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No. 26-525

In the Supreme Court of the United States

ANTONIO ELLISON,
Petitioner,

v.

KENTUCKY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF KENTUCKY

PETITION FOR WRIT OF CERTIORARI

Antonio Ellison
DOC No. 262062
Kentucky State Penitentiary
266 Water Street
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Pro Se Petitioner

OCTOBER MMXXVI

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QUESTIONS PRESENTED

1. Whether a state court may rely on diligence and successive-motion rules to reject a *Brady* claim without deciding suppression or cumulative materiality, where newly obtained evidence alleges that an eyewitness told the lead detective before trial that petitioner was not the shooter and that information was not disclosed to the defense.

2. Whether a blanket order barring an indigent prisoner from filing any future *pro se* papers in his criminal case, and directing summary denial of future *in forma pauperis* collateral attacks, violates the constitutional right of access to the courts when the order reaches newly discovered, nonfrivolous federal claims.

PARTIES TO THE PROCEEDING

Petitioner, the defendant-appellant below, is Antonio Ellison.

Respondent, the plaintiff-appellee below, is the Commonwealth of Kentucky.

RELATED PROCEEDINGS

Circuit Court of Kentucky, Jefferson County:

Commonwealth v. *Ellison*, No. 09–CR–003445 (Mar. 5, 2013) (judgment of conviction entered)

Commonwealth v. *Ellison*, No. 09–CR–003445 (Jul. 22, 2024) (motions for a new trial and an evidentiary hearing denied; filing restrictions imposed) (App. 12–13)

Court of Appeals of Kentucky:

Ellison v. *Commonwealth*, No. 2016–CA–000393–MR (May 5, 2017) (denial of postconviction relief affirmed) (App. 2)

Ellison v. *Commonwealth*, Nos. 2021–CA–0894–MR and 2022–CA–0193–MR (May 5, 2023) (denial of postconviction relief affirmed) (App. 2)

Ellison v. *Commonwealth*, No. 2024–CA–0956–MR (Jul. 3, 2025) (denial of postconviction relief and filing restrictions affirmed) (App. 1–11)

Ellison v. *Commonwealth*, No. 2024–CA–0956–MR (Aug. 11, 2025) (rehearing and motion to supplement denied) (App. 15–16)

Supreme Court of Kentucky:

Ellison v. *Commonwealth*, No. 2013–SC–000518–MR (Dec. 18, 2014) (judgment of conviction affirmed) (App. 2)

Ellison v. *Commonwealth*, No. 2013–SC–000518–MR (Mar. 19, 2015) (rehearing denied)

Ellison v. *Commonwealth*, No. 2023–SC–0283–D (Aug. 16, 2023) (discretionary review denied)

Ellison v. *Commonwealth*, No. 2025–SC–0330–D (Sept. 16, 2026) (discretionary review denied) (App. 14)

United States District Court (WD Ky.):

Ellison v. *Litteral*, No. 3:18–cv–00223–GNS–RSE (Sept. 30, 2019) (habeas petition dismissed; certificate of appealability denied)

United States Court of Appeals (CA6):

Ellison v. *Litteral*, No. 19–6233 (Mar. 30, 2020) (certificate of appealability denied)

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PETITION FOR WRIT OF CERTIORARI

Antonio Ellison respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Kentucky.

OPINIONS AND ORDERS BELOW

The Supreme Court of Kentucky's order denying discretionary review, entered September 16, 2026, is reproduced in the Appendix at App. 14.

The Kentucky Court of Appeals' unpublished opinion affirming the denial of postconviction relief, rendered July 3, 2025, is reproduced in the Appendix at App. 1–11.

The Kentucky Court of Appeals' order denying rehearing, entered August 11, 2025, is reproduced in the Appendix at App. 15–16.

The Jefferson Circuit Court's order denying relief and imposing a filing restriction, entered July 22, 2024, is reproduced in the Appendix at App. 12–13.

JURISDICTION

The Supreme Court of Kentucky denied discretionary review on September 16, 2026. This Court has jurisdiction under 28 U. S. C. §1257(a). The federal questions were raised in petitioner's appeal and motion for discretionary review and were rejected or left undisturbed by the Kentucky courts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment, §1, provides in relevant part: "No State shall . . . deprive any person of

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The First Amendment provides in relevant part: "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances." This protection applies to the States through the Fourteenth Amendment.

Title 28 U. S. C. §1257(a) provides:

> "(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

STATEMENT OF THE CASE

A. Conviction and later-discovered evidence

Petitioner is serving a life sentence following a Kentucky conviction for complicity to murder. The prosecution's theory and the identity evidence at trial made the identity of the shooter central to the case. Petitioner pursued direct review and later collateral proceedings. App. 1–3.

In March 2024, petitioner obtained sworn affidavits from Michelle Griffith and Jeffery Bell. Each stated from personal observation that petitioner was not the shooter. App. 17–21. Griffith further stated that, before trial, she telephoned lead detective Jon Lesher, told him that petitioner was not the shooter, and provided her name and telephone number. According to her affidavit, the detective did not follow up. Petitioner alleged that the information was never disclosed to the defense. App. 4–5, 20–21.

The later discovery did not end with the March 2024 affidavits. Griffith's information also led to the identification of additional persons with potentially relevant knowledge, including Patrice D. Johnson. Johnson's statement was presented in petitioner's petition for rehearing in the Kentucky Court of Appeals. Johnson also identified another individual who reportedly walked down the alley with him and who may possess relevant information. App. 22–24. Petitioner does not characterize that unidentified individual as an eyewitness beyond what the state-court record establishes and does not ask this Court to make new factual findings concerning that person.

Those allegations identify evidence within *Brady*'s rule. The information was favorable because it directly contradicted the State's identification theory and supplied an eyewitness lead. Knowledge of investigating police is attributed to the prosecution. *Kyles* v. *Whitley*, 514 U. S. 419, 437–438 (1995). Petitioner alleged materiality because the information would have permitted the defense to present eyewitness testimony, challenge the adequacy of the investigation, and impeach identification evidence.

B. The state courts declined to decide the *Brady* claim on its merits

The Jefferson Circuit Court denied relief on July 22, 2024, without an evidentiary hearing. App. 12–13. It also directed the Clerk not to accept or docket future *pro se* papers from petitioner in the criminal case, declared that future *in forma pauperis* collateral attacks would be summarily denied, and permitted further filings only through an attorney acting under Kentucky Rule of Civil Procedure 11. App. 10, 12–13.

The Kentucky Court of Appeals affirmed on July 3, 2025. App. 1, 10. It acknowledged petitioner's allegation that Griffith supplied exculpatory information to the lead detective before trial. App. 4–5. But it did not determine whether the detective received that information, whether it was suppressed, whether the prosecution team was responsible for it, or whether the evidence was cumulatively material under *Brady*. Instead, it relied on Kentucky's time and diligence rules for newly discovered evidence and restrictions on successive motions under Kentucky Rule of Civil Procedure 60.02. App. 5, n. 5; App. 6–8.

The Court of Appeals also discounted the affidavits because petitioner testified at trial that he shot in self-defense, because the conviction was for complicity, and because the court viewed the evidence of guilt as overwhelming. App. 6–9. It affirmed without a hearing at which Griffith, Bell, the detective, or trial counsel could testify. App. 10.

Rehearing was denied August 11, 2025. App. 15. The Supreme Court of Kentucky denied discretionary review on September 16, 2026. App. 14.

REASONS FOR GRANTING THE PETITION

I. The decision conflicts with *Brady*, *Kyles*, and *Banks* by allowing diligence rules to displace the State's disclosure duty

Brady imposes an affirmative constitutional duty on the State to disclose favorable, material evidence. *Brady* v. *Maryland*, 373 U. S. 83, 87 (1963). That duty extends to favorable information known to police investigators even when the trial prosecutor lacks personal knowledge. *Kyles*, 514 U. S., at 437–438. It does not become a defense investigation duty merely because a prisoner later may locate the witness independently.

Banks rejected the premise underlying the decision below. When the State represents that it has complied with *Brady*, a defendant may rely on that representation; a rule under which the prosecution may hide and the defendant must seek is constitutionally unacceptable. *Banks* v. *Dretke*, 540 U. S. 668, 695–696 (2004). State suppression may itself establish cause for a defendant's failure to discover and present the evidence earlier. *Id.*, at 691–698.

Here, Griffith's affidavit alleges that she personally told the lead detective before trial that petitioner was not the shooter. App. 20. The state court required petitioner to explain why he did not locate Griffith sooner, but it did not ask why the State failed to disclose eyewitness information allegedly supplied to its lead investigator. App. 5, n. 5; App. 7, n. 6. That allocation of responsibility conflicts with *Banks* and *Kyles*.

The successive-motion rationale does not cure the federal error. A State may enforce adequate and independent procedural rules, but it may not define diligence in a way that relieves the prosecution of its constitutional duty or treats suppressed evidence as though it had always been available to the defense. Nor should a court treat a claim as previously available when its factual basis was allegedly withheld. See *Cone* v. *Bell*, 556 U. S. 449, 466–469 (2009). Review is warranted under Rule 10(c) because the decision below resolves an important federal question in a manner inconsistent with this Court's *Brady* decisions.

II. The state court used the wrong materiality framework and resolved disputed facts without a hearing

Brady materiality does not ask whether new evidence proves innocence by itself or whether enough evidence remains to sustain a conviction. The question is whether the favorable evidence, considered cumulatively with the whole record, creates a reasonable probability of a different result sufficient to undermine confidence in the verdict. *Kyles*, 514 U. S., at 434–436. A defendant need not show that acquittal was more likely than not. *Wearry* v. *Cain*, 577 U. S. 385, 392 (2016) (*per curiam*).

The decision below relied instead on petitioner's trial testimony, the breadth of complicity liability, and the court's view that other evidence was overwhelming. App. 6–9. Those considerations do not answer what a reasonable juror could have done after hearing that multiple eyewitnesses said petitioner was not the

shooter and that one allegedly reported that fact to the lead detective before trial.

The accounts must be considered according to what each statement actually establishes and in the procedural posture in which it was presented.

Griffith's account tends to support the asserted suppression theory and supplies direct eyewitness evidence; Bell supplies another eyewitness account. App. 17–21. Johnson's statement, presented with the petition for rehearing, is relevant only to the extent established by that statement and the state-court record. Petitioner does not ask this Court to treat later investigative leads as independently proven eyewitness testimony. The identification irregularities alleged in the state record bear on the reliability of the investigation. App. 27–28. *Kyles* requires assessment of the net effect of favorable evidence rather than item-by-item dismissal.

The absence of a hearing compounded the problem. The courts discounted the March 2024 affidavits without hearing from the affiants, the detective, or trial counsel. App. 10, 12. A remand would permit the state courts to determine whether Griffith contacted the detective, what she reported, what the detective recorded or communicated, what the prosecution disclosed, and whether trial counsel knew of the witnesses, and then apply the correct federal standard to the developed record. This petition does not ask the Court to resolve the credibility of Johnson or any unidentified potential witness in the first instance.

III. The categorical filing restriction warrants review

Courts may protect their dockets from repetitive or abusive litigation. *In re McDonald*, 489 U. S. 180, 184–185 (1989) (*per curiam*). But filing restrictions must preserve a meaningful avenue for nonfrivolous claims, particularly where a prisoner alleges newly discovered facts establishing a constitutional violation. The right of access requires a meaningful opportunity to present claimed violations of fundamental constitutional rights. *Bounds* v. *Smith*, 430 U. S. 817, 821–823 (1977); *Lewis* v. *Casey*, 518 U. S. 343, 351–353 (1996).

The order here is categorical. It directs the Clerk not to accept or docket any future *pro se* filings in petitioner's criminal case and declares that future *in forma pauperis* collateral attacks will be summarily denied. App. 12–13. It does not merely screen repetitive submissions, limit issues already adjudicated, or require leave to file upon a showing of novelty. It reaches new evidence and new constitutional claims alike.

The attorney-only exception does not necessarily preserve meaningful access. App. 10. There is no federal constitutional right to appointed counsel in ordinary state collateral review. *Pennsylvania* v. *Finley*, 481 U. S. 551, 555–557 (1987). Conditioning every future filing on retaining an attorney may therefore foreclose an indigent prisoner's access altogether. The restriction should be vacated or narrowed to permit good-faith applications based on

newly discovered facts or otherwise nonfrivolous federal claims.

IV. This case presents an appropriate vehicle for resolving the federal questions presented

The federal issues were presented in the state proceedings. The Kentucky Court of Appeals acknowledged the asserted *Brady* theory but left the merits unresolved under diligence and successive-motion rules. App. 5, n. 5; App. 7–8. Its separate treatment of the affidavits' asserted weakness places the materiality issue within the judgment. App. 6–9. The filing restriction appears in the trial court's operative order and was affirmed. App. 10, 12–13.

The petition does not ask this Court merely to reweigh evidence or correct a factual mistake. It asks whether state procedural doctrine may invert *Brady*'s allocation of responsibility, whether materiality may be assessed piecemeal under a sufficiency-like standard, and whether a blanket attorney-only bar may foreclose future newly discovered constitutional claims. Those issues recur when suppression is discovered only after trial and direct review.

* * *

The judgment should be vacated and the case remanded for adjudication of the *Brady* claim under the correct federal standard and for reconsideration or narrowing of the categorical filing restriction.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted.

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OCTOBER 2026

Pro Se Petitioner

Appendix A

RENDERED: JULY 3, 2025; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2024-CA-0956-MR

ANTONIO ELLISON APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JULIE KAELIN, JUDGE
ACTION NO. 09-CR-003445

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; EASTON AND A. JONES, JUDGES.

EASTON, JUDGE: The Appellant ("Ellison"), *pro se*, appeals from an Order of the Jefferson Circuit Court denying, without an evidentiary hearing, Ellison's latest post-conviction motion seeking a new trial pursuant to RCr[1] 10.02, RCr 10.06, and CR[2] 60.02(f). Ellison claims he is entitled to a new trial based upon newly discovered evidence in the form of two affidavits by alleged eyewitnesses to the crime. Ellison

[1] Kentucky Rules of Criminal Procedure.
[2] Kentucky Rules of Civil Procedure.

also appeals the separate order directing rejection of future *pro se* motions challenging this conviction. Upon our review, we affirm.

FACTUAL AND PROCEDURAL HISTORY

This case has a long history because Ellison has filed multiple motions and appeals relating to his murder conviction. We will discuss only the most pertinent details of the case. The several preceding opinions thoroughly describe the factual and procedural history.

A jury convicted Ellison of complicity to murder for the shooting of Ricco Cunningham ("Cunningham"), who was shot twice in the face. The jury fixed Ellison's sentence at life imprisonment. The Kentucky Supreme Court affirmed his conviction. *Ellison* v. *Commonwealth*, No. 2013-SC-000518-MR, 2014 WL 7238821 (Ky. Dec. 18, 2014).

Ellison then filed an RCr 11.42 motion, which was denied by the circuit court. This Court affirmed. *Ellison* v. *Commonwealth*, No. 2016-CA-000393-MR, 2017 WL 1829717 (Ky. App. May 5, 2017). This was followed by a federal *habeas corpus* petition, which was also denied. *Ellison* v. *Litteral*, No. 3:18-CV-00223-GNS-RSE, 2019 WL 4794756 (W. D. Ky. May 2, 2019).

Next was Ellison's first motion for relief pursuant to CR 60.02. This was denied by the circuit court, and this Court again affirmed. *Ellison* v. *Commonwealth*, Nos. 2021-CA-0894-MR & 2022-CA-0193-MR, 2023 WL 3261458 (Ky. App. May 5, 2023). The

Kentucky Supreme Court denied discretionary review of this latest decision.

On March 26, 2024, Ellison filed another *pro se* motion seeking a new trial. On June 5, 2024, Ellison, through counsel, filed a subsequent motion for an evidentiary hearing on this latest *pro se* motion. The Commonwealth objected, and the circuit court summarily denied both motions. In its response to Ellison's motions, the Commonwealth additionally moved the circuit court to "summarily reject any similarly frivolous *pro se* motions which Ellison might submit in the future."[3] The circuit court granted this further relief. This appeal follows.

STANDARD OF REVIEW

A trial court's ruling on a motion for new trial is reviewed for an abuse of discretion. *Taylor* v. *Commonwealth*, 175 S. W.3d 68, 71 (Ky. 2005). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth* v. *English*, 993 S. W.2d 941, 945 (Ky. 1999) (citations omitted). This same standard applies to a CR 60.02 motion generally. *Foley* v. *Commonwealth*, 425 S. W.3d 880, 886 (Ky. 2014).

ANALYSIS

Ellison argues he is entitled to a new trial based on newly discovered evidence. He claims two eye-

[3] Response Opposing Motions for New Trial and Evidentiary Hearing, Record at 584.

witnesses, Michelle Griffith ("Griffith")[4] and Jeffery Bell ("Bell"), signed affidavits in March 2024 saying they were eyewitnesses to the shooting that occurred in 2009. Both state Ellison was not the person who shot Cunningham.

Griffith explains that she was a customer of Cunningham who sold cocaine. She says she was in a car in the same alley where the shooting occurred. Bell was supposedly with her. They say they saw Cunningham interacting with someone in a green car (the same color car from which Ellison would be seen fleeing just after the shooting). Griffith claims she got a good look at the shooter, and she is "a hundred percent certain that it was not Antonio Ellison." Bell echoes Griffith in his affidavit. Griffith also swears that she contacted a police detective and relayed this information prior to Ellison's trial. The detective supposedly rejected her report indicating that he was sure of the identification of Ellison by others.

The evidence of record contradicts the story offered by these belated witnesses. The police were on the scene within minutes and gave chase to the green car from which Ellison later admitted he had fled during the chase. Two witnesses came out from their residences as soon as they heard the gunshots. No one ever reported the presence of another car in the alley. If the second car had been there for a sufficient time to see the shooting and give these belated witnesses a chance to clearly see the face of the shooter,

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[4] The unidentified preparer of the affidavit apparently misspelled "Griffth" throughout the affidavit.

there is no explanation for no one ever reporting having seen the second car.

Ellison further claims Griffith's questionable report to the detective was never provided to him or his counsel.[5] Ellison presented a self-defense claim at trial. He now argues that had he and his counsel known of these witnesses, they would have pursued a different defense strategy. He also regurgitates alternate explanations he has previously given as to why his clothing was in and his DNA on the green car. None of this overcomes Ellison's testimony that he ran from the green car and discarded his shirt with his DNA on it, which two witnesses saw him do.

To excuse the fifteen years it took for these statements to be gathered, the affiants explain that they saw a posting on social media about Ellison's birthday. They then contacted the person (not identified in the affidavit) who made the posting to let them know Ellison was not the shooter. Griffith said that she was afraid to contact the police, even though she supposedly had contacted the detective just after the

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[5] Ellison claims a violation of *Brady* v. *Maryland*, 373 U. S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). Ellison could establish an actionable *Brady* violation here only "by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles* v. *Whitley*, 514 U. S. 419, 435, 115 S. Ct. 1555, 1566, 131 L. Ed. 2d 490 (1995) (footnote omitted). Regardless of any possible merit to the claim of a *Brady* violation, such a claim is not exempted from the duty of a defendant to use diligence in discovering it and asserting it within a reasonable time as well as the separate duty not to repeat CR 60.02 motions.

crime, and she never followed up with anyone about what she had seen.

Ellison was convicted of *complicity* in Cunningham's murder. Based on the evidence of record, others were without question involved in the events of that day leading to the murder. With a complicity theory of responsibility, it was not necessary to prove that Ellison was the shooter, even though Ellison swore under oath that he was the one who shot Cunningham.

Ellison's testimony at trial is a hurdle he cannot clear in his effort to now change his tune to claim he was not the shooter. As previously stated, Ellison presented a claim of self-defense. Ellison himself testified that he shot Cunningham in self-defense. He testified that Cunningham pulled a gun on him. Ellison claimed the gun discharged twice accidentally during the struggle between the two men. Ellison unsuccessfully asked the jury to believe it was just a fluke that both shots were directed at the victim's face.

Essentially, Ellison is asking this Court to grant him relief despite his own perjury. This we cannot do. No person has a right to commit perjury. *Nix* v. *Whiteside*, 475 U. S. 157, 173, 106 S. Ct. 988, 997, 89 L. Ed. 2d 123 (1986). And even "perjury on advice of counsel is not a ground for a new trial." *Payne* v. *Commonwealth*, 79 S. W.2d 204, 206 (Ky. 1935).

The circuit court also ruled Ellison's motion was time-barred. We agree. RCr 10.06 states:

> (1) The motion for a new trial shall be served not later than five (5) days after return of the ver-

> dict. A motion for a new trial based upon the ground of newly discovered evidence shall be made within one (1) year after the entry of the judgment or at a later time if the court for good cause so permits.

RCr 10.02 also has a time limitation. CR 60.02 contains the specific one-year provision regarding relief for a judgment based on newly discovered evidence. Ellison claims that this case shows "good cause" for an untimely motion and that CR 60.02(f) should be applied.

His motion for a new trial was filed more than a decade after his conviction and fifteen years after the murder was committed. This gap of well over a decade cannot be considered "reasonable," especially in light of the other obvious issues with this purported "new evidence."[6] Furthermore, this is Ellison's second 60.02 motion, and "CR 60.02 does not permit successive post-judgment motions." *Foley, supra*, at 884.

Also, "newly discovered evidence which merely impeaches or is collateral is insufficient unless it im-

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[6] There are truly rare situations when newly offered evidence may be considered under CR 60.02(f) after the one-year limit in that rule such as those seen in *Commonwealth* v. *Graham*, 586 S. W.3d 754 (Ky. 2019). No such circumstances are presented in this case. Due diligence to find the evidence now offered by Ellison has not been shown. Furthermore, the Commonwealth waived the bar presented by a prior CR 60.02 motion in *Graham*. That is not the case here. Ellison was required to search for and find this evidence in a timely manner and present it in his first CR 60.02 motion.

peaches the only material witness in the case." *Foley* v. *Commonwealth*, 55 S. W.3d 809, 814 (Ky. 2000). Such evidence "is generally disfavored as grounds for granting a new trial. The evidence must be of such decisive value or force that it would, with reasonable certainty, change the verdict or that it would probably change the result if a new trial should be granted." *Id.* (internal quotation marks and citations omitted). A new trial with these lately created affidavit statements would not erase Ellison's confession of being the shooter.

The evidence against Ellison presented at trial was overwhelming, putting him in the alley where the shooting took place. The most significant piece of evidence that established him as the shooter came from Ellison himself. In addition to Ellison's confession as the shooter, there was physical evidence identifying Ellison as being on the scene and involved with others in the fatal encounter with Cunningham.

Much of the evidence offered against Ellison was his behavior *after* the shooting, including his flight from the scene and an intercepted letter Ellison wrote which asked a friend to "handle" an eyewitness who had identified Ellison. At trial, Ellison insisted that this direction to someone outside the jail was just a request to talk to the witness, not kill him. Eventually, Ellison would be convicted of witness

tampering relating to these events after a jury trial.[7] That much later conviction is presently on appeal.[8]

The Jefferson Circuit Court did not abuse its discretion in denying Ellison's latest post-conviction motion. This brings us to Ellison's second argument on appeal. He asserts the circuit court abused its discretion in its Order, which stated:

> IT IS HEREBY ORDERED that Ellison's motions are DENIED. This matter is struck from the Court's active docket. The Clerk's Office shall not accept or docket any papers which Ellison submits pro se in this case going forward. Any future requests by Ellison to proceed in forma pauperis with collateral attacks of his conviction or sentence in this case will be summarily denied.[9]

In *Cardwell* v. *Commonwealth*, 354 S. W.3d 582, 585 (Ky. App. 2011), this Court sanctioned the Appellant for filing frivolous, successive post-conviction motions. This Court directed the circuit court to deny any future requests to proceed *pro se* and *in forma pauperis* to file any further collateral attacks on his conviction. *Id. See also Berry* v. *Commonwealth*, 624 S. W.3d 119 (Ky. App. 2021). Prior opinions in this case have instructed Ellison that arguments made previously cannot be repeated. Post-

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[7] Jefferson Circuit Court, Case No. 11-CR-000636.

[8] Case No. 2024-CA-1000-MR. That appeal is a separate matter which is presently in the briefing process, and we express no opinion about that matter.

[9] Circuit Court's Order of July 22, 2024, Record at Page 597.

conviction motions must include all arguments that can be made. Arguments cannot be parsed out over decades and made by successive motions.

The wording of the circuit court's order is consistent with our precedents and was not an abuse of discretion. The order does not cut off all access to the court. It simply prohibits *pro se* and *in forma pauperis* filings attacking this conviction. Should there be any legitimate matter which might arise, an attorney subject to CR 11 oversight can file those matters for Ellison.

CONCLUSION

The circuit court did not abuse its discretion when it denied Ellison's motion for a new trial without an evidentiary hearing. With the prior history of post-judgment motions in this case and because of the lack of merit in Ellison's second CR 60.02 motion, the circuit court did not abuse its discretion in not permitting future *pro se* and *in forma pauperis* pleadings by Ellison. The Jefferson Circuit Court is AFFIRMED.

ALL CONCUR.

BRIEFS FOR APPELLANT:	BRIEF FOR APPELLEE:
Antonio Ellison, *pro se* Wheelwright, Kentucky	Russell Coleman Attorney General of Kentucky Kristin L. Conder

Appendix A

Assistant Attorney General
Frankfort, Kentucky

Appendix B

[Filed: Jul. 22, 2024]

No. 09-CR-3445

JEFFERSON CIRCUIT COURT
DIVISION FOUR (4)
JUDGE JULIE KAELIN

COMMONWEALTH OF KENTUCKY PLAINTIFF

vs.

ANTONIO ELLISON DEFENDANT

ORDER

Before the Court are postconviction petitioner's Antonio Ellison's *pro se* "Motion for New Trial" (Mar. 26, 2024) and his counsel's "Motion for Evidentiary Hearing" (Jun. 5, 2024). The Court finds that Ellison's motions are time-barred and procedurally barred; that his arguments and moot and without merit; and that there is no need for an evidentiary hearing in this matter. The Court further finds that Ellison's repetitive and meritless *pro se* postconviction filings in this case are having an impermissibly deleterious effect on judicial resources. Accordingly, having considered this matter fully, and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Ellison's motions are DENIED. This matter is struck from the Court's active docket. The Clerk's Office shall not accept or docket any papers which Ellison submits *pro se* in this case going forward. Any future requests by Ellison to proceed *in forma pauperis* with

collateral attacks of his conviction or sentence in this case will be summarily denied.

/s/ Julie Kaelin
JUDGE JULIE KAELIN
JEFFERSON CIRCUIT
COURT

Tendered by:

Gerina D. Whethers
Commonwealth's Attorney

/s/ Chase M. Cunningham
Chase M. Cunningham
Assistant Commonwealth's Attorney
514 West Liberty Street
Louisville, Kentucky 40202
(502) 595-2300
cmcunningham@prosecutors.ky.gov

Appendix C

Supreme Court of Kentucky

2025-SC-0330-D
(2024-CA-0956)

ANTONIO ELLISON MOVANT

V. JEFFERSON CIRCUIT COURT
09-CR-003445

COMMONWEALTH OF KENTUCKY RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

ENTERED: September 16, 2026.

/s/ Debra Hembree Lambert
CHIEF JUSTICE

Appendix D

[Filed: Aug. 11, 2025]

Commonwealth of Kentucky

Court of Appeals

NO. 2024-CA-0956-MR

ANTONIO ELLISON APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JULIE KAELIN, JUDGE
ACTION NO. 09-CR-003445

COMMONWEALTH OF KENTUCKY APPELLEE

ORDER
DENYING PETITION FOR REHEARING
AND DENYING MOTION TO SUPPLEMENT

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; EASTON, AND A. JONES, JUDGES.

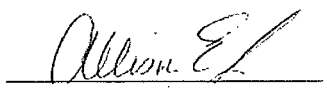
On July 15, 2025, Appellant filed a Petition for Rehearing of this Court's Opinion entered on July 7, 2025. On July 29, 2025, Appellant filed a motion to supplement his Petition. The Appellee has responded objecting to both the petition and the motion to supplement.

Having considered the Petition for Rehearing and the Response thereto, and being sufficiently advised, the COURT ORDERS that the petition be, and it is hereby, DENIED. Having considered the Motion to

Appendix D

Supplement and the Response thereto, the COURT ORDERS that the motion be, and it is hereby, DENIED.

ENTERED: 08/11/2025



JUDGE, COURT OF APPEALS

Appendix E

[Dated: Mar. 18, 2024]

AFFIDAVIT OF JEFFERY BELL

I Jeffrey Bell, swear under the penalty of perjury that the following statements are true and correct. The following is what I am willing to testify to in court. On October 20, 2009, I was in the car with my peoples Michelle when she went to meet her friend Ricco in Portland on Lytle St. I saw Ricco standing outside talking to someone inside of a green car with a gun in his hand at his side. I heard him saying where the money is aggressively. I could sense he was angry, and I could tell something was about to go down with him and whoever was in the car. I never seen him point his gun at the car it stayed by his side. I told my friend to leave from over there, we were getting ready to pull off and that's when we saw a man standing a few feet from Ricco with a black gun shoot Ricco. Ricco fell back, and the man shot him again. After the second shot Michelle pulled out of the alley and drove away. I was able to see the person's face that shot him, and it wasn't Antonio Ellison. Michelle saw the news that Antonio got charged with killing Ricco and told me about it, we both knew that he wasn't the person that had shot Ricco that night. Michelle told me that she was going to call the homicide unit and make report that they had arrested the wrong man, and she was there the night the shooting happened. I have advised Michelle I won't be calling because after what I saw that night, I didn't want to get involved with it. Few days later Michelle told me she

called to the homicide unit and spoke with a male detective Lesher, she told me how the detective said that they had the right man this isn't his first time being charged with murder, Michelle felt as if the detective didn't take her word for the events that she saw happened. I told Michelle to just leave it alone. Fast forward to 2023 Michelle and I were talking about a birthday post we saw that someone posted for Antonio, we reached out to the person that made the post and explained that we knew Antonio wasn't the person that killed Ricco and we were there the night it happened. He asked would I be willing to give a statement to his lawyer and if needed be willing to testify in court to what I saw that night. I don't know Antonio, but I know Antonio didn't kill Ricco, the wrong man has been charged with his murder.

/s/ Jeffrey Bell 3/18/2024
Jeffrey Bell Date

/s/ [illegible signature] 3/18/2024
Notary
Commission expires: 3/11/2028

Appendix F

[Dated: Mar. 25, 2024]

AFFIDAVIT OF MICHELLE GRIFFITH

I Michelle Griffth, swear under the penalty of perjury that the following statement is true and correct. The following is what I'm willing to testify to in court. In March 2009 I met Ricco Cunningham through mutual friends. At the time I was addicted to crack cocaine. From March 2009 until the day, he was killed I brought crack from Ricco in the Portland area. He sold me drugs cheaper than other dealers, so I always went to Ricco. Over the few months I knew that I knew him we became close. When I didn't have money for drugs, I would have sex with Ricco for drugs. Ricco always carried a big gun when he sold drugs, a silver revolver. I heard from other people who knew him that he used to rob other drug dealers. On the day he was killed, October 20, 2009, I called Ricco to buy crack he told me he was by the street; I could see Ricco standing at the driver window of a green car. The green car was facing towards the 22nd. I could not see inside the green car because the windows were tinted. Ricco had his gun in his hand, a sliver revolver. I heard him say where's the money and from the tone of his voice it sounded like a robbery. He was robbing someone inside the car. He did not point the gun at the car he kept it at his side. I tried to put my car in reverse and back out the alley. Before I could get my car in reverse a guy standing By the trunk of the car 2 or 3 feet away from Ricco pulled out a black gun and shot him in his head. Ricco fell backwards

onto his back, then the person shot him again in his head. After the second shot I got my car in reverse and backed out the alley onto Lytle Street. I could see clear the persons face that shot Ricco and I'm a hundred percent sure that it was not Antonio Ellison. When I saw on the news that he was charged with the killing Ricco I know he was not the person I saw shot him. I called to the Louisville metro homicide office and I asked to speak with the detective on the case. I spoke with detective jon lesher.I told him my name and I was there the day Ricco Cunningham was killed and Antonio Ellison was not the person I saw kill Ricco. Detective jon lesher told me he had evidence Antonio Ellison was the shooter and that he had been charged with murder before he got off. I did not immediately call the police out of fear of being killed too and other people was in the alley and witnessed the shooting he took my information and told me he'd call me back from him. I felt he did not believe me, so I did not call back to the homicide office. I do not know Antonio Ellison or any of his family or friends. I did not know what else to do but I knew the wrong person was being charged with killing Ricco.

Appendix F

On September 26, 2023, I saw a friend of Antonio Ellison make a post on social media for his birthday. I contacted his friend and told him I knew Antonio was innocent. I was there when Ricco was killed, and Antonio did not kill him. The friend asked would I be willing to give a statement to Antonio's attorney. I told him I would, and I was willing to testify in court because I knew Antonio was innocent.

Michelle Griffith 3-25-24

Michelle Griffith Date



Appendix G

[Dated: Jul. 24, 2025]

COMMONWEALTH OF KENTUCKY
COUNTY OF JEFFERSON

AFFIDAVIT OF PATRICE D. JOHNSON

I, Patrice D. Johnson, being duly sworn, do hereby make this affidavit and state the following based on my knowledge:

My name is Patrice D. Johnson. I am 36 years old and currently reside at 3009 Penway Avenue, Louisville, Kentucky 40210. I am a private citizen and have no known personal relationship with either the victim or the defendant in the criminal matter for which this affidavit is being provided. I am offering this testimony solely as a neutral and independent eyewitness.

On or about the evening of October 20, 2009, I was walking westbound through Lytle Alley, near North 22nd Street in Louisville, Kentucky, accompanied by my best friend. The alley is adjacent to a location commonly referred to as Bones Park, and near a shopping center and the Circle K gas station.

As we walked west through the alley, I observed a vehicle—possibly an unusual or "funny-looking" model—parked and facing east. Near the back of this dark-colored vehicle, I saw two males engaged in a heated verbal argument. Their voices were raised, and their body language was confrontational.

One male was light-skinned, approximately six feet tall, and slim in build. The other male was shorter, around 5 feet 4 inches, with a heavier build and medium to dark brown skin.

Appendix G

As we approached, the argument escalated. While this sort of commotion is not uncommon where I'm from, I remained observant.

I saw the taller, light-skinned man pull a firearm and fire a shot directly at the shorter man. I witnessed the shorter man collapse to the ground immediately after the first shot. Then, without hesitation, I observed the tall man fire a second shot at the victim while he was lying on the ground. The sound of gunfire caused my friend and me to flee toward the nearby Circle K for safety.

While running, I glanced back and saw the shooter— the tall, light-skinned man— circling the vehicle and then fleeing the scene on foot. At Circle K, we informed someone inside that we believed someone had been shot. We then called for a ride and left the area out of fear.

Several years later, my best friend shared a screenshot from social media and a news article. The materials referenced a television program, possibly **"The First 48,"** covering the same shooting incident. After watching the episode and reviewing the content, I realized it was the same event I had witnessed that evening in Lytle Alley.

Although my best friend discouraged me from coming forward—fearing it could put us at risk I feel morally compelled to tell the truth. The idea that an innocent person could be facing prison time for something they did not do weighs heavily on me. Public attention and fear of retaliation have delayed my disclosure, but I can no longer remain silent.

Appendix G

I affirm under penalty of perjury that the individual currently charged in this case is not the person I witnessed commit the shooting in Lytle Alley on October 20, 2009. I am willing to testify in open court if needed and provide a full account of my observations.

FURTHER AFFIANT SAYETH NAUGHT.

Signature: Patrice Johnson

Patrice D. Johnson

Date: July 26, 2025

Subscribed and sworn to before me this 26th day of July, 2025

Notary Public: [signature]

BETTY F BAILEY
NOTARY PUBLIC
STATE AT LARGE
KENTUCKY
ID # KYNP93342
MY COMM. EXPIRES
10/11/2028

My Commission Expires: 10/11/28

Appendix H

[Dated: Sep. 18, 2020]

AFFIDAVIT OF JORDAN THOMPSON

I Jordan Thompson. Hereby certify that the statements made in this affidavit are true and correct in accordance with my knowledge and belief. I swear under the penalty of perjury. *KRS §523.020* that these statements are true as well. The following is what I'm willing to testify to and let the court know

That on 10-18-2009. my friend. Antonio Ellison called me because him and his girlfriend was arguing and he wanted to move his stuff out of her house I told him to give me a min' and I would be over after I dropped my other friend off at her mom's house. When I got to his girlfriends house. he (Ellison) was outside on the porch with some clothes in his hands. He explained that he had more stuff to get and threw the clothes in his hand. in the back seat of my car.

He then went back in and got a T.V. And DVD Player and we left. I took him to his Grandmothers and he took the T.V. & DVD player inside with him. He signaled from the door that he would talk to me later and I pulled off. At this time neither of us knew he left his clothes in the car. I called him and told him he left his jacket and stuff in the car. We agreed he would "get it later".

I parked my car that night and didn't drive it again for two days as I was with my girlfriend preparing to take a trip out of town and we stayed at her place and drove her car. While there on 10-20-2009 my baby daddy came over and we got into an

argument about money and he got jealous and took the keys to my car. When I discovered he had went to my house and *took* the car me and my friend road around the neighborhood looking for it as I knew he would not go very far.

That's when I seen the car. and it looked pulled over I went to the scene and told the officer "that's my car" he told me I would have to report it stolen to get it back. not wanting to get my Baby Daddy in trouble. I just left. This concludes my knowledge of events leading to my friends arrest.

/s/ Jordan Thompson	9-18-20
JORDAN THOMPSON	DATE.

/s/ N. Collins	9-18-2020
Notary Public @ LARGE	Date

3-28-2023

[illegible] COLLINS
NOTARY PUBLIC
Kentucky, State At Large
I.D. # [illegible]
My Commission Expires 3/28/2023

Appendix I

[Dated: Aug. 21, 2020]

AFFIDAVIT OF ANTONIO ELLISON

AFFIDAVIT:

I ***Antonio Ellison.*** Last Four of S.S.# [redacted] do hereby certify and confirm that under the penalty of perjury by the state of Kentucky and the federal Government that the forgoing statements are true and correct according to my best recollection and understanding.

AND BELIEF:

That the statements contained herein are true. I can remember my attorney telling me that the prosecution simply refused to provide the picture, or photo used to identify me. He informed me that he didn't think they had it. I told him it was ion there possession because a look at the T.V. Show, " The First 48" clearly showed the identification procedure used.

Since they did not produce the photo, I remember we could not argue the point at my suppression hearing. Before the trial came around, I told My attorney at the time, Ted Shouse to try again to get the photo. He filed another motion asking for the photo and for suppression again. No hearing was held, and the Prosecution was not order to produce the Photograph.

My attorney told me that I had to testify at trial to a self defense, defense. I told him I didn't want to, but he informed me that I could not get the defense unless I did so. I asked why we had to admit to anything, he informed me that was the only way to re-

fute Officer, T. Banks "positive" I.D. Of me as the person who ran from the car.

Despite my testimony, I was not at anytime the person who who fled from the car on the night of the crime. I have never been known as "Lil Mikey", which was the individual who the other car's occupants stated was the person who bolted from the car. I did not shoot anybody. The only reason I testified that I did was because my attorney, again, informed me that was the ONLY way to refute the officers identification.

I do not deny being in the car on a previous occasion, however, this was only days prior to the crime when Ms. *Jordan Thompson,* the cars owner, agreed to take some of my clother to my uncles house because me and my girl friend had recently broke up. This resulted in me and her making several trips, which is why my clothes were in the *back seat the car,* and my prints *on* the car.

I ask this Court to Honor these statements as true and correct.

/s/ Cecil Horn — 8-21-2020

Notary Public — Date

CECIL HORN
NOTARY PUBLIC
STATE AT LARGE, KENTUCKY
My Commission Expires
10-17-2022
Notary ID # 610860

10-17-2022

Appendix I

Commission Expires

/s/ Antonio Ellison	8/21/20
Antonio Ellison	Date.