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GEORGE E. GOLDSTEIN
(1938-1997)

April 14, 1998

Larry Frankel, Esquire
Executive Director
ACLU of Pennsylvania
125 S. 9th Street
Philadelphia, PA 19105-1161

Re: Commonwealth v. Leon Williams

Dear Mr. Frankel:

Enclosed please find a letter from Mr. Wittels that was transmitted by telefax for typing. However, some words are omitted because the transmission was not clear. Mr. Wittels will return to the office on April 20, 1998 and will contact you then.

Thank you for your consideration in this regard.

Very truly yours,

Suzette M. Salmon

SUZETTE M. SALMON
Secretary for Barnaby C. Wittels

BCW/sms
Enclosure

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125 S. 9th Street
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Re: Commonwealth v. Leon Williams

Dear Mr. Frankel:

Please forgive my delayed response to your letter of April 8, 1998 with regard to the above captioned matter. As you know, I am out of the country on vacation. However, I do want to give you my best recollection as to how and why this case was tried as a "waiver" i.e., before a judge sitting alone.

This was, in my eyes, a potential death penalty case. The Commonwealth filed a Notice of Aggravating Circumstances and I responded by demanding a jury trial. I made that request at the ready pool conference before Judge Temin and repeated it at every appropriate juncture. Shortly before trial, the prosecutor, Mr. Gilson, called me and asked if I would consider trying this case before Judge Greenspan sitting without a jury. I asked if he would certify that the case rose no higher than third degree murder thus eliminating the death penalty. He refused. I asked for several days to consider the matter and to consult with my client. After due consideration, consultation with colleagues and other members of the defense bar, and conferring with my client, I agreed to try the case before the judge sitting alone.

The result was a conviction for third degree murder and related offenses. Mr. Williams received a hefty sentence, but avoided the distinct possibility of a life term or, worse yet, a sentence of death.

As I review the case in my mind, it is clear that the prosecutor sought the non-jury trial because he had problems with his case and an extremely heavy docket. His only witness to the fatal shooting was a young felon who claimed to have heard a dying declaration which explicitly inculpated my client. This witness recanted and, under oath, said he had heard nothing. Rather, he testified that he had made up the "dying declaration" because he was angry. Thus, the Commonwealth was left with my client's confession. I, on the other hand, was well aware that juries do not like drive by shootings involving drugs. And, make no mistake, this was a bad case in which a fifteen year old boy was erroneously shot because he was in the wrong place at the wrong time.

The fact is, both the prosecutor and I compromised. So did the judge. Right or wrong, these accommodations take place so that the business of the courts can be carried on, so that jammed dockets can be managed.

I find it exceedingly strange that this case should be cited as an example in support of the Commonwealth being given the right to demand a jury trial. As stated above, the impetus for changing the status of this case from a jury trial to a non-jury trial.... It is therefore disingenuous, at best, to suggest this case supports the need for changing the status quo.

If either you or the committee needs further elaboration, please advise. Thank you for your kind attention to this matter.

Very truly yours,

Barnaby C. Wittels (sms)
BARNABY C. WITTELS

BCW/sms