial office that employed about 225 attorneys and disposed of over 50,000 criminal cases each year during Chief Justice Castille's tenure as district attorney. *Abu-Jamal*, 720 A.2d at 123; *Jones*, 663 A.2d at 143. Given this enormous volume of cases, Chief Justice Castille has observed, it was impossible for him to be personally involved in the prosecution of every case handled by his office. *Abu-Jamal*, 720 A.2d at 123; *Jones*, 663 A.2d at 143.[6]

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[6] Williams also cites various newspaper articles from 22 years ago, when Chief Justice Castillle was running for election to the Pennsylvania Supreme Court, that characterized his approach as "tough on crime" and quoted him as having said that he indirectly conveyed his position on the death penalty to voters by telling them that he "sent 45 people to death row as District Attorney of Philadelphia" (Pet. at 14-15). But, of course, those articles were not full transcripts of Chief Justice Castille's remarks; they contained only the limited portions of his comments that the reporters chose to include. *Cf. Cheney v. United States District Court for the District of Columbia*, 541 U.S. 913, 914 (2004) (Scalia, J., denying recusal) ("The decision whether a judge's impartiality can 'reasonably be questioned' is to be made in light of the facts as they existed, and not as they were surmised or reported."), *quoting Microsoft Corp. v. United States*, 530 U.S. 1301, 1302 (2000) (Rehnquist, C.J., denying recusal).

Moreover, there was nothing about the reported remarks that was specific to Williams's case. While he was among the 45 defendants whom juries or judges sentenced to death during Chief Justice Castille's tenure as the district attorney, Chief Justice Castille has explained that the appearance of his name on court filings in those cases was a mere "administrative formality," and that his "formal approval of [capital charging] recommendations from [his] assistants, recommendations

As was true of the justices in *Laird* and *Schneiderman*, the mere fact that Justice Castille held a high-level supervisory position in the office that brought the underlying prosecution fell well short of mandating his disqualification from on appeal. Particularly as a member of a court of last resort who could not be replaced by another jurist, it was appropriate for him to hear the appeal in this case after considering Williams's recusal motion and assuring himself that this was not a prosecution in which he had any significant involvement during his tenure as the district attorney.

Finally, in addition to being wrong on the merits, Williams's recusal claim does not present any of the ordinary factors that would counsel in favor of certiorari. Williams does not identify any jurisdictional split regarding the proper standard for determining when the Due Process Clause requires recusal based on a judge's prior involvement in the case, nor does he identify any broader impact that further review of his recusal claim would have.

Indeed, in Pennsylvania, Williams's case is almost certainly one of the *last* to present the specific issue here, since Chief Justice Castille has retired from the bench and it has been 24 years since he served as Philadelphia's district attorney. *See supra*

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approved at all levels in the chain of command, simply represented a concurrence in their judgment that the death penalty statute applied, *i.e.,* that one or more of the statutory aggravating circumstances set forth in the Sentencing Code, *see* 42 Pa.C.S. § 9711(d), existed, and nothing more." *Beasley*, 912 A.2d at 757-58.

at 6 n.2. At this late date, when all affected parties have had more than two decades to litigate the issue and the situation can no longer recur, it would not be an effective use of the Court's finite resources to now take up the issue of whether Chief Justice Castille was required to recuse himself in cases in which he was the district attorney at the time when charges were filed.

Williams is seeking fact-bound error-correction, with little potential for significant precedential benefit, in a case in which there simply was no error. Certiorari is not warranted.

B. Certiorari is not warranted on the unpreserved and purely abstract question of whether due-process-based recusal claims are subject to harmless-error review.

Unable to establish a split of authorities on the standards governing due-process-based recusal claims, Williams alleges that there is a jurisdictional split on the separate question of whether such claims are subject to harmless-error review (Pet. at 21-24). However, that claim was not neither presented nor addressed below and is not relevant to this case.

"It is a long-settled rule that the jurisdiction of this Court to re-examine the final judgment of a state court can arise only if the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system." *Webb v. Webb,* 451 U.S. 493, 496-97 (1981); *accord Adams v. Robertson,* 520 U.S. 83, 87 (1997). Further, when "the highest state court has failed

to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Street v. New York,* 394 U.S. 576, 582 (1969); *accord Adams*, 520 U.S. at 86-87.

Here, Williams did not present the Pennsylvania Supreme Court with his theory that constitutional recusal claims are not subject to harmless-error analysis, and thus that the full court must reverse Chief Justice Castille's ruling on the recusal motion even if it believed that his participation had no effect on the outcome of the appeal. Indeed, Williams's recusal motion made no mention at all of the impact, if any, that Chief Justice Castille's participation in the case might potentially have on his colleagues. Accordingly, that issue was not "pressed or passed upon below," and is not appropriate for certiorari review. *Bankers Life & Casualty Co. v. Crenshaw,* 486 U.S. 71, 79 (1988).

Moreover, the harmless-error question that Williams raises for the first time in his certiorari petition does not present a live controversy here for the fundamental reason that there was no error in the denial of his request for recusal and, consequently, neither Chief Justice Castille nor the broader Pennsylvania Supreme Court would have had need to address the issue of harmless error even if it had been raised.

This case does not present a suitable vehicle for deciding the unpreserved and (here) purely abstract question of whether constitutionalized recusal claims are subject to harmless-error review. The petition for a writ of certiorari should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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July 24, 2015