021No. 20-5795

IN THE SUPREME COURT OF THE UNITED STATES

DON TEDFORD

Petitioner

v.

PENNSYLVANIA

Respondent

ON PETITION FOR WRIT OF *CERTIORARI* TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF *CERTIORARI*

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COUNTER-STATEMENT OF THE CASE

On January 10, 1986, 22-year-old Jeanine Revak ("the victim") was raped and murdered in Butler County, Pennsylvania. The autopsy revealed that her cause of death was asphyxia ligature strangulation with bilateral pulmonary collapse and severe hemorrhaging. Her dead body was found lying in a remote rural area of Washington County, Pennsylvania on January 11, 1986.

On February 6, 1987, following the guilt phase of a trial, a jury of Donald Tedford's ("Tedford") peers found him guilty of first-degree murder[1] and rape[2] in connection with Ms. Revak's death. At the penalty phase of the trial, the jury found two aggravating circumstances[3] and no mitigating circumstances[4] and

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[1] 18 Pa.C.S.A. § 2502(a)

[2] 18 Pa.C.S.A. § 3121(a)

[3] The two aggravating circumstances found by the jury were: (1) Tedford committed the killing while in the perpetration of a felony (rape), 42 Pa.C.S. § 9711(d)(6); and (2) Tedford had a significant history of felony convictions involving the use or threat of violence to the person, 42 Pa.C.S. § 9711(d)(9).

[4] Tedford elected to present no mitigating evidence to the jury during the penalty phase. The Pennsylvania Supreme Court has previously found that Tedford was mentally competent and that his refusal to present

returned a sentence of death. On March 20, 1987, the trial court formally imposed on Tedford a sentence of death for the murder conviction and a consecutive term of imprisonment of 8.5 to 17 years for the rape conviction.

On December 13, 1989, the state Supreme Court unanimously affirmed Tedford's judgment of sentence on direct appeal. *See Commonwealth v. Tedford*, 567 A.2d 610 (Pa. 1989). Tedford did not seek review of that decision by this Court.

On July 12, 1995, Tedford filed a *pro se* petition under the Post-Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. § 9541 *et seq.*, collaterally attacking his judgment of sentence. The PCRA court dismissed that petition and on July 16, 1996 appointed PCRA counsel ("first PCRA counsel"), who filed a counseled amended PCRA petition on January 15, 1997.[5] On January 28, 2000, the PCRA court dismissed the counseled petition as an untimely second PCRA petition. On October 18, 2001, the state Supreme Court reversed that determination and directed the lower court to treat the petition filed on January 15,

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such evidence against his counsel's advice did not render his trial counsel ineffective or require a new penalty phase. *See Commonwealth v. Tedford*, 960 A.2d 1, 47 (Pa. 2008).

[5] First PCRA counsel were experienced attorneys from the Federal Community Defenders' Organization for the Eastern District of Pennsylvania, Capital Habeas Unit ("the FCDO").

1997 as a timely counseled, amended first PCRA petition and to entertain the merits of Tedford's claims. *See Commonwealth v. Tedford*, 78 A.2d 1167 (Pa. 2001).

The PCRA court thereafter permitted the filing of another counseled, amended first PCRA petition. *That petition – which contained 80 claims of ineffective assistance of trial counsel – was the subject of a three-day evidentiary hearing.* On March 5, 2004, the PCRA court denied all of the claims for lack of merit except one, namely a claim that Tedford's trial counsel had a conflict of interest at the time of trial. Following an evidentiary hearing on that claim, the PCRA court on July 16, 2004 found that claim to also be without merit and denied relief. On November 19, 2008, the state Supreme Court affirmed the PCRA court's denial of PCRA relief in an extensive and thorough Opinion. *See Commonwealth v. Tedford*, 960 A.2d 1 (Pa. 2008).

In 2009, Tedford's first PCRA counsel filed a counseled petition for writ of habeas corpus ("the habeas petition") in the United States District Court for the Western District of Pennsylvania ("the federal district court") alleging that Tedford's judgment of sentence violated his federal constitutional rights.[6] Thereafter, Tedford's counsel – *now federal habeas corpus counsel* -- filed a voluminous motion for discovery, which was, with one exception, denied by

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[6] The habeas petition – *still pending* -- alleges the existence of 17 different grounds for the grant of a new trial and/or sentencing.

the federal district court in a thoughtful and comprehensive Opinion and Order.

Tedford subsequently filed a second counseled discovery motion in federal court, this time seeking materials above and beyond those sought in the first discovery motion. More specifically, the second discovery motion sought *the entire investigation file of the Pennsylvania State Police ("PSP") relating to the murder of Jeanine Revak.* Prior to filing this motion, Tedford's first PCRA counsel had sought the PSP investigation file via a Pennsylvania Right to Know Act ("RTKA") request, *see* 65 P.S. § 67.101 *et seq.,* which was mostly denied by the PSP on the grounds that such a production of criminal investigation materials is prohibited by the RTKA as well as by Pennsylvania's Criminal History Record Information Act, 18 Pa.C.S.A. § 9101 *et seq.* ("CHRIA"). In connection therewith, the PSP provided an 18-page index listing, for each record in its possession regarding the rape and murder of Jeanine Revak, the record type and record subject as well as the statutory provision that barred the record's disclosure to Tedford ("the PSP index").

Instead of appealing this decision to the Pennsylvania Office of Open Records ("the OOR") in conformity with the governing state law, *see* 65 P.S. § 67.1101, Tedford instead opted to file the second federal habeas discovery motion which asked the federal district court to compel the PSP to produce its entire investigation file to Tedford. In other words, *Tedford asked the federal district court to negate PSP's RTKA determination.* During a hearing on the second motion for discovery, however, Tedford's

counsel informed the federal judge that they did not seek an appeal with the OOR because *they believed the PSP decision on Tedford's RTKA request was in full accordance with the governing state law.*

On June 30, 2011, the federal district court denied that motion. On September 11, 2012, that court granted a motion filed by Tedford to provide him with replacement counsel due to irreconcilable differences with the FCDO.[7] The new counsel ("current PCRA counsel") filed an extensive third discovery motion in federal court seeking 20 categories of information

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[7] Tedford informed the federal district court in a publicly-filed *pro se* pleading that the FCDO used deception and false evidence while representing him in the first state court PCRA proceedings – including in the state Supreme Court – in an effort to advance its anti-death penalty agenda at the expense of his personal interests and clearly-articulated objectives in the litigation (10/11/11 Request for Leave to File *Pro Se* Objections to Counsel's Motion to Reconsider filed in the United States District Court for the Western District of Pa. at Civil Action No. 09-409) (not sealed).

based on the PSP index.[8] On September 29, 2014, the federal district court denied that motion.[9]

On November 7, 2014, Tedford's current PCRA counsel filed in the federal district court a "motion to expand the appointment of counsel." In the words of the federal district court:

> …In this motion, Petitioner explains that **because he has not had success obtaining the discovery he seeks in this federal habeas proceeding, he intends to file another post-conviction motion in state court and pursue his discovery and whatever additional remedies he may have there.** Petitioner asks that this Court exercise its discretion…and expand the scope of appointment of his current federal habeas counsel so that they can represent him in the state proceeding that he intends to pursue.

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[8] The third motion for discovery falsely represented to the federal district court that seeking discovery in a Pennsylvania PCRA proceeding is "an exercise in futility" and that "the Pennsylvania rules and practices foreclosed him" from obtaining discovery.

[9] The judge who disposed of the third discovery motion was not the same judge who disposed of the first two discovery motions. Tedford was given a "second set of eyes" to review his claimed entitlement to review the Commonwealth's files and the result was the same.

Tedford v. Beard et al., Civil Action No. 09-409 at 5 (E.D. Pa. Nov. 12, 2014) (emphasis added). The federal district court denied that motion but stayed the federal habeas proceedings, explaining:

> …[A]s the litigation of his third motion for discovery demonstrates, **what Petitioner essentially wants to do is relitigate his state criminal trial and conduct additional discovery so that he can see if there are any new claims that may be available to him.** Because he cannot do either of those things in this federal habeas proceeding, Petitioner has decided he now wants to pursue another state post-conviction proceeding. If that is the course of action he wants to take next, the Court will stay this proceeding during the pendency of that state action. But after considering all relevant facts, the Court declines to authorize the use of federal resources as Petitioner litigates another state collateral action.

Id. at 5-6 (emphasis added).

One month later, Tedford filed a purportedly *pro se* second PCRA petition in the state PCRA court. **This was filed 24 years, eight months, and 19 days after Tedford's judgment of sentence became final on direct appeal and six years and 13 days after the Pennsylvania Supreme Court's affirmance of the denial of the first PCRA petition.** The PCRA court appointed current PCRA counsel to represent Tedford.

On May 5, 2015, Tedford's counsel filed a highly anomalous pleading in the PCRA court entitled:

> Consolidated Pleadings: Amended Petition Pursuant to the Post Conviction Relief Act, Petition for Reconsideration of June 12, 2002 Order of the Court, First PCRA Filing, and Request to Amend that Filing, Petition for Writ of Habeas Corpus Pursuant to Tile 42 PA.C.S. § 6503, Petition for Relief Pursuant to Article I, § 11 of the Constitution of the Commonwealth, and Motion for DNA Testing.[10]

On June 9, 2015, Tedford's counsel filed an additional pleading in the PCRA court which they characterized as a "Supplement to Petition Pursuant to the Post Conviction Relief Act Based on Newly Discovered Evidence."[11]

The Commonwealth filed a timely response to these pleadings on September 18, 2018. On October 9, 2018, the PCRA court filed a notice of its intention

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[10] As explained *infra*, this pleading was a dressed-up request for discovery of the Commonwealth's files decades after his trial had concluded. Accordingly, this pleading is referred to herein as "the consolidated PCRA discovery request."

[11] This pleading, which asserts a claim based on an April 20, 2015 joint press release regarding FBI testimony on hair comparison analysis over a 20-year period, is referred to herein as "the hair analysis claim."

to dismiss all of the claims without an evidentiary hearing pursuant to Pa.R.Crim.P. 909(B)(2)(a). Tedford filed a response thereto, in which he acknowledged that he was required by law to file his DNA testing request in a separate motion and sought permission to do so.

On February 11, 2019, the PCRA court filed an Order holding that: (1) with the exception of the request for DNA testing, all of the claims contained in the consolidated PCRA discovery request were filed untimely and the court lacks jurisdiction to consider their merits, requiring dismissal of the claims; (2) the court has jurisdiction to consider the hair analysis claim but denies that claim for lack of substantive merit; and (3) Tedford is granted leave to file an amended motion requesting DNA testing in conformity with 42 Pa.C.S.A. § 9543.1 within 60 days, i.e. by April 12, 2019.[12]

On March 4, 2019, Tedford timely appealed the PCRA court's disposition to the state Supreme Court. On April 22, 2020, the Pennsylvania Supreme Court filed a *unanimous* Opinion affirming the PCRA court's disposition below, including the determination that Tedford's consolidated PCRA discovery request was untimely-filed and that the PCRA court lacked jurisdiction to consider it on the merits. *See Commonwealth v. Tedford*, 228 A.3d 891 (Pa. 2020).

With regard to the timeliness of the second PCRA petition, the Court stated:

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[12] Tedford did not subsequently file such a motion.

> For his first claim, Tedford asserts that the PCRA court erred in dismissing his second counseled PCRA petition as untimely. This Court has consistently held that the PCRA's time restrictions are jurisdictional in nature and that a PCRA court must, before considering the merits of claims asserted in a PCRA petition, first make a threshold determination whether each claim was timely filed.
>
> In the vast majority of cases, if a PCRA claim is not timely filed, the PCRA court must dismiss it. Section 9545(b) of the PCRA establishes a one-year time bar for the filing of PCRA claims, with three exceptions.

Id. at 904 (citations omitted).

The statutory exceptions referenced by the state Supreme Court – which could be fairly characterized as *equitable exceptions* – permit a collateral attack beyond one year under the following circumstances:

> (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).

The state Supreme Court continued:

> We [have] summarized the statutory language of Section 9545(b)…as follows:
>
> > A PCRA petition, including a second or subsequent one, must be filed within one year of the date the petitioner's judgment of sentence became final, unless he pleads and proves one of the three exceptions outlined in 42 Pa.C.S. § 9545(b)(1). A judgment becomes final at the conclusion of direct review by this Court or the United States Supreme Court, or at the expiration of the time for seeking such review. ... The PCRA squarely places upon the petitioner the burden of proving an untimely petition fits within one of the three exceptions. The PCRA further requires a petition invoking one of these exceptions to be filed within 60 days of the date the claim could have been presented.

Tedford, 228 A.3d at 905.

The Court noted that the one-year limitation period expired on January 16, 1997 and that the PCRA court only had jurisdiction to consider the second PCRA claims if one of the exceptions was pleaded and proved. The Court determined that Tedford had failed to do so:

> Tedford contends that he was entitled to file his current PCRA petition based upon the newly discovered facts exception, which provides that "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." He argues that the "facts" which permitted the filing of his present PCRA petition include the "revelations" in the PSP's March 4, 2011 letter in response to his RTKL request. In particular, he posits that prior to receipt of this letter, he had from the time of trial been assured by the Commonwealth that the 375 pages of documents that he had received in discovery was the sum total of the documents available for discovery. The March 4, 2011 letter and attachment, however, revealed that the PSP had more than 800 documents in its possession, demonstrating that Tedford had received only about 40 to 45% of the PSP's files.
>
> Tedford does not deny that he failed to file his current PCRA petition within sixty days of receipt of the PSP's March 4, 2011 letter. Indeed, he did not file his current PCRA petition until December 2, 2014, *well over*

three years after the receipt of the PSP's letter. Tedford argues, however, that this lapse in time should be excused, as it was the result of his prior counsel's ineffectiveness. He posits that upon receipt of the PSP's letter, his prior counsel should have immediately filed (i.e., within sixty days) a new PCRA petition. The PCRA court rejected this argument, pointing out that Tedford's focus on the ineffectiveness of "prior counsel" was misguided, since his present counsel was appointed to represent him in his federal court habeas proceedings on September 11, 2012. As such, *Tedford did not file the current PCRA petition until more than two years after new counsel was appointed…*

Tedford's contention, namely that the requirement that a PCRA claim based upon the newly discovered facts exception in Section 9545(b)(1)(ii) must be filed within sixty days from the date on which it could have been presented "did not apply to him" because of his prior counsel's ineffectiveness overlooks that this Court has repeatedly held that claims of ineffectiveness do not overcome the statutory time limitations of the PCRA statute. In *Commonwealth v. Gamboa-Taylor*, 562 Pa. 70, 753 A.2d 780, 786 (2000), for example, we stated that "claims of PCRA counsel's ineffectiveness do not escape the PCRA one-year time limitation merely because they are presented in terms of current counsel's discovery of the 'fact' that a previous attorney was ineffective." More recently, in

Commonwealth v. Robinson, 635 Pa. 592, 139 A.3d 178 (2016), we observed that "it is well-settled that couching a petitioner's claims in terms of ineffectiveness will not save an otherwise untimely filed petition from the application of the time restrictions of the PCRA." We have also consistently held that courts have no power to carve out equitable extensions to the PCRA's timeliness requirements.

In an effort to avoid these rulings by this Court, Tedford cites to *Commonwealth v. Peterson*, 648 Pa. 313, 192 A.3d 1123 (2018), in which this Court held that counsel's negligence *per se* in filing an untimely PCRA petition constitutes adequate grounds to permit the filing of a new PCRA petition beyond the one-year time bar pursuant to the exception in subsection 9545(b)(1)(ii). *Peterson* involved a unique procedural context. After being sentenced to consecutive life sentences for first-degree murder, Peterson petitioned for post-conviction relief. Although the docket reflected that an evidentiary hearing was scheduled, it never took place and there was no further activity on the petition for the next fifteen years. The PCRA court denied the petition on its merits, but on appeal the Superior Court quashed the appeal because it had been filed one day too late under the PCRA's timeliness requirements. Peterson then filed a second petition, seeking, based upon counsel's ineffectiveness in filing his first PCRA petition

late, reinstatement of his PCRA appellate rights *nunc pro tunc* to challenge the PCRA court's order dismissing his first petition. This Court reversed the Superior Court's quashal of the second petition on timeliness grounds, ruling that counsel's untimely filing of Peterson's first PCRA petition constituted ineffectiveness *per se*, "as it completely deprived Peterson of any consideration of his collateral claims under the PCRA." Counsel's ineffectiveness *per se* in connection with Peterson's first PCRA petition was a newly discovered "fact" under Section 9545(b)(2)(iii), as the PCRA court had made factual findings that Peterson did not know about the untimely filing and could not have ascertained this fact through the exercise of due diligence. Given these factual findings, and because counsel's untimely filing of Peterson's first PCRA petition constituted ineffectiveness *per se* by completely foreclosing him from obtaining any collateral review, we concluded that Peterson was entitled to invoke the subsection 9545(b)(1)(ii) exception to permit the filing of his second PCRA petition beyond the one-year time bar.

Tedford argues that his prior counsel's failure to timely file a new PCRA petition within sixty days of receipt of the PSP's letter constituted negligence *per se*. We disagree, as even if we assume that prior counsel's (and current counsel's) actions constituted ineffective assistance of counsel, said ineffectiveness was not ineffectiveness *per se*,

as it did not wholly deprive Tedford of collateral PCRA review. As the PCRA court correctly observed, *Tedford previously litigated a substantial number of collateral claims in connection with his first PCRA petition, including multiple claims of ineffective assistance by trial and appellate counsel and numerous contentions that he had been improperly denied discovery.* This Court thoroughly reviewed the certified record and affirmed the PCRA's denial of those claims. Moreover, any ineffectiveness by counsel (past or present) has not jurisdictionally foreclosed all of Tedford's current collateral claims, as the PCRA court considered his microscopic hair analysis and DNA testing on their merits.

Next, Tedford argues that if his current PCRA petition is untimely under the strictures of Section 9545(b), then this provision of the PCRA is "unconstitutional as applied." Again invoking the ineffectiveness of his prior counsel, he contends that he has a constitutional right to "receive a fair hearing in connection with his claims and the effective assistance of counsel pursuant to the 5th, 6th and 14th Amendments to the United States Constitution and Article I § 9 of the Constitution." In this regard, he insists that "[h]is substantive right to seek relief and to a fair procedure [has been] summarily repudiated by the mechanical operation of the statute of limitations." He further argues that Article 1, Section 11, sometimes known as the

> "Remedies Clause," entitles him to relief from the ineffectiveness *per se* of his prior counsel, as that constitutional provision "ensures that where legal injury has been sustained there will always be some way for the individual to access the courts for relief."
>
> In his brief filed with this Court, Tedford makes no attempt to develop these constitutional arguments. We note that this Court has rejected prior constitutional challenges to the PCRA's timeliness provisions. In *Commonwealth v. Turner*, 622 Pa. 318, 80 A.3d 754, 767 (2013), we held that *the PCRA "provide[s] a reasonable opportunity for those who have been wrongly convicted to demonstrate the injustice of their conviction," and that "[t]he current PCRA places time limitations on such claims of error, and in so doing, strikes a reasonable balance between society's need for finality in criminal cases and the convicted person's need to demonstrate that there has been an error in the proceedings that resulted in conviction."* Tedford does not address our reasoning in *Turner* and *Peterkin*.

Tedford, 228 A.3d at 904–08 (citations omitted) (emphasis added).

REASONS FOR DENYING THE WRIT

The Court should deny the petition for writ of *certiorari* for multiple reasons: (1) the Pennsylvania Supreme Court's enforcement of the state collateral review statute's jurisdictional time limitation is consistent with this Court's jurisprudence; (2) Tedford's petition is grounded in a fundamental misunderstanding of the governing law; and (3) none of the compelling reasons for granting a petition for writ of certiorari outlined in Rule 10 are present.

1. The Pennsylvania Supreme Court's enforcement of the PCRA statute's jurisdictional time limitation is consistent with this Court's jurisprudence.

As noted *supra*, in affirming the lower court's finding that the second PCRA petition was untimely-filed and therefore deprived the state courts of jurisdiction to consider it, the state Supreme Court held that the PCRA statute's time limitation "provide[s] a reasonable opportunity for those who have been wrongly convicted to demonstrate the injustice of their conviction," and "strikes a reasonable balance between society's need for finality in criminal cases and the convicted person's need to demonstrate that there has been an error in the proceedings that resulted in conviction." *Tedford*, 228 A.3d at 908.

This Court has repeatedly held that a state may impose reasonable time limitations on collateral attacks of criminal judgments of sentence asserting federal constitutional rights. *See, e.g., Johnson v. United States*, 544 U.S. 295, 306, 316 (2005); *Daniels v. United States*, 532 U.S. 374, 375 (2001); *Custis v.*

United States, 511 U.S. 485, 497 (1994); *Michel v. Louisiana,* 350 U.S. 91, 97 (1956); *Williams v. State of Georgia*, 394 U.S. 375, 382-83 (1955). Indeed, "[i]t is *beyond question* that under the Due Process Clause of the Fourteenth Amendment [a state] may attach reasonable time limitations to the assertion of federal constitutional rights." *Michel,* 350 U.S. at 97 (emphasis added).

As the Court has explained:

> A defendant convicted in state court has numerous opportunities to challenge the constitutionality of that conviction, but those vehicles for review are not available indefinitely and without limitation. Procedural barriers limit access to review on the merits of constitutional claims, vindicating the presumption of regularity that attaches to final judgments, even when the question is waiver of constitutional rights.

Daniels, 532 U.S. at 375 (citing *Parke v. Raley,* 506 U.S. 20, 29 (1992)). The state has a strong interest in the finality of judgments, without which confidence in the integrity of judicial procedures is undermined and the orderly administration of justice is impaired. *Custis*, 511 U.S. at 497.

The United States Constitution does not require the states to provide avenues for post-conviction relief much less counsel for post-conviction relief proceedings. *Pennsylvania v. Finley*, 481 U.S. 551, 556-57 (1987). When a state chooses to provide such

an avenue, which is a civil proceeding, the Due Process Clause requires that the proceedings be "fundamentally fair." *Id.* Fundamental fairness requires that post-conviction petitioners be permitted "an *opportunity* ... granted at a meaningful time and in a meaningful manner for [a] hearing appropriate to the nature of the case." *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982) (citation omitted) (emphasis in original)

Pennsylvania has afforded Tedford a fundamentally fair opportunity to collaterally attack his judgment of sentence. In 2004, the PCRA court conducted a three-day evidentiary hearing and considered more than 80 separate and distinct counseled claims for relief presented by Tedford. In response to Tedford's complaint that he did not receive the PSP index until 2011, the Commonwealth has two responses.

First, the current RTKA statute became effective on January 1, 2009; the prior RTKA statute was enacted on June 21, 1954. Therefore, *Tedford had the ability to file his RTKA request and determine that PSP has 823 pages in its investigative files at least as far back as October 2, 1997 when he filed his motion for discovery in connection with the first PCRA proceedings.* Even if the Court looks only at the current version of the RTKA which governed the PSP information referenced by Tedford, *the statutory mechanism for obtaining the information was available to Tedford three years prior to the time that he made an effort to obtain it.* Tedford has articulated no reason why he could not have, through the exercise of reasonable diligence, filed his RTKA request with

the PSP between 1987 and 2010 instead of waiting until 2011 to do so. Tedford failed to exercise due diligence.

Putting that aside, if he had exercised reasonable diligence by filing his claim based on the PSP index within 60 days of receiving it on March 4, 2011, he could have advanced a colorable argument that the after-discovered evidence exception to the PCRA time bar applied and he might have been eligible to have the claim decided on the merits. Instead, Tedford waited to file his claim based on the PSP index until after 1,368 days had passed from the date that he could have filed it. Tedford failed to exercise due diligence.[13]

On the question of whether Pennsylvania's PCRA jurisdictional provision is fundamentally fair, it is instructive to note that a motion by a federal prisoner for post-conviction relief under 28 U.S.C. § 2255 is subject to a one-year time limitation that generally runs from the date on which the judgment of conviction becomes final. *Clay v. United States*, 537 U.S. 522, 524 (2003). This Court has consistently

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[13] The fact neither the FCDO nor current PCRA counsel exercised reasonable diligence in filing the after-discovered evidence claim based on the PSP index supports a reasonable inference that all counsel lacked confidence in the merits of the claim and instead only subsequently invoked it as a disingenuous delaying tactic following the federal district court's refusals to grant discovery.

rejected due process challenges to that one-year limitations period.

Although it is true that Section 2255's limitation period is not jurisdictional in nature and is subject to equitable tolling, Pennsylvania's collateral review limitation period also permits the consideration of claims beyond the one-year period when one or more of three equitable circumstances are proven by the petitioner. *See* 42 Pa.C.S.A. § 9545(b). Indeed, through this mechanism a form of equitable tolling is built into the PCRA statute's jurisdictional limitation period. Although the scope of this equitable tolling may not be as broad as that afforded to prisoners collaterally attacking their federal convictions, it nonetheless comprises a critical component of a regimen for processing state collateral challenges to criminal convictions that is fundamentally fair.

For these reasons, the Pennsylvania Supreme Court's enforcement of the PCRA statute's jurisdictional time limitation is consistent with this Court's jurisprudence.

2. Tedford's petition is grounded in a fundamental misunderstanding of the governing law.

The core premise underlying Tedford's petition to this Court is that: (1) the PSP documents relating to Ms. Revak's death are 823 pages long but the discovery provided to the defense before trial was 375 pages in length; and (2) before the government can take his life, Tedford must be given an opportunity to review the entire contents of the Commonwealth's files to ensure that no materials exist that might have been suppressed in violation of the rule set forth in

Brady v. Maryland, 373 U.S. 83 (1963). That argument belies a fundamental misunderstanding of the law governing *Brady* claims.

As noted by the federal district court, the fact that the PSP file allegedly contains more records than were made available to Tedford's defense does not support the inference that the prosecution improperly suppressed information. As the Pennsylvania Supreme Court has cogently observed, citing to this Court's precedent:

> …By way of PCRA discovery background, it is important to reemphasize that, although substantive *Brady* claims may be cognizable under the PCRA, *Brady* does not govern the question of the scope of discovery under the PCRA. *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. at 68–69, 129 S.Ct. 2308. Furthermore, the Commonwealth is correct that *there is no general right, under Brady…to inspect the prosecutor's file. Brady* imposes an affirmative and continuing duty upon the government to disclose exculpatory information, but it establishes no specific right in the defendant to review the Commonwealth's file to see, for example, if he agrees with the Commonwealth's assessment and representation. The U.S. Supreme Court has explained the operation of *Brady* as follows:
>
> > *A defendant's right to discover exculpatory evidence does not include the unsupervised authority to search through the Commonwealth's files....*

> Although the eye of an advocate may be helpful to a defendant in ferreting out information, *Dennis v. United States,* 384 U.S. 855, 875, 86 S.Ct. 1840, 1851, 16 L.Ed.2d 973 (1966), this Court has never held—even in the absence of a statute restricting disclosure—that a defendant alone may make the determination as to the materiality of the information. Settled practice is to the contrary. In the typical case where a defendant makes only a general request for exculpatory material under *Brady v. Maryland* ..., it is the State that decides which information must be disclosed. *Unless defense counsel becomes aware that other exculpatory evidence was withheld and brings it to the court's attention, the prosecutor's decision on disclosure is final. Defense counsel has no constitutional right to conduct his own search of the State's files to argue relevance. See Weatherford v. Bursey,* 429 U.S. 545, 559, 97 S.Ct. 837, 846, 51 L.Ed.2d 30 (1977) ("There is no general constitutional right to discovery in a criminal case, and *Brady* did not create one").

Pennsylvania v. Ritchie, 480 U.S. at 59–60, 107 S.Ct. 989 (additional citations and footnotes omitted).

Commonwealth v. Williams, 86 A.3d 771, 787-789 (Pa. 2014) (emphasis added).

Tedford's insistence that he is entitled by law to see the entirety of the contents of the government's investigative file is in clear derogation of this Court's unambiguous precedent on the subject.

Notably absent from the petition for writ of certiorari is mention of the fact that notwithstanding everything articulated *supra*, undersigned counsel – understanding the solemn ongoing duty of the Commonwealth to disclose to Tedford information that constitutes *Brady* material which has not previously been turned over to him, assuming that the concern expressed by Tedford about the existence of 823 pages of records in the PSP file is genuine, and recognizing that Tedford has been sentenced to death – has personally reviewed the PSP files at issue. The purpose of that voluntary review was to confirm that no information that would fall under the *Brady* rule exists in the Commonwealth's possession. However, *because Tedford has refused to identify with specificity the 375 pages of discovery that he states were provided to him prior to trial, it is impossible for the Commonwealth to know what was produced in pretrial discovery and what was not, much less determine whether undisclosed Brady material exists.*

The Commonwealth's files, much of which were generated over 30 years ago, lack any documentation on that subject. Because Tedford has possession of the 375 pages that he alleges were produced to him in pretrial discovery, and because the burden rests with him in making a PCRA *Brady* claim to prove by a preponderance of the evidence that admissible,

favorable, material evidence was suppressed, and because he has no legal right whatsoever to inspect or examine the Commonwealth's files, the Commonwealth respectfully requested in the state PCRA court that Tedford produce to the Commonwealth a complete copy of the 375 pages that he repeatedly references. The Commonwealth pledged that upon receipt of those documents, the Commonwealth would do another good faith review of the 823 pages in the PSP file to determine whether the law requires anything additional to be produced to Tedford.

Tedford has incongruously refused to provide the Commonwealth with the 375 pages of pretrial discovery that he claims to have in his possession notwithstanding the fact that doing so would facilitate the very result he claims to seek in this litigation. Inexplicably, he is preventing the Commonwealth from fulfilling its obligations pursuant to *Brady* in the manner prescribed by law while simultaneously falsely claiming that he is the victim of malfeasance by the government.

3. None of the compelling reasons for granting a petition for writ of certiorari outlined in Rule 10 are present. *See* Rule 10. The petition does not identify a conflict between the decision below and the decision of another state court of last resort or United States court of appeals on an important federal question, nor does it identify an unsettled question of federal law that has not, but should be, decided by this Court. The petition also does not explain how the decision of the Pennsylvania Supreme Court conflicts with the relevant decisions of this Court. As a result, the

petition should be denied without examination of its merits.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

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