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## Former Downingtown magisterial district judge wants new trial, cites illness

By Michael Rellahan, Daily Local News

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WEST CHESTER >> Rita Jo Arnold, the former Downingtown magisterial district judge convicted of tampering with records and obstruction of justice in an attempt to cover up a criminal citation against one of her sons, is fighting for her freedom.

And for her life as well, which her attorney and one of her doctors say may be one and the same.

On Aug. 2, the state Supreme Court, in a one-page decision, refused to hear Arnold's appeal of her 2013 conviction and state prison sentence, without comment. That effectively upheld an earlier decision by the state Superior Court sustaining the 16- to 32 -month jail sentence a senior judge had imposed on Arnold for her actions in the citation-fixing scheme, which he said had brought dishonor to the state court system.

The high court's decision seemingly paves the way for Arnold, of West Bradford, to resume serving her prison sentence, since it exhausts her direct appeals of the conviction and sentence she maintains was unfairly imposed.

But on Aug. 15, Arnold's new attorney, A. Charles Peruto Jr. of Philadelphia, filed a motion in Chester County Common Pleas Court seeking to have her conviction overturned under the state's Post Conviction Relief Act (PCRA), alleging that her previous attorney had been ineffective in persuading her to plead guilty to the charges against her instead of taking the case to trial.

But Peruto, in also asking that Arnold be allowed to remain free on bail pending the result of her PCRA petition, also argued that to send the 60-year-old Arnold to prison now would be, essentially, a death sentence.

"She is suffering horribly," Peruto told the Daily Local News last week. "We are hopeful that the judge will dismiss the case because of that."

The twin motions have been forwarded to Senior Judge John L. Braxton, who handed down Arnold's sentence and has refused to reduce it in the past, for scheduling. A hearing on the motions has been set for Thursday at 9:30 a.m. in the Chester County Justice Center.

The facts surrounding Arnold's criminal behavior outlined in the decisions against her are as follows:

While Arnold was serving as the district judge in the Downingtown area, which at the time covered West Bradford, her two sons were involved in an altercation at her home there on Jan. 19, 2010. State police were

called to the scene and issued a citation to one of the men, Forrest C. Solomon Jr., who was on probation at the time for drug offenses.

When the citation was turned in to Arnold's court, it was placed in the docketing bin. When she saw it, Arnold called a sergeant at the state police barracks at Embreeville to ask why a citation had been issued. The sergeant promised to look into it, but before he could answer her question he received the citation in the mail from Arnold's office.

The sergeant, Brandon Daniels, called Arnold and told her that the citation had been properly issued and needed to be refiled. The court received the citation on Feb. 8, 2010, but Arnold failed to docket it. She later told a court employee that she would tell her when to docket it, saying that Solomon had a probation hearing coming up and she did not want the citation to affect his case.

One month later, the trooper who issued the citation told Daniels that it had not been docketed, and Daniels called the court. Arnold told him that her court was "backlogged," and that the citation would be filed soon. It was docketed on April 5, 2010, but Arnold had it transferred to District Court 15-1-01 in West Chester, changing the sex, race, and birthday of the defendant. She also failed to inform the Chester County Court Administration of her actions.

The irregularities of the citations were eventually discovered by court administration, and when then-President Judge James P. MacElree II asked her to explain them, Arnold told him the delay in docketing had been because her court had been closed for several days because of noxious fumes in the building. But a review of other citations received at the time found no other delays.

The state Court of Judicial Conduct suspended Arnold for three months because of her actions. During the investigation, Arnold approached a court employee who said that Arnold asked her to testify that she had not known of the citation until April 5, 2010, when in fact she had known about it beforehand. Arnold later asked that the employee be replaced.

She was charged in April, 2013, and resigned her position almost immediately.

In her appeal, Arnold asked the court to consider that Braxton had abused his discretion by imposing a sentence that was twice the outer end of the aggravated range in the sentencing guidelines, and ignored mitigating factors in her favor. It also raised the question of whether he had properly articulated his reasons for the sentence on the record.

The state Attorney General's Office, which prosecuted the case against Arnold, argued, however, that Braxton had taken into account mitigating factors such as her breast cancer and lack of a prior record, but that he had decided not to give those the weight that Arnold would have liked.

The Superior Court agreed with the prosecution.

"It is evident that the sentencing court considers the factors that (Arnold) alleges were mitigating. (Braxton) simply did not afford those facts more weight than what it considered were aggravating factors," its decision rejecting the appeal read.

Now, Peruto is seeking to have the conviction voided and Arnold given a new trial on the basis that her previous attorney, Heidi Eakin of Harrisburg, had given her improper legal advice during her plea and sentencing hearing. But he is also arguing that taking Arnold away from her medical team in the county and subjecting her to incarceration in the state correctional system would cause her medical condition to deteriorate significantly.

"Clearly, your honor never intended the sentence to be a death sentence in prison," he wrote, addressing Braxton.

“Arnold’s condition has worsened,” the attorney wrote. “Her health is considerably worse than it was at sentencing.” She suffers not only from breast cancer but also diabetes, lymphedema, retinopathy, and neuropathy. “These medical issues need constant and daily monitoring, and she needs regular doctor visits to control her condition.”

Based on doctor’s reports, the petition declares, “Arnold will likely suffer and die in prison.”

In a letter attached to the petition, Dr. Bruce Colley of Downingtown, one of Arnold’s doctors, said that if she is removed from her current medical care, she will develop complications that, “with time, will lead to serious deterioration of her health and an untimely death.

“Surely, the Commonwealth of Pennsylvania, in which I have lived all my life, and of which I, like you, am intensely proud, does not intend the fatal consequence to which she will arrive if incarcerated,” he said in a letter to Braxton attached to Peruto’s motion.

“If Mrs. Arnold is removed from her home and medical community she will soon die,” Colley wrote.

In addressing the legal issues surrounding her latest appeal, Peruto said that Arnold had been misled by Eakin, who had represented her before the judicial board and since her 2013 arrest.

“At sentencing, Arnold was assured by her trial counsel that her lack of prior record, her willingness to resign and plead guilty, and her serious medical condition would be considered mitigating factors,” he stated.

He said a proposed probationary plea negotiated with the state Attorney General’s Office was rejected by the judge. When that happened, Eakin allegedly took Arnold aside and told her she should still plead guilty because the judge was trying to scare her and might give her a “taste” of jail, the petition claims. Asked what that meant, Eakin replied five to 10 days, or as much as 30 days. “Nothing in life is guaranteed,” Peruto quoted Eakin as telling Arnold.

Instead, Braxton handed down the 16-to-32 month prison sentence, which stunned observers.

Peruto’s petition alleges that Eakin gave Arnold misleading legal advice, and coerced her into entering the guilty plea and not going to trial. Because of that, he said, Arnold should be allowed to withdraw her plea and seek a new trial.

Eakin could not be reached for comment.

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