

No. 2021-_____

In the
SUPREME COURT OF THE UNITED STATES

~~CHARLES P. McCULLOUGH,~~
~~COMMONWEALTH OF PENNSYLVANIA,~~

~~PETITIONER,~~

COMMONWEALTH OF PENNSYLVANIA,
CHARLES P. McCULLOUGH,

~~RESPONDENT.~~
~~Petitioner~~

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

PETITION FOR A WRIT OF CERTIORARI

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Pet.App. 133a hereto which is a copy of PNC's Investment Management and Trust Division Receipt of Assets which Gray signed and is dated March 9, 2006, the same day as Jordan purportedly signed the ~~trust~~ agreement. [REDACTED]

PNC TRUST

6. The Commonwealth did not react to the foregoing. On the contrary ADA Fitzgerald acted as PNC's defense counsel as evidenced by his refusal to produce to Petitioner's trial counsel the handwriting analysis-PNC had obtained, and his rationalization of PNC's systemic notary fraud. The Commonwealth was oblivious to PNC's theft of a \$14,000,000 investment portfolio. Instead, it prosecuted Petitioner for checks totaling \$50,000.00 which all had been returned to the 1996 Trust some 22 months before charges were brought against him.

The selectivity of this Commonwealth's prosecution renders Petitioner's convictions unconstitutional.

IX. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant this Petition for ~~Writ of~~ Certiorari.

Date: August 30, 2021 Respectfully submitted,

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Trust with its sole discretionary spending power. Additional "ignored" criminal offenses revealed in the Orphans' Court proceedings and during the criminal trial in Allegheny County were as follows:

1. Notary fraud by PNC, Tom Gray and Patricia McConegley. ¹⁶

2. PNC's "policy" of notary fraud. ¹⁷

3. Theft by PNC by making disbursements from the PNC Trust and theft by Northwest by making disbursements from the 1996 Trust without Jordan's written request (if Jordan was not incapacitated); ^{Pet. APP}

83a-84a.

4. Theft of Jordan's investment portfolio by PNC and Gray. See portions of Gray's testimony at ¹⁸ ~~Proposed Pet. App.~~ Pet. App. 1044a to 1052a; ¹⁸

5. Gray also committed perjury when he falsely testified that the schedule to the PNC Trust agreement would have been attached to the trust agreement after the collection of assets. See ~~Proposed Pet. App.~~ ^{19a}. In fact, PNC had already collected the assets. See ²⁰

16

(The PNC notary who fraudulently represented she was present when Jordan purportedly executed the PNC Trust).

17

See the comment of PNC apologist ADA Fitzgerald: "That's the way PNC did business, Your Honor. They changed that." ^{Pet. APP 82a}

18

That testimony shows that Gray had been pursuing Jordan's business for years ~~that~~ that when he met with her to have her sign the PNC Trust, Jordan believed herself to be relatively poor and was concerned about her bills being paid. See ~~Proposed Pet. App.~~ 1025aff, 1033aff. Gray did not give Jordan any comfort that was not the case.

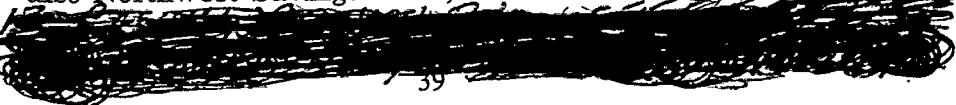
contract against its maker. It was the only way to rationalize the theft counts convictions.

The Commonwealth was able to secure a conviction even though they offered no evidence that Mrs. Jordan was anything other than incapacitated during any relevant time period. Judge Cashman's switch of presumptions on Petitioner violates his due process and fair trial rights under the 14th Amendment. Hence the conviction must be dismissed.

By affirming Judge Cashman, the Superior Court countenanced this shifting of the burden of proof to the Petitioner. These theft convictions must be reversed.

D. The convictions must be dismissed because the Commonwealth selectively prosecuted Petitioner in violation of equal protection rights under the 5th and 14th Amendments of the U.S. Constitution.

As set forth below, the Commonwealth selectively prosecuted Petitioner while ignoring the crimes of PNC employees, Tom Gray, Notary Patricia McConegley and also Northwest Savings Bank, the co-trustee of the 1996



lower portion of one PNC Unconditional POA Guarantee so as to label it a copy and signature guarantee thereby avoiding the fact that PNC had insured that the POA was in full force and effect. Likewise, it could not have been an accident that a second PNC Certification of the POA's validity was ignored, as were Petitioner's Agent & Co-Trustee Accounts and related proceedings and decrees.

C. Both the Superior Court Panel Opinion, and the Cashman Opinion unconstitutionally repealed the presumption of Petitioner's innocence and used the civil contract law presumption that the language in the POA is to be construed against Petitioner.

"IN DRAFT"
The Cashman Opinion asserts that ~~because~~ *THE [POA], [PETITIONER] KNEW THE PROVISIONS OF THAT [POA] AND THE NECESSARY REQUIREMENTS TO INSURE ITS VALIDITY!"* Petitioner "prepared the POA, he must have known it was invalid." However, Judge Cashman discounted the universal acceptance of the POA as not establishing that

Petitioner "was ^{UN} aware of the invalidity of the [POA]..."

With this statement, *JUDGE* Cashman repealed the presumption of innocence, and supplanted it with contract

law rule of construction that construes the language of a

*15. CASHMAN OPINION, P.40 - SEE PET. APP. 73a;
CASHMAN OPINION, P.41 - SEE PET. APP. 74a.*

By relying solely upon the Cashman Opinion for the summation of the trial record, the Superior Court failed to provide meaningful appellate review and is curious in light of the fact that Judge Cashman was not the trial judge and only entered the case *on the day of sentencing*.

Not a lot of time to absorb an extensive trial transcript and then sentence the Petitioner who has called for a recusal of a colleague under an accusation and an admission of ex parte communications with third parties and with counsel of record.

It must be emphasized that Judge Cashman's 100 erroneous statements are not abuses of discretion. These erroneous statements were intentionally made *Pet. APP. 48a, 61 SCQ.* untethered from the trial record. Judge Cashman used *14* hearsay five (5) times to justify a conviction. He dismissed a nun's testimony as too short and as irrelevant by falsely stating it occurred *after the charitable contribution* so he *15* opines Mrs. Jordan had no prior charitable intent. Nor

was it merely judicial under sight to seize only upon the

14. CASHMAN OPINION, P.27; PET-APP. 61a; CASHMAN

CASHMAN OPINION, P.28 (TWO HEARSAY STATEMENTS -

SEE PET-APP. 61a). (CASHMAN OPINION, P.45 - SEE PET-APP. 79a; CASHMAN OPINION, P.46 - PET-APP. 79a).

a. Reliance on stale testimony by Jordan's thrice fired attorney about conversations he had with Jordan *six (6) years* prior to the Catholic Charities donation;

b. Ignoring Sister Justice's testimony about Mrs. Jordan's state of mind with regard to donating to Catholic causes only four (4) months prior to the actual donation;

The trial record demonstrates that the myriad of participants involved in some capacity with Mrs. Jordan's affairs, including Judge Mazur of the Orphans' Court, Mrs. Jordan's guardian, banks, lawyers and assisted living facilities, including those whose interests were averse to that of the Petitioner. All accepted the validity of the POA. [REDACTED] Pet. App. 61a, 71a, 72a, 200a. Judge Cashman dispatched this universal acceptance of the validity of the POA stating: "This mound of evidence does not validate the [POA], nor does it establish that [Petitioner] was unaware of the invalidity of the Power that he created." In drafting the [POA] [Petitioner] knew the provisions of the POA and the necessary requirements to insure its validity." [REDACTED] Pet. App. 72a.

Other egregious and erroneous statements in the
Cashman Opinion included the following:

- a. ignoring the provisions of the POA Certification by PNC that unconditionally guarantees validity and enforceability of POA;
- b. misconstruing the springing feature of the POA as *requiring* (emphasis added) a physician's statement, when that clause does not apply to the springing feature of the POA;
- c. using an expressed "sufficient" condition as a "necessary" condition to spring the POA;
- d. Employing a civil contract law rule of construction to invent an ambiguity in the POA to use against Petitioner when none existed.

The Cashman Opinion jaded the Superior Court's review because 58 materially erroneous Cashman Statements were included in the Superior Court's Opinion, together with another 10 erroneous Cashman Statements in its opinion affirming the Petitioner's conviction. See [REDACTED] Pet.App. 87a, et seq. which is the compilation of the erroneous Cashman Statements that were used in the Superior Court Opinion; to wit:

A compilation of Judge Cashman's errors, 106 in
all, ¹⁵ ~~was~~ ^{48a} at ~~was~~ Pet.App. ~~et seq.~~ ¹²

Statements were not directed at just the Petitioner, but also the Petitioner's wife and son. See ~~was~~ Pet.App.

74a, ¹⁶ see also ~~was~~ Pet.App. 57a; 75a-76a. In an effort

to buttress his dismissal of the Petitioner's post-verdict motion(s), Judge Cashman included five references in the

Cashman Opinion to statements from the trial transcript that were earlier ruled as hearsay by Judge Nauhaus during the trial. But this did not stop Judge Cashman

from relying upon them. ¹³ See ~~was~~ Pet.App. 60a-61;

79a. The 63-page Cashman Opinion also included statements that were untethered from the trial record in

that (see ~~was~~ Pet.App. 165a) it contained all of *three citations to the record* (emphasis added), and only one of

which was a citation to a witness' testimony.

¹² It is important to remember that J. Cashman was never the trial judge and only took over the case when J. Nauhaus became "sick" after finding the Petitioner guilty of the charges on appeal. *SEE CASHMAN OPINION, P. 4.*

¹³ Erroneous statements, ~~was~~ 44-46; 90-91.

CF. PET. APP. 49a.

Judge Nauhaus' failure to dismiss the case against Petitioner; however, validates Schmotzer's testimony that the judge predetermined that he "had to find the Petitioner guilty of something" to comply with the secretary's edict that the Petitioner had to be guilty of something. Judge Cashman had to go to extremes to discount Schmotzer's testimony as that of a "perjurer" after he was placed under the threat of imprisonment if he didn't testify to what he had overheard. As the DA's sister-in-law, Janine McVay was not an uncompromised "minute clerk" who had nothing to be afraid of by telling the truth. Instead, she was a biased and gravely compromised witness in the Commonwealth's favor; who due to her family connections had every reason to falsely deny Schmotzer's testimony.

B. The Cashman Opinion and the Superior Court Opinion were replete with erroneous statements that have either no basis in the record, or were belied by the record, or were a material distortion of the record, such that Petitioner's due process rights pursuant to the 14th Amendment to the U.S. Constitution were violated. Therefore, all of the convictions must be dismissed.

discretionary powers are subordinate to the POA, the entire conviction is checkmated. If the POA is void, petitioner cannot be convicted of theft charges because the POA does not exist.

There remains the question as to why Judge Nauhaus failed to compel the "brand new ballgame" that he declared would be forthcoming after the Commonwealth admitted it did not have any written expenditure authorizations from Mrs. Jordan. It must first be noted that Judge Nauhaus did not reverse his legal conclusion that the void POA legally was nonexistent and could not be relied upon by the banks and make the charitable donation and the political contributions. Nor did the judge reverse his finding that Petitioner did not obfuscate his role, consistent with him not being charged with theft by deception. Hence, regardless as to why Judge Nauhaus did not keep his vow, because the POA was void, Petitioner is innocent.

10
A

sprung lawfully as a condition precedent to the misapplication of monies.

Section 5603(g) compels the same result. The statute provides that a POA is subordinate to trustees with discretionary powers which necessarily includes trustees with discretionary expenditure power. Section 5603(g) compels acquittal from a different direction than the above argument. It presupposes a valid POA.

Because of that Section 5603(g) conclusively resolves the secondary issue as to whether Petitioner could have compelled PNC and Northwest to make the charitable donation and the four political contributions assuming he and the Banks were possessed with discretionary powers that had sprung. The answer is "NO."

Section 5603(g) voids the Commonwealth's argument that the POA was valid, but misapplied to cause the issuance and disbursement of all five checks, i.e., the argument supporting the five misapplication charges. Since 5603(g) precludes the assertion that the trustees'

then allow the banks to act without written permission
from Mrs. Jordan. *"Pet. App. 84a."*

As noted previously, PNC made the charitable donation from the PNC Trust at a point in time when PNC understood and believed the POA to be legally non-existent according to its trial testimony. Hence, PNC, and only PNC, could have made the illegal donation since ADA Fitzgerald admitted to the trial court that the requisite written authorization from Mrs. Jordan was absent. Not only are the charitable theft charges void, but so are the misapplication of funds charges as to the four political contributions per the 1996 Trust. Northwest could only have made those contributions if Mrs. Jordan had authorized them if the POA had not sprung. The Commonwealth did not produce an authorization for Northwest to avoid responsibility and culpability for the political contributions. The void POA also voids the Misapplication charges which presume that the POA is

"Pet. App. 83a."

either trust illegal and violative of the expenditure provisions of both trusts unless each such expenditure had

been supported by a written authorization from Mrs.

Jordan. *See PNC Trust, 1996 Trust, Pet. App. 84a*

The ADA goes on to argue that Petitioner

obfuscated his role, but Judge Nauhaus shot that theory

down by making the express finding of fact that Petitioner

did not obfuscate his role because Petitioner did not have

Pet. App. 84a. the authority. To that end it is noted that Petitioner was

charged with theft of movable property and not theft by

deception which would have been the necessary charge if

obfuscation had occurred. The Cashman Opinion at no

point accuses Petitioner of obfuscating his role. Instead, it

seeks to absolve PNC and Northwest from criminal

culpability by finding the banks were merely negligent in

their due diligence. As Judge Nauhaus stated, "the

Commonwealth could not take a position that the Trust.

Documents did not allow the POA to act until sprung but

There is no ambiguity as to the terms of the PNC Trust. The discretionary power to expend trust monies is *RET. APP. 64a*, a springing power. Both PNC and the Petitioner had to agree that Mrs. Jordan was incapacitated before that *SEE PNC TRUST, RET APP. 62b*, power came into exercise. Otherwise, no expenditures from the PNC Trust could be made without Mrs. Jordan's *RET. APP. 83a*, written authorization. As was made clear PNC alone had custody of the trust assets and had sole power of the purse. Since PNC made unauthorized disbursements of trust funds, it, not the Petitioner, committed theft. *RET. APP. 83a, 84a*, Legally, as Judge Nauhaus determined during Francis *A. KELLY, JR. ON 10/10/98*, *Johnston's testimony, Petitioner was incapable of* *10/10/98* directing any of the funds unless Mrs. Jordan was incapacitated; and if she was not incapacitated the POA was void as it had not sprung and therefore did not exist.

Similarly, if Mrs. Jordan was not incapacitated the discretionary spending powers of the co-trustees of the PNC Trust and of Northwest, pursuant to the 1996 Trust did not spring either, rendering any expenditure from

NOTICE that is displayed on the first page of the POA.

That notice was ignored in the Cashman Opinion and by the Superior Court. On two PNC Certifications of the

POA it clearly states that the POA was in full force and

Pet. App. 593a, 602a.
effect. Near the end of the first day of trial there is a

critical exchange between Judge Nauhaus and ADA

Fitzgerald, during the testimony of PNC's employee,

Frances Johnston, a highly placed trust executive and also an attorney.¹⁰ The ADA affirms to the trial judge that the

Commonwealth's position is that the POA was "void." *Pet. App.*

Testimony by Johnston was that PNC's position was in

step with the Commonwealth's and the POA was void

because Mrs. Jordan was not incapacitated; or, as the

Cashman Opinion illegally phrased it that Petitioner

failed to prove that Mrs. Jordan lacked capacity. By so

stating, the Cashman Opinion deprived Petitioner of the

presumption of innocence.¹¹

¹⁰ See tr. Vol. 1, pp. 212, 277, *Pet. App.* 83a-84a.

¹¹ See Section C, infra, Argument.

to Schmotzer. At the conclusion of the hearing, Judge Cashman exploded, calling Schmotzer a "perjurer," and dismissed the recusal motion. Judge Cashman's Remand Opinion devoted five (5) pages to attacking Schmotzer as a perjurer. If Judge Cashman knew of McVay's familial

relationship with the District Attorney, he never let on. *SEE REMAND OPINION, PET. APP. 278a - 339a.*

The Superior Court affirmed the Cashman Opinion using 68 of Judge Cashman's incorrect findings of fact and conclusions of law and failed to refer to the trial record even once. *SEE OPINION, PET. APP. 339a - 392a;*
PET. APP. 81a - 103a.

VIII REASONS TO GRANT THE PETITION

A. Did the Pennsylvania Supreme Court deny Petitioner his rights to a Fair Trial and Due Process under the 5th and 14th Amendments by failing to acquit Petitioner when the Commonwealth's basis of culpability (i.e., a "void" POA), a specific finding by the trial judge, the nature of the theft crime for which the Petitioner was convicted, and a state statute made Petitioner incapable, as a matter of law, of having committed the offenses of which he was ultimately convicted?

There is conspicuous language required on every POA in Pennsylvania. It begins with IMPORTANT

December of 2015. This directly contradicted the statements of Judge Cashman at the December 2015 Sentencing Hearing concerning Judge Nauhaus' inability to conduct the sentencing hearing. *PET APP 49a.*

Martin Schmotzer was called to the stand and he confirmed what he had previously told the Petitioner; however, he refused to identify the source of his information. Judge Cashman found Schmotzer in contempt for withholding his source and ordered him removed from the courtroom. Later, Schmotzer returned and identified the source of his information as Janine McVay, a criminal division "minute" clerk and sister-in-law to the Allegheny County District Attorney. *E* Pet. App.1663a; 1664a; and 1669a.⁹ McVay's relationship to the District Attorney was not disclosed to the Petitioner during the recusal hearing.

When called to the stand after a week's recess, Janine McVay denied being the source of any information

⁹ Public records establish McVay to be the District Attorney's sister-in-law. *THESS*

five consecutive sentences of six months to one year for each of the five theft charges and a concurrent sentence for the five misdemeanors; for a total confinement of 2 $\frac{1}{2}$ years to 5 years. Despite a voluminous record in the case and the numerous character witnesses called to the sentencing hearing, Judge Cashman stated that he considered his personal knowledge to sentence. See Cashman Opinion, *P.63.*

An appeal to the Superior Court resulted in an interim order remanding the case to the lower court to conduct a second recusal hearing as the first one was flawed. At the second Recusal Hearing Judge Nauhaus admitted to ex parte conversations about the Petitioner's trial and the judge's request and desire to see the Petitioner go non-jury. Judge Nauhaus went on to deny that he had ever discussed the Petitioner's verdict with Nauhaus' secretary and he denied preferring non-jury trials. Judge Nauhaus also admitted to recusing himself because he could not fairly sentence Petitioner in

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A hearing on the Recusal Motion was held before the President Judge. The Petitioner was denied the right to call Judge Nauhaus, his trial counsel and Martin Schmotzer. Based on those evidentiary rulings, the President Judge dismissed the Motion to Recuse for lack of evidence. The very next day the Petitioner was arrested by the Allegheny County DA's Office, and charged with perjury and other offenses as a result of the dismissed Recusal Hearing. Those charges were later withdrawn on April 6, 2021, some 5 ½ years later, on the day Petitioner was ordered to report for jail.

Judge David Cashman entered this case on December 17, 2015, the day of sentencing. He explained that he was conducting the sentencing hearing for Judge Nauhaus whose health ^{CASHMAN SAID} prevented him from continuing, but was not recusing himself. ^{PER APR 49a} In handing down Petitioner's excessive sentence, Judge Cashman omitted a review of the trial record from his litany of factors that he considered in sentencing Petitioner. Petitioner was given

refused to identify, who had had a conversation with Judge Nauhaus' secretary. The secretary said that [redacted] Nauhaus stated that he was of the mind to acquit the Petitioner because he had not done anything criminally wrong. The secretary replied to the Judge that a not guilty verdict would be "bad optics" and that he had to find Petitioner guilty of something. The courthouse employee told Schmotzer that Judge Nauhaus agreed with the secretary to convict Petitioner of the charges concerning the five checks. Schmotzer went on to warn [redacted] Petitioner that he would be found guilty of the very same charges of which he was later convicted.

After his conviction but prior to sentencing, Petitioner and new legal counsel filed a Motion to Recuse Judge Nauhaus alleging that the trial judge had initiated several ex parte communications with Petitioner's former trial attorney including one urging Petitioner's counsel to go non-jury.

live officials. The Superior Court noted the "suspicious air" emitted from the timing of the re-awakened prosecution.

The indictment of the Petitioner, filed February 19, 2009, consisted of 24 counts. A non-jury trial was eventually conducted by Senior Judge Lester Nauhaus and concluded with the Petitioner's conviction on July 31, 2015, for five counts of theft of movable property and five counts of misapplication of entrusted funds. These were for the same five checks that were approved by the Pet. APP 1161a, ET SEQ. on Orphans' Court in August of 2008. The two sets of crimes, theft of moveable property versus misapplication of entrusted funds, are mutually exclusive as the theft charges were predicated upon the "void" POA theory that was discredited in Orphans' Court; while the misdemeanors presumed a valid POA.

During the course of the Petitioner's criminal trial, he was approached by a courthouse insider, Martin Schmotzer. Petitioner was told by Schmotzer that he had been told by a courthouse employee, whom Schmotzer

at his own expense on behalf of his constituents to d
an eighty million (\$80,000,000) dollar slush
controlled by the Allegheny County Chief Executi
three state senators whose districts were with
County limits. The slush fund had been diverted
FROM Pennsylvania gaming revenues that were suppose
TO BE USED for infrastructure improvements.

This evoked outrage from the Chief Executi
WHO menacingly foretold the public of Petitioner's indict
MEN

A month later. The Petitioner was being interview
ON January 14, 2009, on "NightTalk" when the
CHIEF Executive appeared on the same show to ~~threaten~~
Petitioner. See CD and transcript at APP. 497a, 498.

In Commonwealth v. Butler, 367 Pa Super 45

(1987), the Superior Court of Pennsylvania held ~~that~~
~~THAT THERE~~ is a presumption of selective prosecution when ther
~~WHERE IS A~~ "re-awakening" of prosecutorial interest in a former
~~TARGET~~ that occurs close in time to that person's filing of a
lawsuit against a police detective and various other

POA, the propriety of the four political contributions and the charitable donation.

However, the Cashman Opinion does not even acknowledge the existence of Petitioner's Agent and Co-Trustee Accounts let alone address the collateral estoppel effect of the Orphans' Court proceedings and decrees. The Superior Court followed suit and ignored those proceedings and decrees as well. *Pet. App. 68a.*

This assertion by Cashman is belied by PNC's sworn affidavit discussed *supra*, while the latter position has not been the law since the Pennsylvania Constitution was amended 53 years ago to include the Orphans' Court among the co-equal, sister divisions within the same Court of Common Pleas. See Pa. Const., Art. V, Section 1; *Commonwealth of Wadzinski*, 401 A.2d 1129, 1132 (Pa. 1978); *rev on other grounds*, 422 A.2d 124 (Pa. 1980); *In Re: Estate of Reineyt*, 532 A.2d 832 (Pa. Super. Ct. 1987).

By the time of the Orphans' Court proceedings had concluded in August of 2008, Petitioner had sued, pro se,

"per the request" of the POA in compliance with 20

PET APP. 67a, 75a

Pa.C.S. Section 5603(g). Ms. Boehm also testified that

PET APP. 67a
Petitioner did not direct PNC to make the donation

PNC's Tom Gray testified that the POA only applied to

PET APP. 63a

Mrs. Jordan's personal estate and not her trust estate

Hence Petitioner had no control over the trust estate.

PNC employee, Lana Boehm, further testified *THAT*

she was aware that Mrs. Jordan's mother was Catholic

Sister Justice testified at trial that twice during the

month of January, 2006 (some four months before the

charitable donation)⁸ she met with Mrs. Jordan to dis-

CUSS

her plans to donate real estate or money to the Catholic

Church. *PET APP. 74a.*

CATHOLIC

As a result of the above Orphan's Court proce-
DINGS

and decrees, Petitioner should not have been charged

the offenses he was convicted of because those proce-
DINGS

and decrees had already confirmed the validity *OF*

⁸ In an attempt to discount the probative value of Sister Justice' testimony, the Cashman Opinion erroneously states that Sister discussion and meetings with Jordan occurred *after* the donation to Catholic Charities. *PET APP. 74a.*

The confirmation of the validity of the POA in those Orphans' Court procedures also reinforced the validity of the Catholic Charities donation as being the product of the exercise of a valid POA. ^{Pet. APP 68a} In addition to being a part of the prosecution's temporary restraining order petition, as well as part of Petitioner's Co-Trustee Account the donation was part of the PNC Trust Account, jointly filed by PNC and Petitioner and included within the ambit of PNC's sworn affidavit to that account which states, in part all "disbursements (from the PNC Trust) were made to the persons entitled thereto." ^{Pet. APP 82a; Pet. APP 1690a, ET300.} This account was also confirmed "absolutely" and was never challenged by the prosecutor. ^{Pet. APP 17470a, Account} The PNC Trust was filed in September of 2006, and confirmed in December of 2006. ^{1D.}

PNC made its sworn affidavit knowing that for the four months prior to that date that the Catholics Charities executive director was the Petitioner's wife. ^{Pet. APP 68a, 82a.} See testimony of PNC Trust Official, Lana Boehm. Its internal documentation shows PNC made the donation

Allowance, dated June of 2009, filed at Docket No. 4478

2004, showed over fifty (50) billable entries spent with

ADA Claus during the Orphans' Court proceedings; as well as additional time spent between ADA Claus and the guardian's legal counsel.

According to the trial testimony of Steven Seel,

Esquire,⁷ ADA Claus' involvement was so invasive that caused an extensive delay in the proceedings to complete his "investigation." All told, the ADA used the Orphans' Court to scrimmage the case that the Commonwealth presented at Petitioner's trial, hence the unconstitutional use of civil proceedings in violation of the 4th, 5th, and 14th

Boyd ~~Amendments~~
Amendments. See *Boyd v. U.S.*, 116 U.S. 616, 634 (1886).

The stipulated trial testimony of Richard Federowicz, Esquire, was that he had no doubt that the Orphans' Court proceedings confirmed the validity of the Petitioner's POA. *Pet. App. 69a, 71a-72a.*

⁷ One of Petitioner's Orphans' Court attorneys.

al Pet.App. No party, including the
69a, Habla ET SEQ.
d District Attorney, appealed and no attempt to unwind the
e decrees occurred within the 5-year window provided by
e Title 20 Pa.C.S. § 3521. That should have ended the
7, matter especially since an Assistant District Attorney had
p been a continued presence in the Orphans' Court
proceedings.

8 Mrs. Jordan's Guardian appeared to mirror the
1 prosecution's theories of the Petitioner's criminal
culpability during the Orphans' Court proceeding. The
ADA prompted Mrs. Jordan's Guardian to file a Petition to
remove the trustee, Northwest Bank, by asserting that
Petitioner's POA was a nullity because it had not yet
"sprung" and that Mrs. Jordan had not approved the four
political contributions. When Northwest challenged the
petition, the Guardian withdrew it and substituted a
Petition for Modification that made no mention of the
political contributions' allegations or that the POA had
not sprung. Mrs. Jordan's guardian's first Petition for

or her guardian; nor did they file a private criminal complaint. Mrs. Jordan did not appear before the grand jury or at the preliminary hearing. She passed away in

more than five years before (emphasis added) the trial without

District Attorney's Office ever preserving her testimony, even though she testified at her own guardianship hearing.

Both Petitioner's Agent Account and Co-Trustee Account contained the following sworn statement which was never questioned:

"These political contributions were reviewed with and approved by Mrs. Jordan following discussion with her about each of the candidates presented and their involvement in matters of concern to Mrs. Jordan, and payment was affected by checks drawn by Northwest Savings Bank." A

See Petitioner's Agent Account, ~~Exhibit~~ Pet.App. 617 and Co-trustee Account, Proposed Pet.App. 674a.

In August 2008, final Orphans' Court decrees were issued confirming Petitioner's actions as POA and co-trustee "Absolutely", dismissing any objections "with prejudice" and awarding his lawyer's fees of \$62,500.

executed by an employee of PNC, Tom Gray at [REDACTED]

593a, *ET SEQ.*
Pet. App. [REDACTED] and the POA Certification executed by G.L.

Meadows, another employee at PNC, at [REDACTED] Pet.
App. 602a, *ET SEQ.*

The media coverage of the four political contributions caught the attention of the Orphan's Court Division of the Court of Common Pleas of Allegheny

County which ordered Northwest and Petitioner to file [REDACTED]

trustee accounts of their activities pursuant to the 1996

PETITIONER'S CO-TRUSTEE ACCOUNT IS AT PET. APP. 674a, ET SEQ.
Trust. Separately, Petitioner was ordered to file an

account as Agent pursuant to the POA [REDACTED] Pet. App. 674a.

The District Attorney's Office of Allegheny County

entered its appearance in the proceedings by filing a

EX PARTE
petition to freeze Mrs. Jordan's assets despite the

presence of a court-appointed guardian overseeing her

PET. APP. 674a
assets. The prosecution's temporary restraining order was

grounded in a criminal procedural statute, 42 Pa.C.S.A.

Section 9728, to justify the issuance of the order. There was never a statement obtained from either Mrs. Jordan

power, both of which, along with the POA, required Mrs.

Jordan to be incapacitated before any of the three became operable.

The notion that the POA trumped those discretionary trustee spending authorities is false and in violation of 20 Pa.C.S.A. Section 5603(g) and 5603(g)(2) which provides that the holder of the POA can do no more than make non-binding requests to the bank co-trustees. Section 5603(g) expressly belies the premise adopted by the Cashman Opinion; i.e., that the POA supersedes the expenditures provisions of the PNC Trust and the 1996 Trust.⁶

That the validity of the POA occurred simultaneously with Mrs. Jordan's execution of it was universally recognized and backed up by two separate, unconditional guarantees issued by PNC that the POA

PET. APP.
542, 55a, 56a, 60a,
593a,
602a⁶

SEE JUDGE
DEL SOLIS OPINION

ESTMOMI, PET. APP. 1450a, 1459a.

Per APP. 118a, et
seq.

996 incapacitated before discretionary expenditures of trust
monies could be made on her behalf, and both had to agree
she on each expenditure before it could be made; thus, giving
000 each trustee veto power over the other. If Mrs. Jordan
nty was not incapacitated, expenditures of PNC Trust funds
to could only be made as Mrs. Jordan directed in writing.

RE 118a, et seq.
re- Several weeks before the PNC Trust was executed
1 to on February 15, 2006, Mrs. Jordan had made Petitioner

ank her agent pursuant to the POA which was a springing
for durable POA in order to stave off a guardianship
seen proceeding that Mrs. Jordan's twice fired, former attorney
st.5 had instituted against her. After the POA stopped the

guardianship, Mrs. Jordan fired the attorney a third time.

that remained permanent, LOSING HIS GRIP ON HER
DID NOT STOP THE TRUST (Per APP. 61a).
During the criminal trial, the Commonwealth

argued that the POA's powers exceeded the jointly held
discretionary spending powers of PNC, held with
Petitioner, pursuant to the PNC Trust as well as under
the 1996 Trust, Northwest's sole discretionary spending

(Pet APP
62a, 63a-407a)

“Independent trustee” of Jordan’s 1996 Trust, her “████████”

(Pet APP ~~████████~~ which had the sole discretionary power under the
407a) ¹⁹ ~~████████~~ 1996 TRUST
“████████” to expend Jordan’s trust funds only if she

B.F. ████████ was incapacitated, her wish to make four \$10,000

campaign contributions: one to the campaign of a county
judge seeking an appellate judgeship and one each to
three Allegheny County Council members seeking re-
election.⁴ There was a \$10,000 charitable contribution to
Catholic Charities made the previous year by PNC ~~████████~~

after Petitioner informed it of Mrs. Jordan’s request for
the same.⁵ ████████, PNC and Petitioner had been
396a.

Pet. APP 118a.

Pursuant to the PNC Trust, both PNC and

Petitioner had to determine that Mrs. Jordan was

⁴ At trial the genesis of the planted media story was revealed. Petitioner’s opponent directed his campaign staffer to call Jordan. The staffer, Ms. Wright, masquerading as a representative of the Republican Party thanked Jordan for a contribution she never made. As per Wright’s testimony, Jordan denied making the non-existent contribution. Nonetheless, the opponent went to the media with the story. The trial judge ruled the Wright testimony hearsay, called it “silliness” and determined the opponent and Wright had “basically perpetrated a fraud on Jordan.” Pet. App. ~~████████~~ 62a, 63a.

⁵ Petitioner did not attend Mrs. Jordan’s purported execution of that trust.

Lastly, it offends fundamental fairness to convict Petitioner by denying him the presumption of innocence and instead using the civil contract law construct that turns an ambiguity in a writing criminally against its maker.

In 2007, Petitioner was a prominent Pittsburgh attorney and former Allegheny County Solicitor, who ran for the [REDACTED] Republican At-Large seat on Allegheny County Council. Petitioner handily defeated his opponent; but not before his opponent planted a story with the media that called into question Petitioner's co-stewardship with two successive bank co-trustees of Shirley Jordan [REDACTED] *MRS.* "Jordan") a rich but elderly and incapacitated widow, who moved in and out of lucidity.³

At issue was that Petitioner had relayed to Northwest Bank [REDACTED] ("Northwest"), the

³ See the memo by Attorney Lance Whiteman, who preceded Petitioner as [REDACTED] *MRS.* Jordan's agent. [REDACTED] Pet.App.108a. Whiteman initially describes Jordan as quite knowledgeable in her affairs, conversant in Medicare Part D. Proposed Pet.App.114a. Within a week, Whiteman describes the "flipped-side" of Jordan [REDACTED] in which she denies ever having signed the POA, and accuses Whiteman of not being an attorney.

opinion of the *post-trial* [REDACTED] judge that contained over 100 erroneous statements that were untethered to the trial record in order to sustain the (PET. APP. 48a-86a), Petitioner's conviction, an appellate court that provided *NO* meaningful review and instead adopted 68 of the lower (PET. APP. 87a-103a); court's erroneous statements, a prosecution "lowlighted" by selective prosecution that occurred in the midst of the Petitioner's trial and the failure by the Pennsylvania Supreme Court to supervise the foregoing.

It offends fundamental fairness to convict petition for using a POA when the trial judge found that the PC was "void" and hence "does not exist" and that Petition did not "obfuscate" his use of said POA.

It offends fundamental fairness to conv. *CONVICT* Petitioner on the grounds that his authority under a PC *THE POA* superseded the discretionary expenditure powers of the *TWO* bank trustees, pursuant to their respective *TRUST* documents when a Pennsylvania statute states the *THE* opposite.

ent of those judges of the court responsible for the transaction of specified classes of the business of the court.

In a court of common pleas having two or more divisions each division of the court is vested with the full jurisdiction of the whole court, but the business of the court may be allocated among the divisions of the court by or pursuant to general rules.

42 Pa.C.S.A. §9728 authorizes temporary restraining orders to prevent dissipation of assets. Said statute was used by the Commonwealth to obtain a temporary restraining order in Orphan's Court, because it recognized that the Orphan's Court was a court of coordinate jurisdiction to the criminal court. [REDACTED]

VII. STATEMENT OF THE CASE

This case is of major public concern for several reasons, including the uniqueness of ^{the} constitutional rights violations that are presented to the Supreme Court for redress. These include the extra-judicial, ultra vires

The Fourteenth Amendment provides in pertinent part: "nor shall any State deprive any person of ~~life~~
liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the law. 28 U.S.C. 1257(a); Pa. Const. Art V, Section 1.

20 Pa.C.S.A. § 3358 provides that no Orphan's Court Decree shall be subject to collateral attack on account of irregularities.

20 Pa.C.S.A. § 3521 provides a five (5) year window for any interested person to re-open an Orphan's Court Decree.

20 Pa.C.S.A. § 5603(g), found at ~~Pa. Stat. Pet. Ap~~ 393a – 395a, provides that if the trustees have ~~discretion~~ with respect to the expenditure of the income or corpus ~~INCOME~~ the trust, the agent with the power to receive trust ~~income~~ or corpus of the trust may only make non-binding, ~~make~~ ^A ~~REQUES~~ for the same to the trustees. ~~2.~~

42 Pa.C.S.A. § 952 provides that the divisions of court of common pleas are administrative units ~~composed~~

V. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C.1257(a). The petition is timely filed. The Pennsylvania Supreme Court issued its decision on April 5, 2021.

VI. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment provides: "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things"

The Fifth Amendment provides: "nor shall any person be subject for the same offence to be twice put on jeopardy of life or limb, nor shall any person be deprived of life, liberty or property without due process of law"

The August 20, 2019, Opinion from the Common Pleas of Allegheny County² dismissed the Petitioner's Motion to Recuse the trial judge, and is found at Proposed Pet.App. 278a to 338a.

The March 25, 2020, Pennsylvania Superior Court opinion affirming the "Cashman Opinion" and the [REDACTED] Remand Opinion [REDACTED]

Pet.App. 339a to 392a.

[REDACTED]
[REDACTED] Application for
[REDACTED]
The Pennsylvania Supreme Court's April 5, 2021, per curiam, dismissal of Petitioner's Application for Extraordinary Relief, which is the subject of this Petition.

[REDACTED] App. 2a.

² The [REDACTED] Remand Opinion.

C. IN RE: FIRST AND FINAL ACCOUNT OF CHARLES P. McCULLOUGH, AGENT
[OF POA DATED FEBRUARY 15, 2006], ORPHANS' COURT NO. 1824 OF 2007,
(THE "AGENT ACCOUNT").

H. IN RE: FIRST AND FINAL ACCOUNT OF CHARLES P. McCULLOUGH
CO-TRUSTEE (NORTHWEST SAVINGS BANK WAS THE OTHER CO-TRUSTEE
AND FILED ITS OWN FIRST AND FINAL ACCOUNT) AS TO THE

F.I. In Re: The Shirley H. Jordan Trust, Shirley H.
Jordan, Principal, Charles P. McCullough, Esq. and PNC
Bank, Trustees, Orphans' Court Division, No. 6002 of
2006; dated March 9, 2006 (The PNC Trust).

G.I. In Re: Shirley H. Jordan, an ~~incapacitated~~^{INCAPACITATED}
person, Orphan's Court Division, No. 4478 of 2004.

DECLARATION OF TRUST BY
SHIRLEY H. JORDAN DATED
AUGUST 27, 1996 (THE "1996
TRUST"). (THE
"CO-TRUSTEE
ACCOUNT")
CONFIRM DATE -

OK, CORRECT
DATE 15 8/27/96

III. PETITION FOR WRIT OF CERTIORARI

Petitioner, Charles P. McCullough, respectfully petitions
for a writ of certiorari to review the judgment of the
Pennsylvania Supreme Court.

IV. OPINIONS BELOW

The May 1, 2017, Rule 1925(b) opinion of the Court
of Common Pleas of Allegheny County,¹ confirming the
conviction and sentence. ~~230a to 276a~~ Pet.App.

165a to 228a.

The December 19, 2018, opinion of the
Pennsylvania Superior Court remanding the case for a
new recusal hearing. ~~230a to 276a~~
Pet.App. 230a to 276a.

¹ i.e., the Cashman Opinion

Petition in violation of his 5th and 14th Amendment rights to a Fair Trial and Due Process?

D. Did the Pennsylvania Supreme Court validate the selective prosecution of Petitioner in violation of his Equal Protection rights under the 14th Amendment and his Due Process Rights under the 5th and 14th Amendments?

II. PARTIES TO THE PROCEEDING AND RELATED CASES

- A. Petitioner is Charles P. McCullough, Pro Se.
- B. Respondent is the Commonwealth of Pennsylvania acting through the Allegheny County District Attorney's Office.
- C. Commonwealth of Pennsylvania vs. Charles P. McCullough, No. ~~233 WDA 2016~~, In the Supreme Court of Pennsylvania, Western District. Judgment entered April 5, 2021.
- D. Commonwealth of Pennsylvania vs. Charles P. McCullough, No. 233 WDA 2016, In the Superior Court of Pennsylvania, Judgment entered March 25, 2020.
[REDACTED] Pet.App. 278a.
- E. Commonwealth of Pennsylvania vs. Charles P. McCullough, Criminal Division, No. CC 2009 -10522. Judgment entered December 17, 2015.

2

F. ESTATE OF SHIRLEY H. JORDAN,
DECEASED. ORPHANS' COURT NO. 818 OF 2010.

I. QUESTIONS PRESENTED

A. Did the Pennsylvania Supreme Court deny Petitioner his rights to a Fair Trial and Due Process under the 5th and 14th Amendments by failing to acquit him when the Commonwealth's basis of culpability (i.e., a "void" Power of Attorney, hereinafter "POA"), and a state statute made Petitioner incapable, as a matter of law, of committing the offenses for which he was ultimately convicted?

B. Did the Pennsylvania Supreme Court deny Petitioner his rights to a Fair Trial and Due Process under the 5th and 14th Amendments by affirming an opinion by a post-trial judge that contains over 100 erroneous statements that are either not in the record; not in the record and contradicted by the record; or taken out of context, when 68 of those statements were incorporated into the Superior Court's intermediate opinion of affirmance?

C. Did the Pennsylvania Supreme Court affirm the unconstitutional repeal by the Superior Court and the post-trial judge, of the presumption of Petitioner's innocence and the use of a contract law presumption that language in a POA should be construed against the

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA, : No. 14 WM 2021

Respondent

v.

CHARLES P. MCCULLOUGH,

Petitioner

ORDER

PER CURIAM

AND NOW, this 5th day of April, 2021, the Application for Extraordinary Relief and the Motion for Stay and to Modify Sentence are **DENIED**.

Justice Wecht did not participate in the consideration or decision of this matter.