

STATE OF MARYLAND,

Petitioner,

v.

ALICIA WHITE,

Respondent.

IN THE

COURT OF APPEALS

OF MARYLAND

September Term 2015

Petition Docket No. ____

**PETITION FOR A WRIT OF CERTIORARI
AND MOTION FOR EXPEDITED REVIEW**

The State of Maryland, Petitioner, by its attorneys, Brian E. Frosh, Attorney General of Maryland, and Carrie J. Williams, Assistant Attorney General, moves, pursuant to Maryland Rule 8-301, for the issuance of a Writ of Certiorari to the Court of Special Appeals to review the above case. In support of this Petition, and pursuant to Rule 8-303(b)(1) and (2), the State notes the following:

(A) The case was docketed as Case No. 115141036 in the Circuit Court for Baltimore City;

(B) Alicia White is pending manslaughter and related charges in the Circuit Court for Baltimore City. On January 6, 2016, the State sought an order compelling William Porter to testify as a witness in White's trial pursuant to Courts & Judicial

Proceedings Section 9-123. The circuit court issued an order compelling Porter to testify, which is attached hereto. White noted a timely appeal to the Court of Special Appeals. On January 20, 2016, the circuit court stayed White's trial pending resolution of the appeal;

(C) This case is currently pending in the Court of Special Appeals as Number 2489 of September Term, 2015. A motion to consolidate this appeal with *Caesar Goodson v. State*, Sept. Term, 2015, No. 2308 is pending in the Court of Special Appeals. This case was decided on the same record and presents the same issues as *Goodson v. State*. Porter's brief in *Goodson* was filed on January 26, 2016. The State's brief was filed on February 10, 2016. Oral argument is currently scheduled for March 4, 2016. For the Court's convenience, a copy of the briefs filed in that case are attached to this petition;

(D) A copy of the docket entries evidencing the judgment of the Circuit Court is attached hereto;

(E) The judgment of the Circuit Court has adjudicated all claims in this case between Porter and the State related to the

motion to compel Porter's testimony, but White's criminal case remains pending.

QUESTION PRESENTED

Does Courts & Judicial Proceedings, Section 9-123 provide Porter sufficient protection against self-incrimination to allow his testimony to be compelled in the trial of Alicia White?

STATEMENT OF FACTS

Freddie Gray was injured in police custody on April 12, 2015. He died from his injuries a week later. Gray's death sparked unrest in Baltimore City culminating in the deployment of the National Guard. Several weeks later, on May 1, 2015, the Baltimore City State's Attorney's Office charged six police officers in connection with Gray's death: William Porter; Caesar Goodson; Alicia White; Garrett Miller; Edward Nero; and Brian Rice. Gray's death, Baltimore's unrest, the criminal charges, and the subsequent trials all garnered national media attention.

Pursuant to the prosecutor's request, Porter was tried first. Porter's trial began on November 30, 2015, and ended in a mistrial

on December 16, 2015, after jurors were unable to reach a verdict. Porter's case is scheduled for retrial in June of this year.

Until it was stayed by the circuit court, White's trial was scheduled to begin on February 8, 2016. One month prior to the start of White's trial, the State served Porter with a subpoena to appear and testify as a witness for the prosecution. Porter moved to quash the subpoena, which motion was denied at a hearing on January 6, 2016.

At that same hearing, Porter took the stand and testified that, if called as a witness, he intended to invoke his Fifth Amendment privilege against self-incrimination. The State sought an order compelling Porter's testimony pursuant to Courts and Judicial Proceedings Article, § 9-123. In its written motion, the State averred that Porter's testimony "may be necessary to the public interest," and that Porter was refusing to testify based upon his privilege against self-incrimination.

Porter objected to being compelled to testify on a number of constitutional grounds. Porter also argued that the State should not be permitted to compel his testimony because doing so would be the equivalent of the State suborning perjury, would turn the

prosecutors into witnesses, and would make providing him a fair retrial impossible.

The State responded that Porter's constitutional concerns were unfounded. Porter's complaints about his retrial, the prosecution argued, could be litigated at a future pre-trial hearing in his case, but were not a basis to deny the motion to compel.

After hearing argument, the court issued an order pursuant to the State's request. The order stated that Porter must testify as a witness in White's case, that he "may not refuse to testify on the basis of his privilege against self-incrimination," and that "no testimony of [Porter], compelled pursuant to this Order, and no information directly or indirectly derived from the testimony of Officer Porter compelled pursuant to this Order, may be used against Officer Porter in any criminal case, except in a prosecution for perjury, obstruction of justice, or otherwise failing to comply with this Order." Porter's appeal of this order is currently pending in the Court of Special Appeals.¹

¹ As noted above, the circuit court also granted the State's motion to compel Porter's testimony in the trial of Caesar Goodson (Circuit Court case number 115141032). The appeals are based on the same

REASONS FOR GRANTING THE PETITION

Certiorari review of this case, prior to a decision in the Court of Special Appeals, is necessary and desirable because this case presents an issue of first impression and because pre-judgment certiorari review will advance the cause of judicial economy and assure that the officers charged in the death of Freddie Gray are brought to trial in a timely manner.

The scope of § 9-123 immunity is an issue of first impression. Neither this Court nor the Court of Special Appeals has opined on the scope of a prosecutor's authority under § 9-123, the constitutionality of § 9-123, or the circuit court's role in the issuance of motions to compel under § 9-123.

In the trials of Goodson and White, the circuit court granted the motions to compel Porter's testimony and Porter appealed. The issue before the Court of Special Appeals is whether § 9-123 complies with the dictates of the Fifth Amendment and Article 22 of the Maryland Declaration of Rights. In the trials of Nero, Miller,

record and a motion to consolidate the cases is pending in the Court of Special Appeals. A petition for writ of certiorari in Goodson's case has also been filed.

and Rice, the circuit court denied the motions to compel, and the State appealed. The issue before the Court of Special Appeals in those cases is whether the circuit court can deny a request from the State's Attorney that complies with § 9-123, and, more specifically, whether the court has the discretion to evaluate the State's decision to grant a particular witness immunity and grant or deny the motion to compel based upon whether it agrees with the State's choices.²

Certiorari review should be granted in all five cases because they provide an appropriate vehicle for this Court to consider the application of § 9-123 from all sides. As demonstrated by the lower court's rulings in all five of these cases, the standard by which § 9-123 requests are viewed is inconsistent. The lower courts are in need of guidance regarding their proper role when faced with a prosecutor's request under § 9-123. Any questions surrounding the constitutionality of § 9-123 are also important to resolve, so that prosecutors can continue to rely on this important tool.

² The State has filed petitions for writs of certiorari in those cases as well.

As discussed in the State's brief, immunity statutes are ubiquitous across the country. The appellate courts of many states, and the federal government, have opined as to the constitutionality of these statutes and the roles of the judiciary and executive branches of government when making immunity decisions. This Court should review § 9-123 so that Maryland can join the ranks of the jurisdictions where these issues are a matter of settled law.

Not only is pre-judgment certiorari in this case important because it presents a case of first impression, it also advances the policy of judicial economy. The trials of the six police officers charged in the death of Freddie Gray are of great import to Maryland and the city of Baltimore. There is little doubt that, if a writ of certiorari is not granted and the Court of Special Appeals issues an opinion, the losing party will file a petition for writ of certiorari in this Court. If this Court is inclined to grant such a petition, issuing a writ of certiorari now is a matter of judicial economy.

And in this case, judicial economy is important. The five officers in the underlying criminal cases have not yet been brought

to trial. While the appeals of the motions to compel are critical, the State also has an interest in litigating the appeals in a timely fashion. The faster the appeal process is resolved, the less time the defendants' trials will be delayed. The State is mindful of its obligation to bring criminal defendants to trial in a timely manner — indeed, the State has worked hard to bring these cases to trial as quickly as possible. This Court should grant pre-judgment certiorari review of this important issue of first impression in order to provide guidance to the lower courts as to § 9-123, and in order to resolve the issues in this case as expeditiously as possible.

MOTION FOR EXPEDITED REVIEW

In keeping with its efforts to expedite the appellate process in these cases, the State respectfully requests that this Court consider this petition as soon as practicable and, if the petition is granted, the State requests that this Court expedite its review of the issue presented.

Alicia White's trial was scheduled to begin on February 8, 2016. After Porter appealed the order compelling him to testify, the circuit court stayed White's trial pending resolution of the

appeal. The State seeks expedited review of this appeal in order to minimize the delay to White's trial proceedings.

RESPONDENT'S COUNSEL'S POSITION

Undersigned counsel has spoken with Gary Proctor, counsel for Porter, and he has indicated that, while he disagrees with the State's position on the merits of the underlying appeal and the application and constitutionality of Section 9-123, he takes no position on the State's request for a writ of certiorari (as to the cases captioned *Goodson v. State* and *White v. State* only) and, therefore, does not intend to file an answer to the State's petition unless directed to do so by this Court. Counsel for Porter will instead defer to this Court regarding whether to issue a writ of certiorari in those two cases.


CONCLUSION

The State of Maryland respectfully asks the Court to grant this petition for a writ of certiorari and motion for expedited review.

Dated: February 10, 2016

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

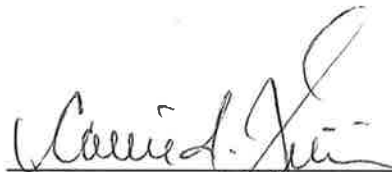

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**CERTIFICATION OF WORD COUNT AND
COMPLIANCE WITH MD. RULE 8-112.**

This petition complies with the font, line spacing, and margin requirements of Md. Rule 8-112 and contains 1841 words, excluding the parts exempted from the word count by Md. Rule 8-303.



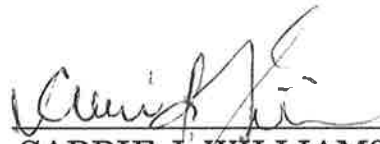
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CERTIFICATE OF SERVICE

I certify that on this day, February 10, 2016, a copy of the Petition for a Writ of Certiorari was delivered electronically and mailed by first-class U.S. Postal Service, postage prepaid, to Gary E. Proctor, 8 East Mulberry Street, Baltimore, Maryland 21202, and Joseph Murtha, 1301 York Road, Suite 200, Lutherville, Maryland 21093.



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