



**PACDL**

Pennsylvania Association of  
Criminal Defense Lawyers

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December 17, 2018

District Attorney Larry Krasner  
Office of the District Attorney of Philadelphia  
3 South Penn Square  
Philadelphia, PA 19107

**Re: Commonwealth v. Jovaun Patterson, CP-51-CR-0005094-2018**

Dear District Attorney Krasner:

The Pennsylvania Association of Criminal Defense Lawyers (“PACDL”) is a professional association of attorneys admitted to practice before the Supreme Court of Pennsylvania and who are actively engaged in providing criminal defense representation. As such, PACDL presents the perspective of experienced criminal defense attorneys who aim to protect and ensure by rule of law those individual rights guaranteed by the Pennsylvania and United States Constitutions, and work to achieve justice and dignity for defendants. PACDL’s membership includes more than 950 private criminal defense practitioners and public defenders throughout the Commonwealth.

The ACLU of Pennsylvania is a nonprofit, nonpartisan organization with approximately 40,000 current members. It is the state affiliate of the American Civil Liberties Union, founded in 1920 to protect and advance civil liberties throughout the United States through advocacy, public education, and litigation. The ACLU of Pennsylvania promotes the protection of fundamental rights in the criminal justice system at all stages of proceedings.

We are writing to express grave concern about your recent filing of a “Nunc Pro Tunc Petition in Support of Motion to Vacate Defendant’s Guilty Plea and Sentence” in Commonwealth v. Jovaun Patterson (CP-51-CR-0005094-2018). A copy of this motion is attached. In this motion your office asks the court to vacate a *negotiated* guilty plea and sentence that had already been imposed and that Mr. Patterson was already serving. In support of this request you claim that your office (1) did not honor the requirements of Crime Victims Act, and (2) has determined that there was insufficient supervisory review prior to the plea and sentencing. This motion was filed after your office (1) agreed to a plea and sentence with counsel and his client, (2) entered into a plea and sentence in open court and (3) on questioning from media stated that the disposition in Mr. Patterson’s was “wholly appropriate.”<sup>1</sup>

PACDL members, ACLU members and the broader community have supported your efforts and promise to bring transparency, accountability and justice to a system that often appears to lack those qualities. Furthermore, while criminal defense attorneys and assistant district attorneys may practice in an adversarial system, the undersigned recognize the inherent need for good faith and trust in adjudicating criminal matters.

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<sup>1</sup> <http://www2.philly.com/philly/news/crime/philly-beer-deli-owner-shooting-gunman-krasner-plea-sentence-20181115.html>

Unfortunately, the filing in Mr. Patterson's matter suggests that this District Attorney's Office seeks, without legal support, to upend the delicate balance required to resolve criminal matters. As a matter of legal authority and as a matter of policy, the reasoning and relief requested runs contrary to the culture you promised to bring to the District Attorney's Office. The thrust of your requested relief in this matter would expand the Crime Victim's Rights Act far beyond its intent and render it nearly impossible for criminal defendants to make informed decisions about their matters. The reasoning underlying the request for relief represents a significant and reckless disregard for the principles of due process. It is important to note that we are not aware of any prior District Attorney in Philadelphia taking such drastic and irresponsible action.

As a practical matter, we can find no support in either the Crime Victim's Rights Act or in the related caselaw to support the request in this filing. In fact, most Pennsylvania decisions wrestling with this issue suggest the opposite (*Commonwealth v. Zuber*, 353 A.2d 441, 446 (Pa. 1976) (remanding for imposition of "a prison sentence commensurate with the term contemplated by all of the parties to the plea proceedings" even though the terms initially contemplated were incapable of fulfillment under the law); *Commonwealth v. Martinez*, 147 A.3d 517 (Pa. 2016) (applying *Zuber*; sex offenders entitled to benefit of their bargain through specific performance; Commonwealth must honor registration terms in force at time of plea).<sup>2</sup>

Your second reason for relief, that your office has now decided that there was insufficient supervisory review of the disposition, raises significant concern. In any adversarial system that seeks justice, there is a need for good faith negotiation and the ability of both counsel and defendants to rely on the actions taken by an Assistant District Attorney. When counsel for a criminal defendant discuss matters with your Assistant District Attorney, especially in plea negotiations, counsel and their clients should expect that the Assistant District Attorney has the authority to make whatever decisions or representations they make. Furthermore, when an Assistant District Attorney appears on your behalf in court, counsel and their clients should be able to assume that they have the authority to take actions on behalf of the District Attorney's Office.

Asking for relief because your office has now decided that the Assistant District Attorney did not follow an undisclosed internal policy threatens the ability of defense counsel and their clients to resolve matters fairly and openly. As you are well aware, defense counsel and their clients do not have insight into what internal discussions prosecutors may have occurred regarding a specific case and we certainly do not have insight into all policies or procedures your office now decides to require of Assistant District Attorneys. Assuming the relief you request in Mr. Patterson's matter is granted, a defense attorney could no longer advise a client that the District Attorney's Office would honor the terms of a guilty plea tendered in open court because the District Attorney's Office may decide at a later time that they are unsatisfied with the agreement that the client relied on in deciding to plead guilty. In fact, based on the logic in your filing, the District Attorney could seek to increase a defendant's negotiated sentence years after they began serving it. As you can imagine, such a radical change in your office's policy would impede the ability of criminal defendants to make meaningful decisions regarding disposition of their matters and greatly burden an already overburdened criminal justice system.

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<sup>2</sup> For a more detailed legal analysis, see "Response in Opposition to Government's Nunc Pro Tunc Petition to Vacate Defendant's Guilty Plea and Sentence" filed by S. Philip Steinberg on behalf of Mr. Patterson on December 10, 2018.

Additionally, your logic would make the judge's role in certifying and executing a plea agreement impossible. Allowing the prosecution to unilaterally revoke a negotiated plea at an undetermined time in the future would mean that judges could not rely on the finality of any criminal proceeding. Furthermore, a trial court could not possibly find a plea knowingly and voluntarily tendered when a defendant is unaware what alleged internal policies may have been followed or not by an Assistant District Attorney.

We recognize that culture change in any organization can be difficult, and we appreciate that there may be competing interests in the adjudication of any criminal matter. However, we are deeply disappointed that, without legal authority and with no evidence that either counsel for Mr. Patterson or Mr. Patterson had done anything inappropriate, your office would seek to change the terms of an agreement that had already been ratified and executed in court. We would not presume to offer advice on how to handle this matter internally, but we respectfully suggest that criminal defendants who have relied on the promises of your office and fulfilled their ends of negotiations should not bear the burden of your office's later decision to revisit an internal decision.

Sincerely,

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