

*Prepared by the Court*

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STATE OF NEW JERSEY,

Plaintiff,

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: CRIMINAL PART  
BERGEN COUNTY**

**DOCKET NO. 16-1945**

**COMPLAINT NO. 0219-S-001008 (2016)**

(initiated on Citizen's Complaint)

v.

CHRISTOPHER J. CHRISTIE,

Defendant.

**ORDER**

BONNIE J. MIZDOL, A.J.S.C.

**FILED**

**MAR 17 2017**

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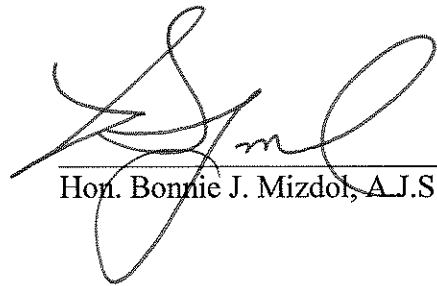
**THIS MATTER** having come before the court on Notice of Appeal and Verified Petition of civilian complainant, William J. Brennan ("Brennan"), in the presence of Donald F. Burke, Esq., attorney for civilian complainant, in connection with complaint-summons No. 0219-S-001008 (2016) initiated by Brennan against Christopher J. Christie ("Defendant"), on notice to Alston & Bird, LLP (Craig Carpenito, Esq.), attorneys for Defendant; the Office of the County Prosecutor, County of Bergen, John L. Higgins, III., Esq., First Assistant Prosecutor on behalf of the State of New Jersey and the Office of the Attorney General, State of New Jersey, and the Court having considered the papers filed in support and in opposition to the matter; and for good cause shown,

**IT IS** on this 17th day of March, 2017;

1. **ORDERED** that the February 2, 2017, Order of Honorable Roy F. McGeady, P.J.M.C. denying Brennan's motion for appointment of an independent special

prosecutor is **AFFIRMED** for the reasons set forth in the opinion annexed hereto;  
and it is further

2. **ORDERED** that Brennan's verified petition for appointment of a special prosecutor is **DISMISSED** for the reasons set forth in the opinion annexed hereto;  
and it is further
3. **ORDERED** that Brennan's request that "this court refer the matter to a Grand Jury with the hearing transcript and video from the proceeding before Honorable Roy F. McGeady, P.J.M.C. for a determination as to whether the Grand Jury concurs as to his finding of probable cause," is **DENIED** for both the procedural and substantive reasons set forth in the opinion annexed hereto; and it is further
4. **ORDERED** that a copy of this Order shall be served upon all counsel of record simultaneously with service of the court's written opinion.



Hon. Bonnie J. Mizdol, A.J.S.C.

NOT TO BE PUBLISHED WITHOUT  
THE APPROVAL OF THE COMMITTEE ON OPINIONS

**FILED**

**MAR 17 2017**

**BONNIE J. MIZDOL, A.J.S.C.**

STATE OF NEW JERSEY,

*Plaintiff,*

v.

CHRISTOPHER J. CHRISTIE,

*Defendant.*

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: CRIMINAL PART

BERGEN COUNTY

DOCKET NO. 16-1945

COMPLAINT NO. 0219-S-001008 (2016)

(initiated on Citizen's Complaint)

APPEAL OPINION

**Decided: March 17, 2017**

**Honorable Bonnie J. Mizdol, A.J.S.C.**

Donald F. Burke, Esq., on behalf of civilian complainant, William J. Brennan

John L. Higgins, III., Esq., First Assistant Prosecutor, (Catherine Foddai, Esq., Senior Assistant Prosecutor appearing) on behalf of the State of New Jersey, (Office of the County Prosecutor, County of Bergen).

Rebecca M. Ricigliano, Esq., First Assistant Attorney General, (Jennifer E. Kmiecik, Esq., Deputy Attorney General appearing) on behalf of the State of New Jersey, (Office of the Attorney General, State of New Jersey).

Craig Carpenito, Esq., on behalf of the defendant, Christopher J. Christie, (Alston & Bird, LLP)

## **I. Introduction**

Civilian complainant, William J. Brennan (“Brennan”), appeals the Municipal Court Order of Honorable Roy F. McGeady, P.J.M.C., dated February 2, 2017, denying Brennan’s motion for appointment of an independent special prosecutor in connection with a complaint-summons initiated by Brennan against Christopher J. Christie (“Defendant”), alleging official misconduct in violation of N.J.S.A. 2C:30-2(b). Brennan also petitions the court for identical relief by way of a separate verified petition.

For the reasons stated herein, the Municipal Court’s determination is affirmed and the verified petition is dismissed.

## **II. Facts and Procedural Posture**

On September 28, 2016, Brennan filed complaint-summons No. 0219-S-001008 (2016) in the Fort Lee Municipal Court in Bergen County, alleging that defendant committed official misconduct in September of 2013 when he “refrained from ordering that his subordinates take all necessary action to re-open local access lanes to the George Washington Bridge” in violation of N.J.S.A. 2C:30-2(b). (Compl. Summons No. 0219-S-001008 (2016), Sept. 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 September 28, 2016.

On October 3, 2016, prior to the scheduled probable cause hearing, Attorney General, Christopher S. Porrino, recused himself from any involvement in State v. Christie complaint-summons No. 0219-S-001008 (2016) and designated First Assistant Attorney General Rebecca M. Ricigliano to oversee the OAG’s involvement in this matter. (*see* Prosecution Br. Opp’n. at 2, Nov. 4, 2016.)

On October 13, 2016, the Honorable Roy F. McGeady, P.J.M.C., conducted a probable cause hearing. Upon its conclusion, Judge McGeady found sufficient probable cause for issuance of complaint-summons No. 0219-S-001008 (2016) against defendant.

On October 14, 2016, Bergen County Prosecutor, Gurbir S. Grewal, recused himself from any involvement in State v. Christie complaint-summons No. 0219-S-001008 (2016), and designated First Assistant Prosecutor, John L. Higgins, III, to oversee BCPO's involvement. (*see* Prosecution Br. Opp'n. at 2, Nov. 4, 2016.)

On October 19, 2016, Brennan moved the court to: i) disqualify the OAG, the BCPO, and all county prosecutors from prosecuting the case against defendant, and ii) appoint a special prosecutor; due to alleged conflicts.

On November 2, 2016, defendant filed a motion for leave to file an interlocutory appeal of the municipal court's October 14, 2016, finding of probable cause.

On November 30, 2016, this court entertained oral argument on Brennan's motion to appoint a special prosecutor, and on December 2, 2016, rendered a written opinion and order, dismissing Brennan's motion for lack of standing.

On December 5, 2016, Brennan moved this court to reconsider its December 2, 2016, order dismissing his petition for lack of standing. On December 23, 2016, the court issued a written opinion and order denying Brennan's motion for reconsideration.

On January 11, 2017, this court entertained oral argument on defendant's interlocutory appeal, rendered a written opinion and order on January 12, 2017, reversing and remanding the issue to the Municipal Court for Vicinage 2 (Bergen County) for a new probable cause hearing affording defendant the constitutional protection of his right to counsel.<sup>1</sup>

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<sup>1</sup> State v. Christopher J. Christie, BER-L-1945-16, (January 12, 2017, Order and Written Opinion)

On February 2, 2017, the municipal court conducted a second probable cause hearing. During the hearing, Brennan moved the court to appoint a special prosecutor. The municipal court denied the request. On February 12, 2017, Brennan filed the instant appeal accompanied by a verified petition and supporting brief.

On March 2, 2017, BCPO submitted correspondence to the court in accordance with R. 3:25-1 (a) advising that it had administratively dismissed the complaint underlying the instant matter, explaining that after careful review of the evidence, it concluded an inability to prove official misconduct beyond a reasonable doubt.

On March 9, 2017, Alston & Byrd, counsel for defendant, submitted opposition arguing Brennan's appeal should be dismissed for his lack of standing and in accordance with the "law of the case" doctrine.

On March 9, 2017, BCPO submitted opposition seeking summary dismissal, echoing the lack of standing and "law of the case" arguments made by defendant.

On March 15, 2017, Donald F. Burke, Esq., counsel to Brennan, filed a reply letter brief in further support of Brennan's request for appointment of a special prosecutor. The reply brief seeks alternative relief never before pled, specifically that "this court refer the matter to a Grand Jury with the hearing transcript and video from the proceeding before Honorable Roy F. McGeady, P.J.M.C. for a determination as to whether the Grand Jury concurs as to his finding of probable cause."

## Law

### a. Appeal

Rule 7:13-1 provides that appeals from municipal court judgments shall be heard in accordance with R. 3:23, R. 3:24, and R. 4:74-3. State v. Bradley, 420 N.J. Super. 138, 139, 19 A.3d 479, 480, 2011 N.J. Super. LEXIS 56, \*1 (App.Div. 2011).

### b. Standing

In the State of New Jersey, there is no circumstance in which a private complainant may act as the prosecuting attorney. Individual citizens cannot appropriate to themselves the law enforcement function. It is the responsibility of the prosecutor to investigate and prosecute crimes. In re Grand Jury Appearance Request by Loigman, 183 N.J. 133 (2005), 870 A.2d 249, 2005 N.J. LEXIS 303 (N.J. 2005). The role of the victim or the concerned citizen is to report knowledge of criminal activities to law enforcement. Ibid. Thereafter, the role of the victim or concerned citizen is strictly limited to providing trial testimony. Only prosecutors as defined in the court rules are authorized to act in cases that may result in incarceration or other penalties. This limitation is warranted as the court's interest is in the fairness of the process, rather than "the vindication of individual interests." In re Loigman, supra, 183 N.J. at 144. "Both constitutionally and legislatively, victims have been granted myriad rights, privileges and accommodations. Nowhere in the constitutional or legislative scheme, however, are they granted the right to individually prosecute charges." Bradley, supra, 480 N.J. Super. at 143.

Allowing a complainant to utilize the courts to challenge a prosecutorial decision would be disruptive, intrusive and inappropriate. Prosecutors, unlike private citizens, are governed by the Rules of Professional Conduct and case law. In re Loigman, supra, 183 N.J. at 144.

Once a probable cause determination is made, a complainant lacks standing to further pursue the matter with the court. State v. Vitiello, 377 N.J. Super. 452 (App. Div. 2005).

As was set forth at length in this Court's previous Opinion of December 2, 2016, Brennan has fulfilled his role as a concerned citizen.<sup>2</sup> He has reported his knowledge of alleged criminal activity to a proper law enforcement authority. As a civilian complainant he has no right pursuant to our constitution, statutes, case law, or court rules, to prosecute criminal charges; that role is exclusively restricted to prosecutors as defined in our court rules. R. 3:23-9.

**c. Administrative Dismissal**

Rule 3:25-1(a) authorizes the administrative dismissal of a complaint "by the prosecutor without presentation to the grand jury." The rule requires that the "prosecutor... report the dismissal and the basis therefor to the Assignment Judge and... notify the defendant."

**d. Reconsideration**

R. 4:49-2 governs motions for rehearing or reconsideration which seek to alter or amend a judgment or order. A motion for reconsideration shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions the moving party believes the court has overlooked or as to which it has erred. R. 4:49-2.

The standard is exacting. Reconsideration is proper only in cases "which fall into that narrow corridor in which either 1) the court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the court either did not consider, or failed to appreciate the significance of probative, competent evidence." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). The burden is on the moving party to demonstrate the court acted "in an arbitrary, capricious, or unreasonable manner, before the court should engage in the actual

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<sup>2</sup> State v. Christopher J. Christie, BER-L-1945-16, (December 2, 2016, Order and Written Opinion)



reconsideration process.” Ibid. Alternatively, a movant may ask the court to reconsider a prior decision or order if there is new or additional information that the movant could not have provided on its first application for relief. Ibid. A litigant should not, however, seek reconsideration “merely because of dissatisfaction with a decision of the Court.” Ibid.

While titled “Notice of Appeal,” Brennan’s filing is nothing more than a disguised request for reconsideration of an issue that has been presented thrice before this court. Mere dissatisfaction with a court’s decision is insufficient.<sup>3</sup>

#### **e. Doctrines Precluding Relitigation**

The law-of-the-case doctrine serves to “prevent relitigation of a previously resolved issue in the same case.” State v. K.P.S., 221 N.J. 266, 276 (2015). “[O]nce an issue has been fully and fairly litigated, it ordinarily is not subject to relitigation between the same parties either in the same or in subsequent litigation.” Id. at 277. A prior determination amounts to the law of the case, which “settle[d] that question for all subsequent stages of the suit.” Slowinski v. Valley Nat’l Bank, 264 N.J. Super. 172, 179 (App. Div. 1993).

The court has also held it is appropriate to enjoin litigation when claims are precluded by the doctrines of res judicata and collateral estoppel, or when claims are already pending in another forum with superior jurisdiction. D’Amore v. D’Amore, 186 N.J. Super. 525, 530 (App. Div. 1982). See also Charlie Brown of Chatham, Inc. v. Bd. of Adj. for Chatham Twp., 202 N.J. Super. 312 (App. Div. 1985) (citing City of Hackensack v. Winner, 162 N.J. Super. 1, 27-28 (App.Div.1978) stating “[r]es judicata as a principle of law bars a party from relitigating a second time that which was previously fairly litigated and finally determined.” The court further explained collateral estoppel is a broader principle which “bars relitigation of any issue or fact

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<sup>3</sup> State v. Christopher J. Christie, BER-L-1945-16, (December 23, 2016, Order and Written Opinion)

actually determined in a prior action, generally between the same parties while involving a different claim or cause of action.”).

### III. Findings

It is a settled legal issue that Brennan lacks standing to petition the court on matters related to the summons-complaint underlying the instant matter. Pursuant to the “law of the case” doctrine, the court will not consider the merits of whether Brennan has standing to make the instant request for yet a *third* time.<sup>4</sup>

“Under the law-of-the-case doctrine, ‘where there is an unreversed decision of a question of law or fact made during the course of litigation, such decision settles that question for all subsequent stages of the suit[.]’” *Bahrle v. Exxon Corp.*, 279 N.J. Super. 5, 21, 652 A.2d 178 (App.Div.1995) (quoting *Slowinski v. Valley Nat'l Bank*, 264 N.J. Super. 172, 179, 624 A.2d 85 (App.Div.1993)), *aff'd*, 145 N.J. 144, 678 A.2d 225 (1996), and the determination “should be respected by all other lower or equal courts during the pendency of that case.” *Lanzet v. Greenberg*, [\*\*45] 126 N.J. 168, 192, 594 A.2d 1309 (1991) (citing *State v. Reldan*, 100 N.J. 187, 203, 495 A.2d 76 (1985)). The doctrine is a non-binding rule intended “to prevent relitigation of a previously resolved issue.” *In re Estate of Stockdale*, 196 N.J. 275, 311, 953 A.2d 454 (2008). When applicable, it prohibits “a second judge on the same level, in the absence of additional developments or proofs, from differing with an earlier ruling[.]” *Hart v. City of Jersey City*, 308 N.J. Super. 487, 497, 706 A.2d 256 (App.Div.1998).

*Jacoby v. Jacoby*, 427 N.J. Super. 109, 117, 47 A.3d 40, 44-45, 2012 N.J. Super. LEXIS 118, \*8, 2012 WL 2805290 (App.Div. 2012)

This is the identical question of law addressed in this identical matter, by these identical parties, involving identical facts and will not now be disturbed. In his reply brief, Brennan seeks

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<sup>4</sup> *State v. Christopher J. Christie*, BER-L-16-1945, December 2, 2016, Opinion; *State v. Christopher J. Christie*, BER-L-16-1945, December 23, 2016, Reconsideration Opinion; (This court found Brennan lacked standing to petition the court to appoint a special prosecutor in the underlying matter).

alternative relief, specifically that, “this court refer the matter to a Grand Jury with the hearing transcript and video from the proceeding before Honorable Roy F. McGeady, P.J.M.C. for a determination as to whether the Grand Jury concurs as to his finding of probable cause.” This prayer for relief was not properly pled in his appeal nor his verified petition, and is not appropriate for consideration now. Notwithstanding the fact that the relief is procedurally precluded, assuming *arguendo* it is not, the relief sought is substantively denied.

In accordance with, R. 3:25-1(a), “a complaint may be administratively dismissed by the prosecutor without presentation to the grand jury in which event said prosecutor shall report the dismissal and the basis therefor to the Assignment Judge...” R. 3:25-1(a). Brennan argues court “oversight” of a R. 3:25-1(a) administrative dismissal includes a duty to protect the “integrity of the criminal justice system from prosecutorial decisions that may reasonably appear to be driven by partiality”. Brennan’s Reply Brief, pg. 5, March 15, 2017. While the court agrees with this assertion, it does not agree that BCPO’s administrative dismissal was done with partiality.

A prosecutor’s authority to dismiss complaints is supported by the picture of broad prosecutorial authority that emerges from a comprehensive reading of New Jersey statutes, court rules and cases. State v. Ward, 303 N.J. Super. 47, 51 (App.Div. 1997). An Assignment Judge may only review an administrative dismissal if it is determined the prosecutor abused their discretion or acted arbitrarily.

We emphasize merely that the determination of whether a matter should or should not be criminally prosecuted is fundamentally an executive determination delegated to the Attorney General and the county prosecutors. If the prosecutor arbitrarily or corruptly fails or refuses to act, the courts must then intervene to correct the administrative abuse. *In re Ringwood Fact Finding Comm., supra*, 65 N.J. at 516-517, 324 A.2d 1; *State v. Winne*, 12 N.J. 152, 172, 96 A.2d 63 (1953).

State v. Ward, 303 N.J. Super. 47, 56-57 (App.Div. 1997)

While the court remains forever mindful of the heightened concern for conflict when a governor is facing criminal prosecution by the very state he is tasked to govern, it rejects Brennan's argument that BCPO abused its prosecutorial discretion. This court is satisfied that BCPO has, to avoid an actual or perceived appearance of impropriety, designated a prosecutor not appointed by the defendant or his administration, who had unbridled discretion to present the charges to a grand jury, downgrade the charges to a lesser offense or dismiss the charges. R. 3:25-1(1).

There is nothing in the record to suggest BCPO arbitrarily dismissed the complaint in lieu of conducting a thorough investigation and soundly exercising its discretion to dismiss.

The duty of a prosecuting officer necessarily requires that in each case he examine the available evidence, the law and the facts, and the applicability of each to the other, and that he intelligently weigh the chances of successful termination of the prosecution, having always in mind the relative importance to the county he serves of the different prosecutions which might be initiated. Such duties necessarily involve a good faith exercise of sound discretion. *State v. Winne*, 12 N.J. at 172-173, 96 A.2d 63 (citing *State ex rel. McKittrick v. Wallach*, 353 Mo. 312, 182 S.W.2d 313 (1944)); see also *State v. Childs*, 242 N.J. Super. 121, 129-130, 576 A.2d 42 (App.Div.), *certif. denied*, 127 N.J. 321, 604 A.2d 596 (1990).

State v. Ward, 303 N.J. Super. 47, 56-57, 696 A.2d 48, 53, 1997 N.J. Super. LEXIS 311, \*13-14 (App.Div. 1997)

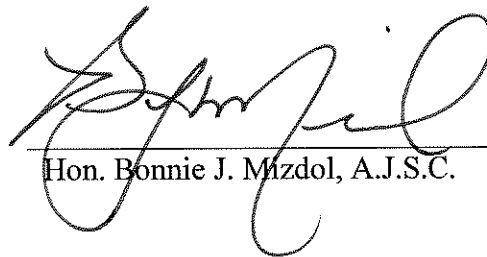
The court is satisfied that BCPO exercised its duties in good faith and with sound discretion, carefully examining available evidence, the law, and the facts.

Brennan argues declining to prosecute a charge where a probable cause finding has been made is "reasonably" perceived by the public as impropriety, warranting the appointment of a special prosecutor and, in turn, nullifying BCPO's dismissal. This argument neglects the

distinction between the threshold proofs sufficient to sustain a finding of “probable cause” and those required to sustain the “beyond a reasonable doubt” burden of proof. In its detailed March 2, 2017, letter notifying the court of its decision to administratively dismiss the complaint, BCPO reasoned that it does not believe that it can prove the charge of official misconduct beyond a reasonable doubt. BCPO’s letter to the court, March 2, 2017. The court finds BCPO’s representation of inability to meet this highest burden of proof to be a valid justification for administrative dismissal, as “a prosecutor should not... 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.

#### **IV. Conclusion**

The municipal court’s denial of Brennan’s motion to appoint a special prosecutor is affirmed and his verified petition is dismissed.



Hon. Bonnie J. Mizdol, A.J.S.C.