

No. \_\_\_\_\_

\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_

ERIC WILLIAMS — PETITIONER  
(Your Name)

vs.

COMMONWEALTH OF PENNSYLVANIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF PENNSYLVANIA  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ERIC WILLIAMS  
(Your Name)

1000 Follies Road  
(Address)

Dallas, PA 18612-0286  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## QUESTION(S) PRESENTED

- I. DID THE PENNSYLVANIA SUPERIOR COURT AND COMMON PLEAS COURT ABUSE THEIR DISCRETION BY DENYING WILLIAMS AN EVIDENTIARY HEARING TO REVIEW THE MERITS OF HIS CLAIMS OF ACTUAL INNOCENCE RESULTING FROM NEW EVIDENCE OF RECANTED STATEMENTS OF RESPONDENT'S KEY WITNESS, HAROLD JACKSON?
- II. WAS WILLIAMS' FOURTH POST CONVICTION RELIEF ACT (PCRA) PETITION FILED WITHIN THE 60 DAY TIME PERIOD EXCEPTION ALLOWED BY PENNSYLVANIA'S STATUTE 42 PA C.S. §9545(B) (2) TO BE ELIGIBLE FOR REVIEW?
- III. WAS IT AN ABUSE OF DISCRETION TO DENY EVIDENTIARY HEARING ON THE MERITS OF WITNESS'S RECANTATION STATEMENT WHEN WILLIAMS HAD NO REASONABLE WAY OR METHOD OF RETAINING AND PRESENTING THE NEW EVIDENCE AT AN EARLIER TIME?
- IV. WAS IT AN ABUSE OF DISCRETION FOR THE SUPERIOR COURT TO DENY AN EVIDENTIARY HEARING ON THE RECANTION OF KEY WITNESS WHERE THERE HAD BEEN NO PROCEDURAL ERROR MADE BY WILLIAMS WHEN EXPLAINING HIS DUE DILIGENCE OF TRYING TO PRESENT THE EVIDENCE TO THE COURT AT AN EARLIER TIME AND THE REASON HE COULD NOT DO SO?
- V. SHOULD THE PCRA AND APPELLATE COURTS BE OBLIGATED TO TREAT PCRA PETITION AS ONE FOR HABEAS CORPUS REVIEW OR RELIEF TO RECANTATION EVIDENCE OF RESPONDENT'S PRIMARY WITNESS TO THE CRIME IF THERE IS NO PCRA EVIDENCE TO RULE ON THE MERITS IN ORDER TO COMPLY WITH CLEARLY ESTABLISHED LAW ARTICULATED IN PRECEDENTS BY THE UNITED STATES SUPREME COURT?
- VI. DID THE PENNSYLVANIA SUPREME COURT ERR AND ABUSE ITS DISCRETION THEREBY DENYING WILLIAMS LEAVE TO FILE A PETITION FOR ALLOWANCE OF APPEAL NUNC PRO TUNC SO THAT HE MAY EXHAUST HIS APPELLATE REMEDIES DUE TO HIS FIRST FILING FOR WRIT OF CERTIORARI TO THIS UNITED STATES SUPREME COURT AS RESULT OF THE HISTORICAL NOT OF THE PENNSYLVANIA SUPREME COURT'S JUDICIAL ADMINISTRATIVE ORDER INCORPORATED WITHIN PENNSYLVANIA RULE OF APPELLATE PROCEDURE, RULE 1114?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☒ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the PENNSYLVANIA SUPREME court appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☒ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was JULY 16, 2018.  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 Pa. C.S.A. §§ 9545(b)(1) & (2)(i)-(iii) provides in relevant part:

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the claim previously was the result of interference of government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

### Article VI of United States Constitution Supremacy Clause

provides:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

### Article I, § IX, Pennsylvania Constitution provides:

"In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of

(Continued)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (Con't)

his life, liberty or property, unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself."

Amendment VI United States Constitution provides that:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have Assistance of Counsel for his defense."

## STATEMENT OF THE CASE

Pro se Petitioner, Eric Williams ("Williams" hereinafter), was arrested September 3, 1989, along with codefendant George Page and later charged with Second Degree Murder (18 Pa. C.S.A. §2502(b)), Robbery (18 Pa. C.S.A. §3701(a)(1)(i)), Theft (18 Pa. C.S.A. §3921(a)), Criminal Conspiracy (18 Pa. C.S.A. §903(a)), Possession of an Instrument of a Crime (18 Pa. C.S.A. §907), and Carrying a Firearm on a Public Street (18 Pa. C.S.A. §6108). Following a non-jury trial, Williams was convicted on the above charges October 24, 1990 and sentenced to serve a term of life imprisonment.

The State's primary witness against Williams was 15-year-old, Harold Jackson. During trial he had testified that on August 27, 1989, at approximately 2:30 a.m, he saw Williams and codefendant, Page, sitting in a car in the 4600 block of North Sydenham Street. The victim, Chae Kim, drove up, got out of his car with money in hand and approached Williams and Page. Mr. Jackson further stated that he saw Williams grab the money out of Mr. Kim's hand and run. Mr. Kim gave chase after Williams.

Jackson said he lost sight of both men, but saw them again shortly thereafter. It was during this time that Page pulled out a gun and ran from the car. Jackson stated he heard Williams tell Page to "bust him." Page fired the gun at Mr. Kim three times. Mr. Kim died as result of his injuries.

Williams' trial counsel filed post-verdict motions, which were denied. Williams then filed pro se post-verdict motions

on the grounds of ineffective assistance of counsel. Trial counsel had withdrawn from the defense and the court appointed attorney Thomas Ciccone. The case was later reassigned to Honorable Judge Ricardo Jackson. For some time, the case remained inactive due to conduct of defense counsel, resulting in the court's removal of Mr. Ciccone.

Court appointed counsel, Barbara McDermott, submitted supplemental post-verdict motions on Williams' behalf. On September 21, 1994, counsel became aware for the first time that Harold Jackson had recanted his testimony against Williams. The recantment was in the form of a letter Mr. Jackson had sent to Williams' mother, Shirley Morris. Ms. Morris had sent the letter to counsel McDermott, which had been presented to Judge Jackson during post-verdict motions argument on September 21, 1994. Judge Jackson dismissed the veracity of the recanted statement on the grounds that it had been unsigned and undated by Mr. Jackson.

In addition, Judge Jackson indicated the possibility that the statement was false and, perhaps, written by someone other than Mr. Jackson.

Counsel had immediately asked for a continuance and for the court to authorize funds to hire an investigator so that counsel could locate, interview, and investigate the State's main witness and the nature of his letter. Because the statement detailed that Mr. Jackson's testimony had been given under duress of threats from police detectives involved in the investigation and

he'd taken a financial bribe from an assistant district attorney to give false testimony during trial, counsel believed those to be substantial element exculpating Williams from guilt and warranted a new trial.

The court denied counsel's requests for continuance and funding so as to investigate the veracity of Mr. Jackson and his recanted statements. In addition, the court denied all other post-verdict motions presented.

On May 18, 1995, while Mr. Jackson was confined at the State Correctional facility in Frackville, PA, counsel wrote him a letter concerning the recanted statement and asked that he send a notarized letter outlining all interactions he had with police and/or the Philadelphia District Attorney's Office, specifically pertaining to this case.

Mr. Jackson responded in an unnotarized letter dated 5/28/95, but reiterated that which he had outlined previously. Counsel appealed the judgment of sentence to the Pennsylvania Superior Court. On November 30, 1995, a three judge panel of the Court affirmed judgment of sentence. A Petition for Allowance of Appeal before the state Supreme Court followed on December 22, 1995, which had also denied all relief.

Williams had filed three Post Conviction Hearing Act ("PCRA") petitions and appears therefrom to the state Superior and Supreme Courts over a span of years. On each occasion, counsel had not been appointed and he was denied relief of the merits. On May 9,

2016, Williams had filed a fourth pro se PCRA Petition pursuant to 42 Pa. C.S. §§9545(b)(1)(i) & (ii) and 42 Pa. C.S. §9545(b)(2) on the merit of newly discovered evidence not made available to him during trial.

The new evidence is relevant and pertinent to the case because it consists of an unsolicited affidavit in the form of a letter of material state's witness, Harold Jackson, that had been sent to Petitioner's mother in March of 2016. It had been signed, dated and notarized.

The document is another factor of Jackson's recantation relating to false testimony offered against Petitioner outside his presence and of which declares Williams as having had no involvement in the actions of his co-defendant in killing the victim, Mr. Kim. The affidavit further details that Mr. Jackson had been coerced and paid a sum of money by a member of the Philadelphia District Attorney's Office and police detectives directly involved with the criminal investigation of the case.

At no time had Williams or his counsel had opportunity to investigate this information or to cross-examine Mr. Jackson during any case proceeding. Moreover, the prosecution has failed to release discovery material divulging the District Attorney's Office payment-for-testimony to Mr. Jackson.

Within his PCRA Petition, Williams requested the relief of an evidentiary hearing so that he may summon and question Mr. Jackson as well as for a new trial.

On April 20, 2017, the PCRA Court denied Williams' PCRA Petition as being untimely filed and as having been previously

raised by his trial and appellate counsels. A timely appeal was entered before the Pennsylvania Superior Court in which an Appellate Brief was filed on June 21, 2017, followed by an Amended Appellate Brief on September 14, 2017. See App'x F.

Based upon a standing Pennsylvania Supreme Court Order governing Pennsylvania Rules of Appellate Procedure, Rule 1114 ("Considerations Governing Allowance of Appeals"), which states in relevant part that "...[i]n all appeals from criminal convictions or post-conviction relief matters, a litigant shall not be required to petition for rehearing or allowance of appeal following an adverse decision by the Superior Court in order to be deemed to have exhausted all available state remedies respecting a claim of error[.]",<sup>1</sup> Petitioner proceeded to file a timely Petition for Writ of Certiorari before this Honorable Court on March 20, 2018.

The Clerk of this Court returned the Petition on March 27, 2018 with instructions that the case must first be reviewed by a United States court of appeals or by the highest state court in which a decision could be had.

On April 9, 2018, Petitioner filed a "Petition for Leave to File Petition for Allowance of Appeal Nunc Pro Tunc" to the the Pennsylvania Supreme Court and an Application to Proceed

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<sup>1</sup> Pa.R.App.P., Rule 1114 at Historical Notes; Order of May 9, 2000. See App'x. I.

in Forma Pauperis with Verified Statement on May 7, 2018; amended  
May 21, 2018. See App'x. B. The Pennsylvania Supreme Court  
entered an Order on July 16, 2018 denying Petitioner's Petition  
for Leave to File Petition for Allowance of Appeal Nunc Pro  
Tunc. App'x A.

Respectfully, this Petition for Writ of Certiorari is now  
ripe for consideration by this Honorable Court in review of  
the merits.



## REASONS FOR GRANTING THE PETITION

1. THE PENNSYLVANIA SUPERIOR AND COMMON PLEAS COURTS ABUSED THEIR DISCRETION BY DENYING TO GRANT WILLIAMS AN EVIDENTIARY HEARING TO REVIEW THE MERITS OF HIS CLAIMS OF ACTUAL INNOCENCE RESULTING FROM NEW EVIDENCE OF RECANTED STATEMENTS OF APPELLEE'S KEY WITNESS, HAROLD JACKSON.

It would be a grave miscarriage of justice of our legal system and the United States Constitution to sustain the conviction of an innocent man for a crime he did not commit based solely upon the false, coercive testimony of a juvenile who had a criminal history of his own at the time.

Williams had filed a timely PCRA petition to the Common Pleas Court for review within the time allowed by Pennsylvania Statute 42 Pa. C.S. 9545(b)(2) after he received a notarized, signed and dated recanted statement from Respondent's sole witness that testified against him at trial. See Appendix C. This is his fourth such petition. A petition for relief under the PCRA, including a second or subsequent petition, must be filed one year of the date the judgment becomes final unless the petition alleges, and the petitioner proves, at the exception to the time for filing the petition, set forth at 42 Pa. C.S.A. §9545(b)(1)(i), (ii), and (iii) is met. Commonwealth v. Harris, 972 A.2d 1196, 1199-1200 (Pa. Super. 2009). The act provides:

(b) Time for filing petition.

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the

date the claim could have been presented.

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

42 Pa. C.S.A. §9545(b).

As noted by the Superior Court, Williams' judgment of sentence became final on or about July 15, 1996, upon expiration of the ninety-day period for filing a writ of certiorari with the U.S. Supreme Court. Thus he had one year from that date, or until July 15, 1997, to file a timely PCRA petition. He did not file the instant petition until May 10, 2016, more than 19 years after his judgment of sentence became final. See App'x. H, at p. 3.

Neither of those facts are of dispute. However, Williams had invoked the exception part of the provision to the time bar, which provides that any new evidence claim must be filed within 60 days of the date the claim could have been presented. 42 Pa. C.S.A. §9445(b)(2). The PCRA court dismissed the petition prematurely as being untimely filed. The Superior Court affirmed, stating that the recantation of Harold Jackson is not a new "fact" as contemplated by the PCRA. App'x. H, p. 3 at ¶ 2.

The Court further reasoned that Williams' affidavit demonstrates that he was aware of Jackson's recantation as far back as 1994 and had not explained he was unable to present the information to the court at an earlier date. That is incorrect. It should be understood that when Williams first became aware of the fact-information, he was incarcerated and had no personal contact with neither his codefendant, Mr. Page, nor with the witness, Harold Jackson. That information received by a third party was simply hearsay in nature. At the time, Williams had no actual transcripts or other paperwork that would verify that Mr. Jackson had recanted his testimony or had been coerced by police and bribed by the District Attorney.

Williams had sought to retain the transcript from Mr. Page's post-sentencing hearing, but was unsuccessful. He would continue those efforts through the many years, but still the District Attorney's Office had objected to their release. It was not until Mr. Jackson had sent a letter to his mother, Mrs. Morris, which was later forwarded on to William's attorney, Barbara McDermott in 1994, that Williams actually knew that material "fact" of Mr. Jackson's recantation existed.

Contrary to the Superior Court's allegation that William's had not explained why he was unable to present the information to the court at an earlier date, Williams, through his counsel, did in fact make an attempt in the Honorable Judge Jackson's court during the combined post-trial motions and sentencing

proceedings held September 21, 1994. The Superior Court neglected to view that information in Williams' PCRA petition. See Appendix C, Petition for Post Conviction Collateral Relief, 5/9/16, at p. 3(a). Judge Jackson immediately deemed the document not credible since it had not been signed, dated, or notarized.

In addition, requested funding and for a continuance in the proceedings so that counsel may further investigate the document's authenticity and question Mr. Jackson were also denied by Judge Jackson.

The appellate court had affirmed the PCRA court's decision denying Williams an evidentiary hearing based on the mere assumption that he had known of the newly discovered "fact" and hadn't presented it earlier, when he had not. He'd only been told that something was so, which did not make it a "fact." Even the 1994 recanted letter that counsel McDermott had received that was unsigned or dated was not "fact" related material, which was why Judge Jackson had rejected it as being not credible despite, himself, having heard Mr. Jackson cite that very recantation to him almost word-for-word verbatim when he resided at the Post-Sentencing Hearing of Williams' codefendant, Mr. Page, on February 28, 1994. That was something that not even the judge had shared with Williams' counsel.

Based upon the above facts, Williams respectfully requests this Honorable Court grant his Petition for remand for further proceedings and review.

2. WILLIAMS' FOURTH POST CONVICTION RELIEF ACT (PCRA)  
PETITION WAS FILED WITHIN THE 60 DAY TIME PERIOD  
EXCEPTION ALLOWED BY PENNSYLVANIA'S STATUTE 42  
PA C.S. §9545(B) TO BE ELIGIBLE FOR REVIEW.

The PCRA court had denied Williams's PCRA petition as being unitmely filed. The court's findings are in error and Williams should be granted relief in this matter for the following reasons.

As previously explained, Harold Jackson's recantation statement that was previously written in 1994 had been rejected as unbelievable by Judge Jackson because it hadn't been signed or dated by its alleged author. Therefore, the matter of the recantation was not fully adjudicated. Williams' counsel tried contacting Mr. Jackson while he was confined at a State Correction Facility in Frackvillie, Pennsylvania, requesting that he provide her with a notarized letter outlining specific information concerning his interaction with police and the District Attorney's Office. See Appendix D.

In response, Mr. Jackson neglected to have the letter notarized and gave a brief dialogue of events he experienced with police and the District Attorney. Without funding approval from the court, counsel did not pursue an investigator or visited Mr. Jackson to retain a more effeicient and believable affidavit..

Years later, in March of 2016, Williams' mother, Shirley Morris, received another letter in the mail from Mr. Jackson. It had been duly sworn, dated, and notarized. See Appendix E,

Sworn Affidavit of Shirley Morris with attachments, 5/2/16.

The letter by Mr. Jackson is similarly worded as that which he provided in 1994. It briefly describes that he was a juvenile at the time of the incident at issue and that he had lied on the [witness] stand about Erik (sic) Williams being place (sic) at the scene of the crime.

The letter further describes that Mr. Jackson was threatened by detectives and the District Attorney, and being persuaded to testify against Williams by being offered money. Appendix E attachments.

Williams had received the documents from Mrs. Morris on April 4, 2016, after speaking with his mother. See Appendix E, Affidavit in the Interest of Eric Williams, 4/22/16, at ¶ 6. Neither Williams or his mother had encouraged or paid Mr. Jackson to draft this document. In fact, because Mr. Jackson is located at another prison, Williams is not allowed to communicate with him at all.

Williams proceeded to file his PCRA petition on May 9, 2016, thus making the filing timely in accordance with 42 Pa. C.S. §9545(b)(1)(i)-(iii), and 42 Pa. C.S. §9545(b)(2).

In addressing this matter, the Appellate court correctly pointed out that our Supreme Court held that [t]he focus of the exception is "on [the] newly discovered facts, not on a newly discovered or newly willing source for previously known facts." Commonwealth v. Johnson, [] 863 A.2d 423, 427 ([Pa.] 2004) (emphasis in original).

However, This Honorable Supreme Court should grant this Petition to determine if the PCRA court and Appellate court should have used its discretion to consider the factors that, when Williams had presented the initial claim to Judge Jackson's court, it was not considered to be factum evidence due to it not being signed or dated. Thus the evidence of Mr. Jackson's recantation did not exist. Furthermore, Williams asks this Court to consider that it was as result of counsel's request for continuance and funding to investigate and interview Mr. Jackson about the the non-factum evidence being denied by Judge Jackson, he could not have ascertained those facts by exercise of "due diligence." See 42 Pa. C.S. §9545(b)(1)(i) & (ii).

Previously, our Supreme Court had detailed a PCRA petitioner's burden when presenting after-discovered evidence for review. The Court held that [the PCRA petitioner] must demonstrate that the evidence:

(1) could not have been obtained prior to the conclusion of the trial by the exercise of reasonable diligence; (2) is not merely corroborative or cumulative; (3) will not be used solely to impeach the credibility of a witness; and (4) will likely result in a different verdict if a new trial were granted.

Commonwealth v. Pagan, 597 Pa. 69, 950 A.2d 270, 292 (Pa. 2008), cert. denied, Pagan v. Pennsylvania, 555 U.S. 1198, 129 S.Ct. 1378 (2009); accord Commonwealth v. Castro, 2012 PA Super 214, 55 A.3d 1242, 1246 (Pa. Super. 2012) (en banc), appeal granted, 619 Pa. 466, 65 A.3d 291 (Pa. 2013).

Williams had demonstrated that he could not have obtained the evidence prior to the conclusion of the trial by the exercise

of reasonable diligence because Judge Jackson denied a continuence of his post-trial proceedings and funding so that counsel could have the evidence and Mr. Jackson investigated. He also demonstrated that the evidence was not corroborative nor cumulative in content, and that it was not going to be used to impeach the credibility of the witness. Finally, because there is so little evidence connecting Williams to the crime, it makes the recantation of such significance that a different verdict would likely result at a retrial. Williams has maintained his innocence throughout the years. There's no ballistic nor DNA evidence tying him to the crimes and he was not aware of Mr. Page's intentions of killing Mr. Kim. In fact, Mr. Page admitted as much during an investigative interview before Lee Mandell, Esq.

Therefore, it is requested that this Petition for Writ of Certiorari be granted and the matter remanded for further proceedings and an evidentiary hearing.

3. IT WAS AN ABUSE OF DISCRETION TO DENY EVIDENTIARY HEARING ON THE MERIT OF WITNESS'S RECONTATION STATEMENT WHEN WILLIAMS HAD NO WAY OR METHOD OF RETAINING AND PRESENTING THE NEW EVIDENCE AT AN EARLIER TIME.

When Williams' counsel came into possession of the first recanted statement of Mr. Jackson, it was for the first time and had been received from Williams' mother, not Williams himself. He had never had possession of that document and had no knowledge of it until his mother informed him about its existence and he later was given a copy through his counsel.



Mr. Jackson again recanted his false testimony in 1994 in open court before Judge Jackson and in a letter addressed to Williams' mother. The Superior Court denied Williams request for an evidentiary hearing on his fourth PCRA petition for newly discovered evidence on its assumption that Williams did not explain why he was unable to present the evidence earlier. The fact is that Williams did make reasonable efforts to bring this evidence to the court's attention at an earlier time, but had been prevented from doing so by the court's refusal to allow funding and a continuance during post-verdict proceedings.

In his PCRA petition, Williams gave detailed explanation in GROUND ONE:

Petitioner has diligently sought to retain the transcripts of Mr. Page's Post-Sentence Hearing and the recanting statements of Mr. Jackson ever since learning of their existence for purposes of his appeals, but has been unsuccessful in his efforts. Such efforts included, but are not limited to, seeking the assistance of his then-counsel, Barbara McDermott, to acquire an affidavit from Mr. Jackson describing events leading up to his involvement with the detectives and the District Attorney that resulted in his making the false testimony against Petitioner. See Exhibit 4.

PCRA Petition, App'x C at p. 3(a), ¶ 2. It continues to further explain the diligent measures which he had taken and why he was unable to affirmatively present the new discovery evidence at an earlier date. So the appellate court was in error for concluding that Williams did nothing.

Moreover, Respondent had mislead the appellate court in it's brief by stating that Williams and his codefendant raised arguments regarding Mr. Jackson's recantation by calling Mr. Jackson again and elicited testimony concering his 1993 recantation letter. See App'x G, Brief for the Commonwealth as

Appellee, 10/16/17, at p. 10, ¶ 1. Respondent further goes on to erroneously state that the "new facts" Williams raised in his fourth petition were not new at all and had already been litigated in prior proceedings. Id.

The first delusion is that Williams did not call Mr. Jackson during his post-verdict motion hearing and argument nor never had opportunity to elicit anything from him concerning the recantation letter. Williams had asked for a continuance and funding to investigate Mr. Jackson and the veracity of the recantation, but both requests had been staunchly denied by Judge Jackson. Next, the recantation letter was not drafted in 1993. In fact, as Judge Jackson had pointed out, the letter contained no date as well as no signature. It was, however, received by Williams' counsel in 1994. Finally, the facts raised in Williams' fourth petition were not received until 2016. Therefore, they were not previously litigated in any of his prior proceedings, because he did not possess them then.

This Honorable Supreme Court should grant this Petition and remand the matter for further review and an evidentiary hearing. Williams had presented the PCRA petition with supporting new evidence within the 60 day time period when he first came to possess the sworn, sized, notarized recantation of the witness. See 42 Pa. C.S.A. §9545(b)(1)(i), (ii).

The Petitioner has shown that the record clearly indicates his counsel had made a dutiful effort to effectively present the evidence to Judge Jackson, but her attempts were dejected because the evidence, i.e., Jackson's recantation statement, had not been signed or dated. Counsel's further requests for funding and reasonable amount of time for continuance to have the statements verified were also denied, despite the fact that Judge Jackson had already been previously aware that the statement was true since Harold Jackson had initially made it in the judge's presence on February 28, 1994, months before Williams or his counsel were made known of it.

Moreover, there was no way for Williams to retain the statement because the prison's policy prohibits communication between inmates housed in separate institutions. Therefore, this further hindered Williams from presenting it earlier. See App'x C at pp. 8(a)-8(b). Thus it is by further reason that Williams respectfully requests this Court to grant his Petition to have the matter remanded for further review and the merit.

4. IT WAS AN ABUSE OF DISCRETION FOR THE SUPERIOR COURT TO DENY AN EVIDENTIARY HEARING OF THE RECONTATION OF KEY WITNESS WHERE THERE HAS BEEN NO PROCEDURAL ERROR BY WILLIAMS OF EXPLAINING HIS DUE DILIGENCE OF TRYING TO PRESENT THE EVIDENCE TO THE COURT AT AN EARLIER TIME AND THE REASON WHY HE COULD NOT.

This case hinges upon the false and misleading testimony of Respondent's sole witness, Harold Jackson, after he's been bribed by an assistant district attorney for \$350.00, and further coerced by detectives involved with investigating the case, to give false testimony against Williams during trial. Such interferences by state officials denied William to have a fair

and impartial trial in accordance with the Sixth Amendment of the United States Constitution. When Williams had come upon new evidence proving his innocence, the Superior Court abused its discretion to deny an evidentiary hearing to present the key witness recanting his statement where no procedural error had been made showing due diligence of trying to present the evidence at an earlier time and why such efforts were impossible.

The Commonwealth had proffered the false testimony of its primary witness knowingly and without divulging information that Harold Jackson had been bribed so that the Commonwealth could secure a conviction. Such acts were criminal and a blatant violation of Petitioner's constitutional rights. Since Jackson was the only witness to the crime, and where he has decided to come forward with the truth explaining how the assistant district attorney and police detectives had induced him into lying, the Petitioner should be able to present the truth.

Therefore, based upon the above facts, the Petitioner requests that this Honorable Court grant this Petition and remand the matter for further review on the merits.

5. THE PCRA AND APPELLATE COURTS SHOULD BE OBLIGATED TO TREAT PCRA PETITION AS ONE FOR HABEAS CORPUS REVIEW OR RELIEF TO RECANTATION EVIDENCE OF RESPONDENT'S PRIMARY WITNESS TO CRIME IF THERE IS NO PCRA REMEDY TO RULE ON THE MERITS IN ORDER TO COMPLY WITH CLEARLY ESTABLISHED LAW AS ARTICULATED IN PRECEDENTS BY THE UNITED STATES SUPREME COURT.

The PCRA and Appellate Courts had erred in their decision to deny Williams' PCRA petition, which had demonstrated a free-standing claim of actual innocence, and is worthy of remand for an evidentiary hearing or retrial by this Honor United States Supreme Court.

Given the overwhelming and substantial weight of the primary witness, Harold Jackson, and his recantation statement presented by Williams, which could not have been retained by the imprisoned Williams at any earlier time, it was a clear abuse of discretion by the courts' failure to recognize the material "facts" of that evidence that have not been previously litigated and requiring some latitude to appoint counsel to review and/or amend the PCRA petition, if neccessary.

The government had further undermined Williams' Sixth Amendment of the United States Constitution and Article I, § IX of Pennsylvania's Constitution to a fair trial. See Brady v. Maryland, 373 U.S. 83, \_\_\_ S.Ct. \_\_\_ (1963). It then kept the information of the deliberate use of false testimony a closed knit secret.

The gravamen of Williams' fourth PCRA petition lies within Mr. Jackson's March 16, 2016 sworn declaration, which narrates:

"I was threaten[ed] by detectives and District Attorney who handle[d] Mr. Erik Williams case and on some occasions I was also persuaded to testify against Mr. Erik Williams by being officered money before testimony."

See Appendix E, p. 4 at ¶ 2. The Respondent never informed Williams or his counsel about any payoff the Mr. Jackson was received to testify nor about that of the coercive tactics police had imposed upon him. In light of these new discoveries, the courts should have been willing to do something more than deny the petition without a hearing .

As the this United States Supreme Court had rationalized in McQuiggin v. Perkins, \_\_\_ U.S. \_\_\_, 133 S.Ct. 1924 (2013), such a similar case is for remand of the the matter to address the merits of establishing actual innocence based upon recanted evidence. Id. This Court also addressed if whether the AEDPA statute of limitations could be overcome by a showing of actual innocence as it seeks to balance the societal interest in finality, comity and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary cases. See Schlup v. Delo, 513 U.S. 298, 324, 115 S.Ct. 851 (1995).

This instant PCRA petition presents a gateway claim of actual innocence. Such a claim must be entertained in the spirit of House v. Bell, 547 U.S. 518, 126 S.Ct. 2064 (2006), because rules of procedural default do not apply to gateway claims of actual innocence. See Murray v. Carrier, 477 U.S. 478, 495, 106 S.Ct. 2639 (1986).

Mr. Jackson's recantation statement further gives air that he had made an effort to register the truth of his deceit some time ago:

"I want nothing other but to resolve this matter and let the truth be told. I also did try to explain this truth before in Mr. Erik Williams and GeorgePage appeal some time ago."

Appendix E, Attachment of Sworn Affidavit of Shirley Morris, p. 4 at ¶ 3.

Williams finally urges this Court to grant this Petition because the failure of the PCRA and Appellate Court to provide an evidentiary hearing and give meaningful consideration to a gateway claim of actual innocence violates the Supremacy Clause of the Constitution of the United States as being contrary to clearly established federal law settled in Bell. See also, Stocker v. Warden, 2004 U.S. Dist. Lexis 5395 (EDPA, Giles, C.J.)(Habeas corpus granted based on actual innocence). In Warden, Judge Giles considered the legislative history of the AEDPA and noted the efforts by Congress "to preserve review where a petitioner could show innocence." Id. at \*8.

This Honorable Court is encouraged to discern by established federal law memorialized in holdings of the United States Supreme Court, which the PCRA court was obligated to adhere under the Supremacy Clause of the United States Constitution since a gateway claim of actual innocence cannot be denied based on a rule of procedure, because such claims are not subject to the doctrine of procedural default or time bar, which is another form of procedural default. Bell citing Dretke v. Haley, 541 U.S. 386, \_\_\_,

124 S.Ct. 1847, 1852 (2004)(holding that colorable claims of actual innocence are not subject to procedural default).

The Bell Court also held that, when considering an actual innocence claim, the reviewing court must consider "all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted..." Id., 547 U.S. at 537-538. The question thus becomes "whether more likely than not any juror would have reasonable doubt." Id., at 538. Under such circumstances, it is how the jurors or the Judge as fact-finder would react to the overall, newly supplemented record. Id.

Therefore, upon consideration of the facts presented herein, the Petitioner respectfully requests this Honorable Supreme Court to grant this Petition for Writ of Certiorari and remand the matter for further review on the merits.

6. THE PENNSYLVANIA SUPREME COURT ERRED AND ABUSED ITS DISCRETION THEREBY DENYING WILLIAMS LEAVE TO FILE A PETITION FOR ALLOWANCE OF APPEAL NUNC PRO TUNC SO HE MAY EXHAUST HIS APPELLATE REMEDIES DUE TO HIS FIRST FILING FOR WRIT OF CERTIORARI.

The Homorable Pennsylvania Supreme Court had erred and abused its discretion by denying Williams leave to file a Petition for Allowance of Appeal Nunc Pro Tunc to exhaust appellate remedies due to his first filing for writ of certiorari to this Court as result of the Appellate Rules of Court Supreme Court Order concerning appellate filings.

The Pennsylvania Supreme Court had entered an order dated May 9, 2000, within the Historical Notes of Pennsylvania Rules



of Appellate Procedure, Rule 1114, which dictates in pertinent part:

Historical Notes

Order of May 9, 2000

Order No. 218, Supreme Court Judicial Administration Docket No. 1 (30 Pa. B. 2582), provides:

AND NOW, this 9th day of May, 2000, we hereby recognize that the Superior Court of Pennsylvania reviews criminal as well as civil appeals. Further, review of a final order of the Superior Court is not a matter of right, but of sound judicial discretion, and an appeal to this Court will only be allowed when there are special and important reasons therefore. Pa.R.A.P. 1114. Further, we hereby recognize that criminal and post conviction relief have petition and do routinely petition this Court for allowance of appeal upon the Superior Court's denial of relief in order to exhaust all available state remedies for purposes of federal habeas corpus relief.

In recognition of the above, we hereby declare that in all appeals from criminal convictions or post-conviction relief matters, a litigant shall not be required to petition for rehearing or allowance of appeal following an adverse decision by the Superior Court in order to be deemed to have exhausted all available state remedies respecting a claim of error. When a claim has been submitted to the Superior Court, or to the Supreme Court of Pennsylvania, and relief has been denied in a final order, the litigant shall be deemed to have exhausted all available state remedies for the purposes of federal habeas corpus relief. This order shall be effective immediately.

Pa.R.A.P., Rule 1114, Historical Notes (emphasis omitted). Based upon this order, it has always been the choice of the appellant to either proceed an appeal for habeas corpus review or present his claim before the United States Supreme Court.

So when this Court had rejected Petitioner's Petition for Writ of Certiorari on March 27, 2018, insisting that he first seek review by the state's Supreme Court or a federal appeals court, review was sought within the Pennsylvania Supreme Court.

App'x B.

The Pennsylvania Supreme Court denied the Petition without reason. While it is not disputed that the Supreme Court had broad discretion to deny a petition and that this is not a matter of right to Petitioner, Peititoner firmly believes that it was an err and abuse of discretion in their doing so, because the Court has been known to relinquish its discretion upon numerous cases filing nunc pro tunc for various reasons. See e.g., Commonwealth v. Butler, 2011 LEXIS 127 (1/18/2011) per curiam; Millinghouse v. Drake, 2014 Pa. LEXIS 2019 (8/11/2014) per curiam; Commonwealth v. Casiano-Fernandez, 2010 Pa. LEXIS 2495 (10/28/2010) per curiam; and Commonwealth v. Stock, 545 Pa. 13 (Pa. 1996) per curiam.

Petitioner believes that the merits of his case are extraordinary circumstances deserving the Court's audience where he has new evidence indicating his innocence and that involves recanted statements of the prosecution's solitary against Petitioner. That recantment, in which the witness swares, details misconduct of the prosecutor and police officials colluding to compel the witness to emit false testimony against Petitioner for the purpose of retaining a conviction to an otherwise baseless case, which is a clear violation of Petitioner's Sixth Amendment right to a fair and impartial trial.

This is evidence in which the trial judge had pre-knowledge of, but that had not been afforded the Petitioner or his counsel. It is evidence that the Petitioner had no way of retaining him-

self as result of his incarceration and the incarceration of the witness. Moreover, Petitioner's counsel was denied the leave requested for a continuance and funding in order to visit the witness at his prison to interview and question him as to the events and his involvements with police and the assistant district attorney; as well as to secure a signed, dated, and notarized affidavit that would satisfy the judge's questions concerning the recantment's authenticity.

Grant that the initial recantment document prepared by the witness was not the best prepared affidavit ever presented to a court, but Mr. Jackson's literary prowess should in no way negate the action of the government's deleterious interference of neither the detectives or the assistant district attorney by threatening and encouraging any witness to lie in court in order to secure their conviction for a crime they did not commit.

Considering the fact that the witness had admittedly lied under oath in open court for the prosecutor and at the coercive actions of police officials, the truth of those lies should not continue to be hindered thereby denying Petitioner the request for an evidentiary hearing.

WHEREFORE, upon final consideration of the foregoing issues presented herein, Petitioner respectfully requests that the court ORDER the remand of this matter for further review on the merits.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_

Date: October 1, 2018