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January 27, 2017

HAND DELIVERED

Honorable Bonnie J. Mizdol, A.J.S.C.
Bergen County Justice Center
Room 425
Hackensack, New Jersey 07601

Re: State v. Christopher J. Christie
Complaint No. 0219-S-001008

Your Honor:

The Bergen County Prosecutor's Office respectfully submits this letter to Your Honor to advise that our office does not intend to pursue charges against defendant based on our review of the evidence and our ethical obligations. See Rule 3:25-1(a). Additionally, we address what we perceive as certain practical problems which undermine the initial probable cause determination. Indeed, from our institutional perspective, we submit that legal and practical considerations militated against Complaint Summons No. 0219-S-001008 ever being issued. And we maintain that it is appropriate to bring them to the attention of Bergen County's Assignment Judge.

A. Procedural History

On September 28, 2016, William J. Brennan filed Complaint-Summons No. 0219-S-001008 (2016) in the Fort Lee Municipal Court in Bergen County, alleging that defendant, Governor Christopher J. Christie, committed official misconduct in September of 2013. Specifically, Mr. Brennan claimed that defendant "refrained from ordering that his subordinates take all necessary action to re-open local access lanes to the George Washington Bridge" and that this inaction violated N.J.S.A. 2C:30-2(b). Complaint Summons No. 0219-S-001008 (2016).

On September 28, 2016, venue of the probable cause hearing was changed from the Fort Lee Municipal Court to the Municipal Court for Vicinage 2 (Bergen County).

On October 13, 2016, the Honorable Roy F. McGeady, P.J.M.C., conducted a probable cause hearing. Mr. Brennan was the sole witness, proffering eight pages of selected transcript excerpts from David Wildstein's testimony from the then on-going federal criminal trial of United States v. Baroni, et al., Docket No. 2:15-CR-00193 (SDW). At the conclusion of the hearing, Judge McGeady found probable cause that defendant committed the second degree crime of official misconduct, which exposed defendant to a sentence of 5-10 years in state prison with a mandatory five year period of parole ineligibility.

On October 19, 2016, Mr. Brennan filed an "Emergent Motion for Appointment of a Special Prosecutor" with the Superior Court, Law Division.

On November 2, 2016, defendant filed a motion for leave to appeal the probable cause finding in the Superior Court, Law Division.

On November 30, 2016, a hearing was held before Your Honor. The court denied Mr. Brennan's motion for the appointment of a special prosecutor. Mr. Brennan subsequently filed a motion for reconsideration, which the court denied.

On December 9, 2016, the BCPO joined in defendant's argument that the municipal court erred in denying defendant the presence of counsel at the probable cause hearing.

On December 30, 2016, defendant filed a brief in further support of his motion to dismiss, asking the court to rule on the merits and find there was insufficient probable cause defendant committed official misconduct, in violation of N.J.S.A. 2C:30-2(b), and to dismiss the complaint in its entirety.

On January 11, 2017, a hearing on defendant's motion to dismiss was held before Your Honor.

On January 12, 2017, Your Honor denied defendant's motion to dismiss the complaint with prejudice. The court did, however, reverse the probable cause determination and remand the matter to the Vicinage 2 Municipal Court for further proceedings.

The matter is scheduled to be heard by Judge McGeady on February 2, 2017.

B. Civilian Complaint

A citizen complaint may be brought in accordance with Rule 7:2-2. A summons on a complaint may be issued "only if it appears to the judicial officer from the complaint, affidavit, certification or testimony that there is probable cause to believe that an offense was committed." R. 7:2-2(a)(1). The New Jersey Practice Manual on Municipal Court Practice states that the testimony comes from the complainant. 17 N.J. Prac., Municipal Court Practice § 5:5 (Ramsey, 3d ed.).

Generally citizen-complaints are brought for minor crimes and involve matters where complainants have personal knowledge of the offense. See, e.g., State v. Storm, 141 N.J. 245, 248 (1995); State v. Myerowitz, 439 N.J. Super. 341, 346 (App. Div. 2015); State v. Bradley, 420 N.J. Super. 138 (App. Div. 2011); State v. Vitiello, 377 N.J. Super. 452, 454 (App. Div. 2005); State v. Dwyer, 229 N.J. Super. 531, 534 (App. Div. 1989).

Our Supreme Court has expressed its concern over citizen complaints and that "private prosecutions pose the risk that the complainant will use the municipal court proceeding to harass the defendant or to obtain an advantage in a related civil action." Storm, supra, 141 N.J. at 253. The Court subsequently observed the danger of private citizens presenting criminal

complaints could allow "political candidates, on the eve of an election, [to] charge their political opponents with fraud or some other nefarious activity[.]" In re Loigman, 183 N.J. 133, 145 (2005).

Moreover, a private citizen may not prosecute serious crimes. Id. at 139. It is "the responsibility of the public prosecutor to investigate and prosecute serious crimes, and it has been the role of the victim or concerned citizen to report knowledge of criminal activities to the proper law enforcement authorities." Ibid.

Here, Mr. Brennan alleged the serious crime of official misconduct against the sitting New Jersey Governor. In light of the above well-established caselaw, we respectfully submit that Judge McGeady erred when the instant complaint issued.¹

In short, a matter of this gravity should not have been heard by a municipal court judge. Nevertheless, given the determination and referral, the BCPO undertook a review as noted below.

¹ The BCPO recognizes that Rules 3:3-1 and 7:2-2(a)(1) read in pari materia arguably required Judge McGeady to decide the question of probable cause. However, Rule 1:1-2 provides that our court rules may be relaxed, if that would result in "the achievement of procedural due process in the service of substantial justice on the merits." Pressler & Verniero, Current N.J. Court Rules, Comment 1 on Rule 1:1-2 (2017). This unprecedented situation was just such a case.

C. Prosecution of This Matter is Unwarranted.

A juxtaposition of the pertinent statute and the evidence, coupled with an appreciation of our prosecutorial duties, underscores the soundness of our decision.

To establish a prima facie case of official misconduct, the State must prove that: (1) defendant was a "public servant" within the meaning of the statute, (2) who, with the purpose to obtain a benefit or deprive another of a benefit, (3) committed an act relating to but constituting an unauthorized exercise of his or her office, (4) knowing that such act was unauthorized or that he or she was committing such act in an unauthorized manner or knowingly refrained from performing a duty. State v. Thompson, 402 N.J. Super. 177, 191-92 (App. Div. 2008) (citing State v. Bullock, 136 N.J. 149, 153 (1994); State v. Schenkolewski, 301 N.J. Super. 115, 143 (App. Div.), certif. denied, 151 N.J. 77 (1997)).

The BCPO conducted a thorough review of the transcripts and exhibits in United States v. Baroni et al., Docket No. 2:15-CR-0019 (SDW), a prosecution which followed an extensive and comprehensive years-long federal investigation. Based upon our review of this material, as well as other relevant evidence, the BCPO has concluded that it will not proceed with official misconduct charges against defendant. The reason is simple, but

compelling -- that charge cannot be proven beyond a reasonable doubt.

Prosecutors are bound by ethical obligations beyond that of other attorneys. R.P.C. 3.8 (special responsibilities prosecutor). A prosecutor's "obligation to play fair is every bit as compelling as his responsibility to protect the public." State v. Harvey, 176 N.J. 522, 529 (2003) (quoting State v. Torres, 328 N.J. Super. 77, 94 (App. Div. 2000)).

As Your Honor knows, a prosecutor's charging decision is, of course, constrained by ethical and institutional imperatives. Prosecutors are "vested with broad discretionary powers in the discharge of the manifold responsibilities of [their] office." State v. Hermann, 80 N.J. 122, 127 (1979). And, "'inaction' may constitute a valid exercise of the discretion allowed to the prosecutor." State v. Muller, 246 N.J. Super. 518, 522 (App. Div. 1991). See also, State v. Winne, 12 N.J. 152, 174 (1953). Concomitantly, a prosecutor's exercise of judgment in declining to investigate and prosecute a matter is entitled to deference; judicial nullification of such a prosecutorial decision is limited to cases of "arbitrariness or abuse." Ringwood Fact Finding Comm., 65 N.J. 512, 516-17 (1974); State v. Ward, 303 N.J. Super. 47, 57-58 (App. Div. 1997); Muller, *supra*, 246 N.J. Super. at 522.

"Prosecutors routinely screen and investigate criminal complaints to determine whether there is probable cause to support the return of an indictment. Prosecutors are ethically bound not to seek an indictment in the absence of probable cause." Loigman, supra, 183 N.J. at 146. Indeed, prosecutors are prohibited from "prosecuting a charge that the prosecutor knows is not supported by probable cause." R.P.C. 3.8(a). Moreover, as the Standards of Criminal Justice make clear,

A prosecutor should not institute, or cause to be instituted or permit the continued pendency of criminal charges when the prosecutor knows that the charges are not supported by probable cause. A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction.

[American Bar Association, Criminal Justice Standards, The Prosecution Function - Standard 3-3.9; emphasis added].

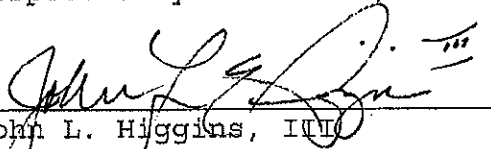
These considerations mandate the conclusion we have reached based on our review of the evidence.

CONCLUSION

For all the foregoing reasons, the BCPO will not pursue the charge of official misconduct against defendant.

Respectfully submitted,

By:


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Cc: Hon. Roy F. McGeady, P.J.M.C. -- Hand Delivered
Craig Carpenito, Esq. -- Via Email
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