

**IN THE COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,	:	<u>Criminal Division</u>
	:	
Respondent,	:	
	:	CP-51-CR-0110791-1971
v.	:	
	:	
ARTHUR JOHNSON	:	
	:	
Petitioner.	:	
	:	

**AMENDED PETITION FOR POST-CONVICTION RELIEF PURSUANT TO 42 Pa. C.S.  
§ 9543**

AND NOW comes Arthur Johnson (“Petitioner”), and hereby files this Amended Petition for Post-Conviction Relief under the Post-Conviction Relief Act (PCRA).

**I. Introduction**

1. Petitioner is currently incarcerated at State Correctional Institution (SCI) Smithfield, serving a mandatory sentence of life imprisonment without parole at CP-51-CR-0110791-1971 pursuant to his conviction for a first-degree murder.
2. For 50 years, Mr. Johnson has suffered an unimaginable nightmare of incarceration – including 37 years in solitary confinement – because Philadelphia police officers interrogated a 15-year-old teenager named Alexander Payne for approximately 21 hours, including 16 hours consecutively, in a 30-hour period until he relented and signed a statement prepared by the police that implicated Johnson. The statement implicating Johnson was signed more than 12 hours after Payne’s second interrogation began, and only after Payne had denied any involvement in or knowledge of the crime for more than 9 of those 12 hours. Further, a supplemental statement provided by Mr. Payne 4 hours

after the signing of the statement that implicated Mr. Johnson indicates that the police themselves had provided Payne with the idea to implicate Mr. Johnson. The alleged identification of Mr. Johnson was made despite a total lack of any other evidence tying Johnson to the crime. After using the statement provided by a 15-year-old child during two interrogation sessions totaling 21 hours to arrest Mr. Johnson, these same police officers pressured and tricked an illiterate, 18-year-old adolescent with intellectual disability named Arthur Johnson to sign his name to a statement he could not read or understand. Today, with this Petition, Mr. Johnson presents exculpatory evidence withheld from him at the time of trial, including prior inconsistent statements of Alexander Payne and facts about the coercive circumstances of Payne's interrogation that have been suppressed since 1970, and a statement from the principal individual – Gary Brame – who committed this crime that, for the first time, disavows that Mr. Johnson had any involvement, and implicates two deceased individuals who were brought in for questioning but never charged. Mr. Johnson is seeking vacatur of his conviction and an end to this nightmare.

## **II. Procedural History**

3. Arthur Johnson was convicted of first-degree murder for the killing of Jerome Wakefield in Philadelphia. Mr. Wakefield was killed on October 6, 1970 after he was shot and stabbed several times on Poplar Street.
4. Mr. Johnson was 18 years old at the time of Mr. Wakefield's death and was tried between May 10 and May 22, 1972 before a jury with Judge George Ivins presiding. He was represented by Rudolph S. Pallastrone. The prosecutor for the Philadelphia District Attorney's Office (DAO) was Julian P. Brereton.

5. Mr. Johnson was sentenced to life in prison for the first-degree murder conviction on August 14, 1973 by Judge Ivins.
6. A post-conviction appeal in the Court of Common Pleas affirmed the conviction, but there was a dissent from Judge Bullock. *Com. v. Johnson*, CP-51-CR-0110791-1971, Order Denying Motion for New Trial and In Arrest of Judgment (May 29, 1973) (Bullock, J. dissenting).
7. Judge Bullock's dissenting opinion would have held that Mr. Johnson's alleged waiver of his *Miranda* rights was not knowing and intelligent, nor was his alleged confession voluntarily given: "A review of the present case convinces us that the defendant did not feel free to speak or not but felt compelled to make a statement. We are further convinced that, apart from the question of voluntariness, the defendant's waiver of his Fifth Amendment rights was not 'knowing and intelligent'." *Id.* at 3.
8. The Pennsylvania Supreme Court affirmed the conviction in 1976. *Com. v. Johnson*, 354 A.2d 886 (Pa. 1976).
9. On June 23, 1986, Mr. Johnson filed a *pro se* Post-Conviction Hearing Act (PCHA) petition challenging his conviction, which was amended on October 22, 1986 and again on April 29, 1987. Leonard Rubin, Esq. was appointed as counsel for Mr. Johnson.
10. The PCHA petition was dismissed on June 5, 1987. Mr. Johnson appealed to the Superior Court, but his appeal was dismissed due to appointed counsel's failure to file a brief. Mr. Johnson filed a subsequent PCHA petition in 1989 to reinstate his appellate rights, which was granted on June 8, 1989. James Bruno, Esq. was appointed to represent Mr. Johnson in the Court of Common Pleas and Pamela Cohen, Esq. was appointed to represent Mr. Johnson in the Superior Court.

11. The Superior Court ultimately affirmed the denial of Mr. Johnson's original PCHA petition on January 26, 1990. *Com. v. Johnson*, No. 1705 Philadelphia, 1989 (Pa. Super. Jan. 26, 1990).
12. On March 23, 2016, Mr. Johnson, represented by current counsel, filed a PCRA challenging his life without parole sentence pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012). That petition has remained in the Philadelphia Court of Common Pleas since it was filed without yet being assigned to a judge.
13. Mr. Johnson incorporates by reference the entirety of his 2016 original PCRA Petition into this Amended Petition.

### **III. Statement of Facts**

#### **a. Trial Record and Appellate History of the Case**

14. The sole evidence presented at trial linking Mr. Johnson with the death of Mr. Wakefield was an alleged confession that was signed by Mr. Johnson during his interrogation by Philadelphia homicide detectives.
15. Mr. Johnson testified, however, that he repeatedly told the police he had nothing to do with the killing of Mr. Wakefield, that he signed the document without being able to read or understand what it said, and that he signed it at the instruction of police. TT, Vol. VIII at 51; 58; 99-100; 104.
16. The only other testimony or evidence offered by the prosecution at trial that linked Mr. Johnson with the death of Mr. Wakefield was testimony from an investigating police officer.
17. Detective Robert Snyder testified that he, along with other police officers, including Detective Lawrence Grace, arrested Mr. Johnson without a warrant after Alexander

Payne gave a statement to police implicating himself and Mr. Johnson in Jerome Wakefield's death. TT, Vol. VII at 3-4.

18. Mr. Pallastrone was not able to question Snyder about Payne's prior statements to the police in which he disavowed having anything to do with the homicide, and made no mention of Mr. Johnson. Nor did Mr. Pallastrone question Snyder whether two arrests in a 13-hour period, and a total of 21 hours of interrogation in a 30-hour period, including the last 16 hours consecutively, undermined the reliability of Mr. Payne's purported identification. Mr. Pallastrone could not, in fact, cross-examine and impeach Snyder on those facts, because the police department totally suppressed all the factual circumstances of Mr. Payne's interrogation, as well as Mr. Payne's prior inconsistent statements. See *infra* at ¶¶ 58-81.
19. Detective Snyder then testified that Mr. Johnson confessed to stabbing Mr. Wakefield following a police interrogation. TT, Vol. VII at 9.
20. Detective Snyder further testified that after he confessed, Mr. Johnson read, made corrections to, and signed a statement typed by police officers confessing to stabbing Jerome Wakefield several times. TT, Vol. VII at 28-29.
21. Mr. Johnson, on the contrary, as will be shown, denied his involvement in the crime when he was arrested and throughout the interrogation, plead not guilty, and for 50 years has contested that he knowingly signed any confession.
22. Detective Snyder then read Mr. Johnson's alleged confession into the record at trial. TT, Vol. VII at 18. According to the alleged confession, Mr. Johnson, Alexander Payne, and Gary Brame were all members of the "Seybert Street Gang" and went out in search of a member of a rival gang, the "Moroccos," on the night of October 6. TT, Vol. VII at 18.

23. When they saw Jerome Wakefield, who Brame allegedly recognized as a Morocco, Brame shot Mr. Wakefield, then ran away. Mr. Johnson ran to where Mr. Wakefield had fallen and stabbed him several times before running away. TT, Vol. VII at 18.
24. Mr. Johnson testified in his own defense at trial. Mr. Johnson testified that he did not, in fact, confess to any involvement in Jerome Wakefield's death. TT, Vol. VIII at 51.
25. In fact, at the time he allegedly read and signed the confession, he could not read. TT, Vol. VIII at 75. Mr. Johnson testified that he had only completed the fourth grade. TT, Vol. VIII at 75.
26. Mr. Johnson testified that the corrections made to the statement were done at the behest of his interrogators, who told him where and what to write. TT, Vol. VIII at 59-73. Mr. Johnson also testified that he was never asked to read the statement, TT, Vol. VIII at 73, and told Detective Snyder that he was unable to read. TT, Vol. VIII at 75.
27. Furthermore, Mr. Johnson testified that, during his interrogation, police officers were "hitting" and "smacking" him while they yelled at him. TT, Vol. VIII at 55. On cross-examination he testified that he believed that Detectives Grace and Flanagan were the ones that struck him. TT, Vol. VIII at 132.<sup>1</sup>
28. Lorraine McNally testified as an expert witness in Mr. Johnson's defense. TT, Vol. IX at 19. Ms. McNally was a school psychologist and testified as to her opinion of Mr.

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<sup>1</sup> Detective Grace is among those officers identified in an extensive expose published by the Philadelphia Inquirer describing the systemic use of coercive interrogation, including physical beatings, by Philadelphia homicide detectives to obtain "confessions" in murder cases. See "The homicide files: How Phila. Detectives compel murder 'confessions,'" Jonathan Neumann and William K. Marimow, originally published April 24, 1977, accessed at: <https://www.inquirer.com/news/homicide-files-1977-series-police-beatings-confessions20200710.html>. It is also worth noting that transcripts from a suppression hearing in the prosecution of Gary Brame in regard to this homicide contained testimony that he was physically assaulted during interrogation. Commonwealth v. Gary Brame, No. 0023, 0024, July 21, 1971, Suppression Testimony. Detective Grace was involved in the interrogation of Gary Brame as well.

- Johnson's inability to comprehend and knowingly waive his rights to counsel and against self-incrimination, as well as his inability to read and comprehend the alleged confession.
29. Based on her review of Mr. Johnson's school records, Ms. McNally testified that Mr. Johnson's score on an IQ test administered in 1960 was 70, which was classified as "retarded educable" – what we would now refer to as intellectual disability. TT, Vol. IX at 26. When Mr. Johnson took another IQ test in 1966 at the age of 14, his score was 63. TT, Vol. IX at 40.
  30. Ms. McNally opined that Mr. Johnson's attention span would be "limited and disturbed" in an interrogation room while he was handcuffed to a chair for several hours. TT, Vol. IX at 52.
  31. Ms. McNally further opined that Mr. Johnson would not have been capable of reading at the level required to read and comprehend the alleged confession that he had signed. TT, Vol. IX at 65-67.
  32. At closing argument, Mr. Johnson's counsel referred to the disputed confession as a "stalemate" that could have been broken if the prosecution had called Mr. Johnson's alleged co-conspirators, Alexander Payne and Gary Brame, to testify against him. TT, Vol. X at 66. He argued that there was no legal limitation on their testifying, and that the jury should infer that these two were not called because their testimony would not have been favorable to the prosecution. TT, Vol. X at 66-67.
  33. The prosecutor, ADA Julian Brereton, countered this argument by claiming, falsely, that Mr. Payne and Mr. Brame could not be compelled to testify due to the risk of self-incrimination. TT, Vol. X at 76. ADA Brereton then told the jury that Mr. Brame was too afraid to testify, and that Mr. Payne had given a statement implicating himself and Mr.

Johnson. TT, Vol. X at 77.

34. Mr. Johnson was found guilty on the basis of a self-incriminating statement that he testified he did not know the contents of, could not and did not read, and that he repeatedly had told police he did not kill Jerome Wakefield or know anything about the crime.
35. Mr. Johnson was convicted even though his intellectual disability and lack of reading comprehension was corroborated by an expert witness.
36. There were no other testimonial witnesses who identified him, nor any physical evidence linking him to the crime.
37. Instead, the prosecution snuck in testimony from Detective Snyder that Alexander Payne had pointed the finger at Mr. Johnson. This charge was made in full confidence that defense counsel would not question the prolonged, coercive, and suggestive nature of the interrogation of the child, Alexander Payne, because police records documenting those facts were suppressed and never provided to Mr. Johnson.
38. That Payne identified Mr. Johnson was reiterated and doubled-down on when prosecutor Brereton told the jury – in a blatant deception that will be discussed *infra* – that Payne and Brame both gave statements pointing the finger at Johnson. Even though Brereton knew that Mr. Brame no longer had a right against self-incrimination because Gary Brame had plead guilty at a hearing *at which Mr. Brereton was present as the prosecutor*, Brereton lied to the jury in order to vouch for his case by reassuring the jury that the two other alleged perpetrators who did not testify also implicated Mr. Johnson. Ex. A, *Com. v. Brame*, No. CP-51-CR-1100231-1970, Change of Plea Hearing, 61-62 (January 13, 1972).

39. Mr. Johnson was sentenced to life in prison, which does not permit parole in Pennsylvania, and which has in more recent years become increasingly referred to as a death-by-incarceration sentence.
40. Mr. Pallastrone filed a post-conviction motion challenging the conviction on the grounds that the identification of Mr. Johnson by Alexander Payne that resulted in the arrest of Mr. Johnson was unreliable, rendering the arrest illegal, and that the purported confession signed by Mr. Johnson therefore should have been suppressed. He also challenged that Mr. Johnson's waiver of his right against self-incrimination was knowing and voluntary on account of his intellectual disability and related inability to read the incriminating statement the police had him sign. Notes of Testimony, Motion for a New Trial And/Or Arrest of Judgment, 3-15 (January 25, 1973).
41. In his challenge to the reliability of Mr. Payne's identification of Mr. Johnson, Mr. Pallastrone argued that the identification was insufficient in the absence of any other corroborating evidence. There was no mention of Mr. Payne having provided at least two statements to police that did not name, let alone inculpate, Mr. Johnson, or that Mr. Payne was subjected to two prolonged interrogations under coercive circumstances. *Id.*
42. Mr. Pallastrone's post-conviction challenges were not successful, though they did generate a dissent from Judge Bullock. *Com. v. Johnson*, CP-51-CR-0110791-1971, Order Denying Motion for New Trial and In Arrest of Judgment (May 29, 1973) (Bullock, J. dissenting).
43. In 1986, Mr. Johnson filed a *pro se* PCHA petition raising an ineffective assistance of counsel claim. Appointed counsel filed amended PCHA petitions on October 22, 1986 April 29, 1987.

44. One of the bases for asserting the ineffectiveness of his trial counsel was that Mr. Pallastrone failed to object the prosecutor's improper vouching for his case by asserting that two non-testifying individuals who were alleged to be Mr. Johnson's co-defendants had given statements implicating Mr. Johnson. Ex. B, Amended Post Conviction Hearing Petition, 10/22/1986 at 4.
45. As discussed *supra*, ADA Brereton told the jury that Alexander Payne "gave a statement implicating himself, Gary Braim [sic] and this defendant." TT Vol. X, 76.
46. Mr. Brereton also vouched for his case by asserting, without evidentiary foundation, that Gary Brame had also implicated Mr. Johnson in a statement. TT Vol. X, 76 ("Gary Braim [sic] gave a statement implicating himself – you heard testimony – and the defendant and Alexander Payne."). According to Mr. Brereton, the prosecution did not call Brame to testify because Brame had a right against self-incrimination and because, Brereton claimed, he told Brereton that he was afraid. TT Vol. X, 77.
47. Judge O'Keefe dismissed Mr. Johnson's PCHA petition and issued an opinion on September 14, 1987. *Com. v. Johnson*, No. 1704 Philadelphia 1989 (Pa. Super. 1990).
48. On appeal, the Pennsylvania Superior Court recognized that ADA Brereton's discussion of Gary Brame's alleged implication of Mr. Johnson was not proper, commenting that "the rejoinder by the prosecutor may well be characterized as improper," but finding that it did not sufficiently prejudice the jury to warrant a new trial. *Id.*
49. When the Superior Court rendered this decision, however, it did so without the knowledge that Mr. Brereton was not merely responding to the argument of defense counsel, but that he was deliberately lying to the jury and perpetrating fraud on the court, as Mr. Brereton was well aware the Gary Brame had already relinquished his right

against self-incrimination. See *infra*, ¶¶ 104-109.

50. Not having any basis for further appeals, any legal counsel or investigative leads, and languishing in the midst of what would become one of the longest periods of solitary confinement in the history of this country, Mr. Johnson did not file any further appeals until the PCRA filed in March 2016 raising his challenge to mandatory life-without-parole pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).

**b. Newly Discovered Evidence in Support of Relief**

51. Mr. Johnson's current counsel, attorneys with the Abolitionist Law Center, first organized a legal team that successfully challenged his prolonged solitary confinement in the DOC. *Johnson v. Wetzel*, 209 F.Supp.3d 766 (M.D.Pa. 2016) (granting plaintiff's motion for preliminary injunction, ordering him transitioned from 36 years of solitary confinement to the general prison population due to conditions of prolonged isolation constituting cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution).
52. As Mr. Johnson transitioned into the general prison population in early 2017 for the first time since Jimmy Carter was president of the United States, the district attorney election in Philadelphia that would see Lawrence Krasner elected was beginning.
53. After Mr. Krasner's election, he commenced to follow through on his campaign pledges to expand the office's Conviction Integrity Unit (CIU). Krasner promised to transform the Conviction Integrity Unit from an understaffed and ineffectual shell into an enterprise genuinely concerned with seeking justice for the wrongfully convicted. See, e.g., Maura Ewing, *Inside the Philly DA's Fight to Free the Wrongfully Convicted*, Gen.medium.com,

Feb. 26, 2019 (available at <https://tinyurl.com/y52k9agq>). Prior to 2018, as has been publicly acknowledged, the DA's office and CIU refused to help prisoners investigate their innocence claims in any meaningful way. *See generally id.*; Chris Palmer & Samantha Melamed, *The Philly DA's office promised an aggressive Conviction Integrity Unit. Judges have pushed back.*, Philadelphia Inquirer, Jan. 29, 2019 (available at <https://tinyurl.com/yxe9xqpe> ).

54. On July 3, 2018, in consideration of the DAO's new commitment to examining false and unlawful convictions, counsel for Mr. Johnson submitted a letter memorandum to the CIU outlining our position on the deficiencies in the prosecution of Mr. Johnson, asserting our belief in his innocence, and requesting that the contents of the District Attorney and police department files pertaining to this case be shared with counsel for Mr. Johnson. Ex. C, CIU Submission from Counsel, July 3, 2018.<sup>2</sup>
55. The CIU had already been inundated with a large number of requests, and it consequently took some time prior to their being able to respond to Mr. Johnson. The initial part of the review consisted of acquisition and review of trial transcripts.
56. Following acquisition of the transcripts, counsel for Mr. Johnson and the CIU entered into a discovery and cooperation agreement. The CIU sought the requested documents. They were not able to locate the District Attorney Office's file for the case, but they did locate the Philadelphia Police Department's homicide file.
57. On December 9, 2019, the Philadelphia District Attorney's Office (DAO) disclosed the entire homicide investigatory file maintained by the Philadelphia Police Department in relation to Jerome Wakefield's murder to counsel for Mr. Johnson. Ex. D, Email from

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<sup>2</sup> Although the letter is not dated, counsel's records confirm the date it was sent.

Assistant District Attorney Carrie Wood, December 9, 2019.

58. The homicide file contained numerous materials that were previously not disclosed to Mr. Johnson or defense counsel and which are exculpatory or led to the discovery of exculpatory evidence through further investigation that relied upon information obtained from the homicide file.

i. Undisclosed Statements of Alexander Payne and Circumstances of His Interrogation

59. The newly disclosed evidence reveals that between approximately 12:00 a.m. on October 7, 1970, and 4:30 a.m. on October 8, 1970, Alexander Payne was picked up by the police twice, spending a combined 21 hours in police custody being interrogated, including a period of consecutive interrogation lasting from 1:30 p.m. on October 7 through 6:00 a.m. the following morning, more than 16 consecutive hours. See Ex. E, Alexander Payne First Interview Sheet, AJ(HF) 251-261 (states police “locked me up at 12 midnight” the night of the murder and let him go at 4:30 a.m.); Ex. F, Chronology of Interrogation And/Or Custody of Alexander Payne, AJ(JF) 83-86 (showing Alexander Payne was arrested at 1:15 p.m. on October 7, 1970 and that his final interrogation session began at 5:00 a.m. on October 8); Ex. G, Supplemental Statement of Alexander Payne, AJ(HF), 96-98 (indicating that Mr. Payne signed his supplemental statement at 6:00 a.m. on October 8).

60. In addition to being an alleged witness and suspect, Alexander Payne was a 15-year-old child. Ex. E, Alexander Payne First Interview Sheet.

61. Only after 9 hours of consecutive interrogation, and 13 hours total interrogation when both arrests are included, in an interview beginning at 10:20 p.m. did Mr. Payne allegedly provide information incriminating himself and others. He gave a formal statement to this

effect between 12:23 a.m. and his signing at 1:50 a.m. on October 8, 1970. Ex. F, Chronology of Interrogation And/Or Custody of Alexander Payne, AJ(JF) at 85. By the time he signed the statement implicating Mr. Johnson he had been subject to more than 12 consecutive hours of interrogation. This was never revealed to defense counsel, nor known to Mr. Johnson until the homicide file was shared with his lawyers on December 9, 2019.

62. But that was not the only formal statement that Mr. Payne provided. Five hours later the police induced him to trade out one suspect for another, and Mr. Payne signed a supplemental statement in which he purports to have lied earlier when he identified Phillip Michaels as the shooter. Now, at 5:15 a.m., after approximately 20 hours of interrogation, including 15 consecutive hours, Mr. Payne claimed for the first time that Gary Brame was the shooter. Ex. G, Supplemental Statement of Alexander Payne, AJ(HF), 96-98.<sup>3</sup>

63. This was the fixed version of events that the police locked onto. This version determined the rest of their investigation, which consisted in beating a confession out of Gary Brame, Ex. I, Witness Certificate of Gary Brame at ¶¶ 6-9, and deceiving Arthur Johnson into signing a statement that he did not read or understand.

64. The documents revealing the course of the police investigation include a critical, exculpatory, and material Interview Sheet documenting a police interrogation of Alexander Payne from early in the afternoon on August 7, 1970, more than 12 hours before he would sign a formal statement implicating Mr. Johnson. The Interview Sheet

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<sup>3</sup> Payne's purported correction occurred while Philip Michaels himself was also being interrogated by the police. After an eight-hour interrogation between 1:00 a.m. – 9:00 a.m., Michaels eventually signed a formal statement which matched Alexander Payne's statement in naming Payne, Gary Brame, and Mr. Johnson as participants in Jerome Wakefield's murder. Ex. H, Declaration of Noel Hanrahan ¶ 8.

indicated that Mr. Payne was arrested at 1:15 p.m. on October 7, 1970 and informed police that he did not participate in the murder of Jerome Wakefield. According to the suppressed record of his interrogation, Mr. Payne denied any involvement until his interview session beginning at 10:20 p.m., which concluded in his signing the statement that implicated himself and Mr. Johnson at 1:50 a.m. See Ex. E, Alexander Payne First Interview Sheet, AJ(HF) 251-261 (noting arrest at 1:15 p.m. on October 7.); Ex. F, Chronology of Interrogation And/Or Custody of Alexander Payne, AJ(JF) 83-86 (noting interview session at 10:20 p.m. on October 7 and signing of statement at 1:50 a.m. on October 8).

65. The Interview Sheet indicates that Payne told detectives that he was driving around Philadelphia with Sylvester Brame at the time of Mr. Wakefield's murder and that Payne knew nothing about Mr. Wakefield's death. See Ex. E, Alexander Payne First Interview Sheet, AJ(HF) at 251.
66. That this statement undermined the prosecution's theory of Mr. Johnson's involvement is evident, as Mr. Payne could not have been in a car with Sylvester Brame at the time of the murder if he was simultaneously with Gary Brame and Arthur Johnson committing that murder. The difference between the two statements is material, and Mr. Johnson's trial lawyer was never permitted to conduct an investigation into this statement, or question Detective Snyder about the circumstances of Mr. Payne's identification of Mr. Johnson, because his trial counsel was never provided this critical document.
67. The Interview Sheet further indicates that Mr. Payne was arrested and interrogated from approximately 12:00 a.m. – 4:30 a.m. on October 7. This arrest and interrogation would have occurred several hours after Mr. Wakefield's murder and approximately 24 hours

before Mr. Payne's statement which served as the basis for Mr. Johnson's arrest. *Id.* at 254.

68. Payne's arrest and interrogation between 12:00 a.m. – 4:30 a.m. was not otherwise documented by police and does not appear on the Chronology of Interrogation And/Or Custody document relating to Mr. Payne. Ex. F, Chronology of Interrogation And/Or Custody of Alexander Payne, AJ(JF) at 83.
69. The prosecution never previously disclosed information showing that Payne was arrested and interrogated on two separate occasions prior to the interrogation which led to his implication of Mr. Johnson in Jerome Wakefield's murder.
70. The prosecution never previously disclosed that Payne initially told police that he was not involved in Mr. Wakefield's death, provided an alibi for the timeframe in which Mr. Wakefield died, and did not implicate Mr. Johnson prior to the statement in which Payne implicated himself and Mr. Johnson.
71. Among other reasons, the records in the homicide file indicate that interview sheets could not have been provided to defense counsel because they were not even provided to the District Attorney Office.
72. A document titled Homicide Case No. 317-1970 indicated what documents were reviewed and provided to the DAO. Ex. J, Homicide Case Cover Sheet, AJ(HF) 109. The contents were listed as:
  - A – Homicide Case Summary and Index
  - B – Homicide Reports
  - C – Statements
  - D – Technical Reports, Photos, Sketches, etc.

E – Division Reports

F – Memorandums and Correspondence

G – Criminal Records and Photos.

*Id.* This cover document indicates that the contents were “Forwarded to Dist. Atty.” on December 28, 1970. *Id.*

73. The Homicide Case Summary and Index documents, also contained in the Homicide File and provided by the DAO, included a document titled “Statement Index” that identified the following names: Gary Brame; William Cole, Joseph Jackson, Arthur Johnson, Phillip Michaels, Alexander Payne. Ex. K, Statement Index, AJ(HF)1-41, at 41.
74. That these “statements” refer to documents formally labeled with the title “Statement” is evident from the fact that the six names listed in the statements given to the DAO correspond precisely to the six formal Statements found in the Homicide File with the heading of “Statement.” Ex. L, Statements in Homicide File (including statements from Gary Brame (72-79), William Cole (99-102), Joseph Jackson (105-108), Arthur Johnson (missing from Homicide File but in the court file and included in this exhibit), Phillip Michaels (147-152), and Alexander Payne (89-95, and Supplemental Statement at 96-98).
75. Interview Sheets were not listed in the contents provided to the DAO. Accordingly, there are interview sheets from individuals who were questioned but who never gave formal statements, and those individuals are not listed in the index as having provided statements. Ex. M, Interview Sheets (including all interview sheets in the Homicide File).
76. The Homicide Case Summary and Index, which comprises the first 41 pages of the Homicide File, include an Investigative Report that summarizes the case. In the discussion of “Defendant #3,” Alexander Payne, there is no mention of his arrest at

midnight on October 7, 1970, nor his arrest at 1:15 p.m. on October 7. Ex. N, Homicide Case Summary and Index, AJ(HF) 1-41, at 33. But the document does not merely sin by omission, but by commission as well, containing the fraudulent assertion that “On Thursday, October 8, 1970, at 12:22 a.m., at Homicide Division Headquarters, the defendant, *prior to being asked any questions*, was read the warnings of his constitutional rights . . .” *Id* (emphasis added). This is a lie. Mr. Payne had been in custody for more than 11 consecutive hours at that point, after being in custody for 4.5 hours the previous night, and he had been repeatedly questioned, as recorded in the suppressed first interview sheet and the interrogation chronology, and he repeatedly denied any involvement or knowledge of who committed the crime.

77. The police omitted *and* misrepresented the circumstances of Alexander Payne’s interrogation and prior inconsistent statements to the District Attorney’s Office in the Homicide Case Summary, and excluded the documents that contradicted this misrepresentation. The prosecution suppressed this evidence in violation of *Brady* by keeping it in the police file, where it remained undetected for nearly 50 years, until it was produced by the CIU.
78. There is further evidence that Mr. Johnson’s trial counsel was not provided the interview sheet indicating that Mr. Payne had denied involvement in the crime both the first night he was arrested and the following day, and did not implicate Mr. Johnson until more than 10 hours into his second interrogation. That is, trial counsel did not utilize this information during the pre-trial suppression motion that challenged the reliability of Mr. Payne’s identification; trial counsel did not utilize this information when cross-examining Detective Snyder at trial regarding Mr. Payne’s purported identification; and trial counsel

did not raise these facts in his post-trial appeal in which he alleged that Mr. Payne's identification of Mr. Johnson was insufficiently reliable to justify the arrest of Mr. Johnson. TT, Vol. I; TT Vol. VII at 32-34; Notes of Testimony, Motion for a New Trial And/Or Arrest of Judgment, 3-15 (January 25, 1973).

79. It is inconceivable that Mr. Pallastrone would continue to challenge the reliability of Mr. Payne's implication of Mr. Johnson in the crime without asserting the two strongest facts undermining that reliability if he had them in his possession: 1) Mr. Payne having provided prior, inconsistent statements during two separate and prolonged interrogations to police in which he asserted his innocence of the crime and his ignorance of any information about it, as well as providing no mention of Mr. Johnson; and 2) the extraordinary circumstances of Mr. Payne's interrogation, which included his being arrested twice in a 13-hour period, his being interrogated for 21 hours, including more than 16 hours consecutively, the fact that he did not implicate himself or Mr. Johnson until approximately 10-11 hours into his second interrogation, nor sign any statement incriminating Mr. Johnson until more than 12 hours into his second prolonged interrogation.
80. The absence of these facts in the trial record reinforces what was learned from the recently disclosed homicide file: Alexander Payne's prior inconsistent statements and the factual circumstances surrounding his interrogation never left the files of the police department since they were generated on October 7-8, 1970, and thus they were never disclosed to defense counsel for Mr. Johnson.
81. This suppressed evidence puts another detail in the interrogation record for Mr. Payne in a new context as well. Further undermining Mr. Payne's identification is that in his

supplemental statement he said that he named Mr. Johnson because “I thought the people already knew who did it,” indicating that the police must have told him that they believed Mr. Johnson was involved, as there is no other explanation as to how Mr. Payne would know what the police thought unless they themselves told him. Ex. G, Supplemental Statement of Alexander Payne, AJ(HF), 96-98.<sup>4</sup>

82. With the prior statements suppressed along with evidence of the prolonged, coercive circumstances of Mr. Payne’s interrogation, trial counsel was deprived of essential, exculpatory evidence that both contradicted the prosecution’s theory of the case and undermined the integrity and reliability of the identification of Mr. Johnson and the entire investigation.

**ii. Sylvester Brame**

83. The investigatory file also included a previously undisclosed Interview Sheet regarding Sylvester Brame from October 6, 1970, the night that Jerome Wakefield died. Ex. O, Sylvester Brame Interview Sheet, AJ(HF) 199-200.
84. The Interview Sheet corroborates the version of events set forth in Alexander Payne’s Interview Sheet in which Sylvester Brame and Payne drove around the city meeting up with girls during the time in which Jerome Wakefield was killed. *Id.*
85. Sylvester Brame’s interview sheet also indicates that his brother, Gary Brame, was also with Sylvester and Payne during that time. *Id.*
86. Sylvester Brame’s Interview Sheet does not implicate Mr. Johnson in Mr. Wakefield’s

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<sup>4</sup> Of the formal statements provided by the police to the DAO and identified in the Homicide Case Summary and Index, it is not clear which were produced to defense counsel. But, even if Mr. Payne’s formal statement and supplement were produced, the probable significance of the statement that “I thought the people already knew who did it” comes into greater focus only when it is known that Mr. Payne had been interrogated since 1:30 p.m. on October 7, providing ample opportunity for the police to convince Payne to tell them what they claimed to already know.

death in any respect.

87. For the reasons already discussed in paragraphs 70-76, Interview Sheets could not have been provided to defense counsel as they were not provided to the DAO.
88. Trial counsel was deprived of the opportunity to investigate the statement recorded on the interview sheet. Without this statement there was no indication that Sylvester Brame was ever taken in for questioning, let alone any indication that he claimed to be with Mr. Payne and Gary Brame at the time of the murder.
89. Trial counsel therefore could not interview Sylvester Brame, or call him as a witness to testify that he was not with Mr. Johnson on the night that Jerome Wakefield was killed.
90. Trial counsel also could not cross examine by asking him whether it was true that Sylvester Brame corroborated Mr. Payne's earlier statement to police that he was with Sylvester. Nor could trial counsel then follow up on why Sylvester Brame was not brought back in for questioning, or why Sylvester Brame was not a suspect that had been ignored once they decided to use Mr. Payne to pin this case on Mr. Johnson and Gary Brame.
91. As the following paragraphs demonstrate, there was ample reason to cross-examine Detective Snyder on why Sylvester Brame's initial interview was never followed up with. For the first time in 50 years Gary Brame has now revealed the two people who were with him and involved in the murder of Jerome Wakefield, and Sylvester was one of them.

### **iii. Statement of Gary Brame**

92. Due to the disclosure of the homicide investigatory file in 2019, Mr. Johnson's counsel were able to conduct additional investigation that was foreclosed to Mr. Johnson's trial

counsel.

93. Counsel for Mr. Johnson were able to utilize information from the homicide file to confer with Gary Brame, an alleged co-conspirator of Mr. Johnson's, about the events leading to Jerome Wakefield's death.
94. The information contained in the homicide file that was disclosed to the defense on December 9, 2019 was instrumental to Mr. Johnson's defense team in interviewing and obtaining a statement from Mr. Brame. A defense investigator was able to ask Mr. Brame questions about specific individuals whose names were previously unknown to the defense, only after which did Mr. Brame reveal the two other individuals who participated in Mr. Wakefield's homicide with him. Neither of these individuals were Mr. Johnson. Ex. H, Declaration of Noel Hanrahan.
95. Gary Brame disclosed that Mr. Johnson was not involved in Mr. Wakefield's murder. Mr. Brame confirmed that he shot Mr. Wakefield with a "zip gun," but that neither Alexander Payne nor Mr. Johnson were with him that night. Witness Certificate of Gary Brame, ¶¶ 1-4.
96. Mr. Brame instead implicated his brother, Sylvester Brame, and Phillip Michaels as the other two individuals who were with him when he shot Mr. Wakefield. *Id.* at ¶ 2.
97. Mr. Brame states explicitly that "Arthur Johnson was not with me when Jerome was shot." *Id.* at ¶ 3.
98. Mr. Brame also alleges that, like Mr. Johnson, he was beaten by police during his interrogation. While Mr. Brame was handcuffed to a chair and repeatedly asserting his right not to say anything to the police, they continued to beat him. Mr. Brame still has a scar in his mouth from being beaten by police during his interrogation. *Id.* at ¶ 8.

99. Like Mr. Johnson, Mr. Brame's statement alleges that he never read the statement that he signed which implicated himself, Mr. Johnson, and Alexander Payne. He states, "They beat people till they sign what they want them to sign. I did not read it. I signed because they told me to sign." *Id.* at ¶ 9.
100. Mr. Brame's statement also indicates that he remained close with the two people who were with him when he shot Jerome Wakefield, but both are now both deceased. His brother, Sylvester Brame, died in 2010, while Phillip Michaels died in the summer of 2020. *Id.* at 11.
101. Mr. Brame never told anybody – nor would he have – that Sylvester Brame and Phillip Michaels were the two who were with him and involved in the killing of Jerome Wakefield while they were alive. Ex. H, Declaration of Noel Hanrahan at ¶ \_\_.
102. At the time of trial, Mr. Brame had been told explicitly by the judge in his own case that his willingness to testify against Mr. Johnson could impact his own sentence. Ex. 17, *Com. v. Brame*, No. CP-51-CR-1100231-1970, Change of Plea Hearing, 62 (January 13, 1972).
103. In this context, not only was Mr. Johnson's trial counsel unlikely to call him, but given the statement that police beat out of Mr. Brame that implicated Mr. Johnson, his not testifying was perceived as redounding to Mr. Johnson's benefit. Still, even though he did not testify, the prosecutor improperly vouched for his case by reference to Gary Brame's statement implicating Mr. Johnson. TT, Vol. X at 76.
104. If the jury had heard from Mr. Brame what he has shared for the first time now that his brother and Phillip Michaels had passed, and after Mr. Johnson's legal team was able to conduct his interview with the critical information contained in the homicide file, Mr.

Johnson would never have been convicted.

**iv. Previously Unknown Evidence that ADA Brereton Deliberately Lied to the Jury to Secure a Conviction**

105. In disclosing the homicide file to counsel for Mr. Johnson, the DAO included case documents from the prosecution of Gary Brame was included. Ex D, Email from ADA Carrie Wood, 12.9.19.
106. Though these documents were in the court file, and thus publicly available, Mr. Johnson had no reason to suspect, let alone an obligation to investigate, that ADA Brereton had lied to the jury and perpetrated a fraud on the court when he argued that Gary Brame did not testify against Arthur Johnson because Mr. Brame had a right under the Fifth Amendment of the U.S. Constitution against self-incrimination. TT, Vol. X at 76.
107. The Change of Plea Hearing for Gary Brame produced on the same date as the homicide file contains a transcript from January 13, 1972, in which Gary Brame pled guilty to second-degree murder in the killing of Jerome Wakefield. Ex. A, *Com. v. Brame*, No. CP-51-CR-1100231-1970, Change of Plea Hearing (January 13, 1972).
108. At that hearing, the judge told Mr. Brame the following:  
  
You have pled guilty, so you have no right to refuse to testify on the ground that it might incriminate you. Your lawyer will explain that to you further. The Commonwealth has the right to call you as a witness in that case. If you refuse to testify, that's something else. You could be held in contempt of Court. But you have no right under the law to refuse to testify. Ex. A, *Com. v. Brame*, No. CP-51-CR-1100231-1970, Change of Plea Hearing, 61-62 (January 13, 1972).
109. The prosecutor at that proceeding was none other than Julian Brereton, the same prosecutor who explicitly told Mr. Johnson's jury that Brereton could not force Brame to

testify. *Id.* at 1.

110. When Mr. Brereton later told the jury that Mr. Brame implicated Mr. Johnson but did not testify because of his Fifth Amendment right against self-incrimination he not only was engaging in “improper” conduct by vouching for his case, as recognized by the Pennsylvania Superior Court, he was lying to the jury.
111. The jury did not know that the prosecutor was resorting to deception to convict Mr. Johnson. Had they known this it would have tainted their faith in the integrity of the prosecution and undermined the likeliness of a conviction.

#### **IV. Jurisdictional Requirements**

112. A PCRA Petition must be filed within one year of the date the petitioner’s conviction and sentence becomes final, unless the petitioner pleads and proves the elements to one of three enumerated exceptions to the one-year timeliness requirement. 42 Pa.C.S. § 9545(b)(1).
113. A petition, including a second or subsequent petition, invoking one of the timeliness exceptions under 42 Pa.C.S. § 9545(b)(1) must be filed within one year of the date the claim could have been presented. 42 Pa.C.S. § 9545(b)(2).
114. In order for a second or subsequent petition filed more than one year after the date the judgment became final to be considered timely, the petitioner must allege and prove one of more of the following:
- (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. § 9545(b)(i-iii).

115. Mr. Johnson's Amended Petition satisfies all three timeliness exceptions and is filed within one year of the date the claims could have been presented.
116. First, Mr. Johnson's Amended Petition is timely under 42 Pa.C.S. § 9545(b)(1)(i) (governmental interference exception) because the prosecution suppressed evidence it was required to disclose to the defense under *Brady v. Maryland*, 373 U.S. 83 (1963). In order to demonstrate that a PCRA petition satisfies the governmental interference timeliness exception for a *Brady* claim, a petitioner must show (1) that interference by governmental officials prevented him from discovering and bringing a *Brady* claim sooner, and (2) that he could not have known of the governmental interference earlier through the exercise of reasonable diligence. *Commonwealth v. Abu-Jamal*, 941 A.2d 1263, 1268 (Pa. 2008).
117. Under *Brady*, prosecutors, including police officers, have a duty to disclose potentially exculpatory evidence to defendants. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995); *Commonwealth v. Burke*, 781 A.2d 1136, 1142 (Pa. 2001).
118. The prosecution in Mr. Johnson's case unlawfully suppressed several exculpatory pieces of evidence which were only recently disclosed to Mr. Johnson's defense counsel.
119. First, the prosecution did not previously disclose that Alexander Payne, the first person to allegedly identify Mr. Johnson as a participant in the offense at issue and the sole basis for Mr. Johnson's warrantless arrest, was interrogated by police investigators on the night of the homicide and that he initially told police that he was not involved in Jerome

Wakefield's murder, nor did he know anything about the murder.

120. An Interview Sheet bearing Mr. Payne's name that was contained in the police's investigatory file indicates that Mr. Payne, who was 15 years-old at the time, was detained and interrogated for four and a half hours on the night of Mr. Wakefield's murder between the hours of 12:00 a.m. to 4:30 a.m. Merely nine hours later, Mr. Payne was detained and interrogated again for approximately 16 and a half hours.
121. The Interview Sheet summarizes the information that Mr. Payne initially provided to police investigators. Mr. Payne told them that he was not involved in Jerome Wakefield's death and did not know anything about his death. At the time of Mr. Wakefield's murder, Alexander Payne claimed that he was driving around Philadelphia with Sylvester Brame, meeting with and talking to girls.
122. Neither the Interview Sheet nor the information contained therein were disclosed to Mr. Johnson or his defense counsel before December 9, 2019, when the Philadelphia District Attorney's Office provided the homicide investigation file to Mr. Johnson's defense counsel.
123. As explained in more detail *infra*, this evidence was exculpatory and was required to be disclosed. Alexander Payne's alleged implication of Mr. Johnson in the offense at issue was instrumental to the prosecution's case against Mr. Johnson.
124. First, Mr. Payne's implication of Mr. Johnson served as the sole basis for the police's warrantless arrest of Mr. Johnson, which led to Mr. Johnson's signing the statement used to convict him. Mr. Johnson's trial counsel attempted to challenge his arrest as unlawful due to Mr. Payne's unreliability as a source of information sufficient to provide probable cause for Mr. Johnson's arrest in pre-trial, trial, and post-trial proceedings. Trial counsel

was deprived of the opportunity to challenge Payne's reliability on the basis of either his extended and undisclosed interrogation on the night of the murder or, crucially, the contradictory and exculpatory information he provided to his interrogators prior to allegedly implicating Mr. Johnson.

125. Second, Payne's implication of Mr. Johnson was relied upon by the prosecution during trial to connect Mr. Johnson to the death of Mr. Wakefield. Testimony from Detective Robert Snyder referenced Payne's statement implicating Mr. Johnson and made no mention of the conflicting, exculpatory account that Payne previously gave to detectives. The trial prosecutor also made improper references to Payne implicating Mr. Johnson during his arguments. Mr. Johnson was unable to present the conflicting, exculpatory information given by Payne because the prosecution suppressed this evidence.
126. The prosecution also suppressed another exculpatory interview sheet. Sylvester Brame was detained and interrogated by police on the night of Mr. Wakefield's homicide. Sylvester Brame's Interview Sheet corroborated Payne's account of what he and Payne were doing during the time that Mr. Wakefield was killed, further undermining the prosecution's theory that Mr. Johnson, Payne, and Gary Brame participated in Mr. Wakefield's murder.
127. In addition to exculpatory information contained within the suppressed interview sheets, trial counsel for Mr. Johnson was also deprived of the opportunity for further investigation which could have revealed exculpatory information. As detailed *infra*, the information contained in these interview sheets were instrumental in obtaining a new statement from Gary Brame, who confirms that Mr. Johnson was not involved in Mr. Wakefield's death.

128. Included in the homicide investigatory file recently disclosed by the Philadelphia DAO is an index of materials that were provided to the prosecutor's office by the police.
129. This index does not include any interview sheets, let alone those of Alexander Payne or Sylvester Brame.
130. The timeline of custody/interrogation for Alexander Payne does not include any mention of the initial detention and interrogation of Alexander Payne in the early morning hours of October 7, 1970.
131. Trial counsel for Mr. Johnson diligently attempted to challenge Payne's alleged identification of Mr. Johnson as a participant in Mr. Wakefield's murder. It is inconceivable that Mr. Johnson's counsel never once raised either Payne's or Sylvester Brame's claims that they were together at the time of Mr. Wakefield's death and knew nothing about it if these interview sheets were disclosed to the defense.
132. While Mr. Johnson recalls Payne's inculpatory statement from his original trial, he has no recollection of Payne's or Sylvester Brame's interview sheets, nor any mention that Payne provided contradictory accounts to police, was detained and interrogated on the night of Mr. Wakefield's murder, or that Sylvester Brame also provided a corroborating account to police.
133. Because this evidence was in the sole possession and control of the prosecution, Mr. Johnson could not have discovered it before it was disclosed by the Philadelphia DAO on December 9, 2019 in response to defense counsel's request to the Conviction Integrity Unit.
134. Prior to this disclosure, Mr. Johnson had no basis for believing that Payne had been detained and interrogated prior to the interrogation which led to his alleged implication of

Mr. Johnson, that Payne had given a contradictory, exculpatory version of events to police, or that Sylvester Brame also gave a corroborating, exculpatory version of events to investigating police officers.

135. Mr. Johnson's Amended Petition is filed less than a year from the date that this evidence was disclosed to defense counsel for the first time.
136. Mr. Johnson's *Brady* claims thus satisfy the governmental interference exception to the PCRA's timeliness requirements because (1) he could not have raised these claims earlier due to the prosecution's failure to disclose *Brady* material; and (2) he could not have discovered this evidence before it was disclosed on December 9, 2019.
137. All of Mr. Johnson's claims for relief also satisfy the newly-discovered facts exception to the PCRA's timeliness exceptions at 42 Pa.C.S. §9545(b)(1)(ii).
138. The newly-discovered facts timeliness exception requires a Petitioner to allege and prove 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." 42 Pa.C.S. § 9545(b)(1)(ii). A Petitioner invoking this exception need only "prove that the facts were unknown to him and that he exercised due diligence in discovering those facts." *Commonwealth v. Bennett*, 930 A.2d 1264, 1270 (Pa. 2007). Due diligence "does not require perfect vigilance and punctilious care, but merely a showing the party has put forth reasonable effort" to obtain the facts upon which the claim is predicated. *Commonwealth v. Edmiston*, 65 A.3d 339, 348 (Pa. 2013).
139. Mr. Johnson's *Brady* claims satisfy the newly-discovered facts exception because neither the interview sheets relating to Payne and Sylvester Brame, nor the information contained therein, were known to him prior to their recent disclosure by the Philadelphia DAO.

140. Mr. Johnson could not have discovered these facts sooner because they were in the sole possession and control of the prosecution and, as discussed in detail *supra*, were suppressed in violation of *Brady*.
141. Mr. Johnson's Amended Petition also brings a claim based on after-discovered evidence – namely, a new statement from Gary Brame, an alleged co-conspirator of Mr. Johnson's, who, for the first time, revealed that Mr. Johnson did not participate in Jerome Wakefield's murder and named the other two participants, neither of whom were arrested or charged in relation to Mr. Wakefield's death.
142. Mr. Brame had never previously revealed to Mr. Johnson or his defense that the other two individuals who participated in Mr. Wakefield's killing were Philip Michaels and Sylvester Brame.
143. Mr. Brame had never previously provided a statement, nor was there any indication in information that was available to Mr. Johnson or his defense, that Mr. Johnson was not with him when Brame shot Jerome Wakefield.
144. The declaration of Noel Hanrahan also reveals why Mr. Johnson could not have discovered this information sooner through the exercise of due diligence. Ex. H, Declaration of Noel Hanrahan.
145. Counsel for petitioner and its investigator relied heavily on the homicide file in identifying individuals and circumstances to question Mr. Brame, substantially aiding the interview and assisting in the elicitation of exculpatory evidence.
146. Defense investigators were able to ask Mr. Brame about specific individuals who were interrogated by police investigators after the homicide, many of whom were previously unknown to Mr. Johnson or the defense. This line of questioning led Mr. Brame to reveal

that Philip Michaels and Sylvester Brame were the other two people who were with him during Mr. Wakefield's homicide. Ex. H, Declaration of Noel Hanrahan at ¶ 16.

147. Mr. Brame also indicated that he would not have implicated either Philip Michaels or Sylvester Brame while they were still alive, and told defense investigators that Philip Michaels had passed away in the summer of 2020. Ex. H, Declaration of Noel Hanrahan at ¶ 17.
148. Mr. Johnson was also precluded from conducting any investigation into the facts of the killing of Jerome Wakefield due to the extraordinary, inhumane, and unconstitutional conditions of solitary confinement he was subjected to for 37 years in the DOC.
149. Mr. Johnson's conditions of solitary confinement forced him to go for years on end without telephone access.
150. The longer he stayed in isolation, the more impaired his concentration became, making reading and writing letters more difficult.
151. Furthermore, because Mr. Johnson is innocent of the alleged offense, he had no idea who actually participated in the killing of Mr. Wakefield, or who may have had helpful information.
152. While he knew that Gary Brame was convicted of the offense, he had no independent knowledge as to whether Mr. Brame was in fact guilty, or, like Mr. Johnson, framed for a crime he did not commit.
153. Mr. Johnson entered solitary confinement in 1979, not to emerge until 2017. It is undisputed that he had intellectual disability. Even after he entered solitary confinement he attempted to challenge his conviction by raising ineffective assistance of counsel claims. But navigating an investigation without any leads and while subject to draconian

conditions of solitary confinement and living with intellectual disability effectively prevented him from being able to develop the means to pursue his innocence. Those means materialized when counsel took on his civil case and then filed the initial PRCA in this matter, methodically seeking evidence through the avenue created by the election of District Attorney Krasner and the expansion of the DAO's Conviction Integrity Unit. In this fact-specific, unique, nightmare of a scenario, Mr. Johnson has brought these claims to court at the earliest possible opportunity – 50 years after he was arrested for a crime he did not commit.

#### **V. Claims for Relief**

154. In order to be eligible for relief under the PCRA, a Petitioner must plead and prove by a preponderance of the evidence that his conviction or sentence resulted from at least one of the following grounds for relief:

(i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

...

(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

42 Pa.C.S. § 9543(a)(2).

155. Mr. Johnson is entitled to relief under 42 Pa.C.S. § 9543 (a)(2)(i) (constitutional violation), (a)(2)(vi) (after-discovered evidence), and (a)(2)(vii) (unlawful sentence).

156. None of Mr. Johnson's claims have been previously litigated or waived.

157. The failure to raise these issues sooner were not the result of any rational, strategic or tactical decision by counsel.

158. Mr. Johnson is requesting an evidentiary hearing on his claims for relief as they raise genuine issues concerning material facts. *See* Pa. R. Crim. Pro 908(1).<sup>5</sup>

**i. The Exculpatory After-Discovered Evidence Regarding Alexander Payne, Sylvester Brame, and Gary Brame Requires Vacatur of Mr. Johnson’s Conviction Based on Their Individual and Cumulative Impact.**

159. A Petition asserting an after-discovered evidence claim under 42 Pa.C.S. § 9543

(a)(1)(vi) must prove:

(1) The exculpatory evidence has been discovered after trial and could not have been obtained at or prior to trial through reasonable diligence; (2) the evidence is not cumulative; (3) it is not being used solely to impeach credibility; and (4) it would likely compel a different verdict.

*Commonwealth v. Burton*, 158 A.3d 618, 629 (Pa. 2018) (citing *Commonwealth v. D’Amato*, 856 A.2d 806, 823 (Pa. 2004).

160. For the first time, Mr. Johnson’s alleged co-participant in Jerome Wakefield’s murder provided a statement exonerating Mr. Johnson and naming the two individuals who were actually with him during Mr. Wakefield’s homicide, neither of whom were arrested or charged in relation to the offense.

161. As discussed in detail *supra* in Section III, Mr. Johnson has recently discovered previously unavailable evidence as a result of the Philadelphia DAO’s disclosure of the police department’s homicide file.

162. This evidence was not available to Mr. Johnson at the time of trial and he could not have

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<sup>5</sup> Mr. Johnson’s 2016 PCRA is incorporated by reference into this Amended Petition. Mr. Johnson recognizes that these claims are currently foreclosed by binding precedent on this Court, *see Commonwealth v. Lee*, 206 A.3d 1 (Pa. Super. 2019), however he wishes to maintain these claims that his mandatory life-without-parole sentence violates the Eighth Amendment for purposes of federal court review.

obtained it at trial or at anytime before its disclosure because it was in the control and possession of the prosecution.

163. Individually and taken as a whole, this evidence would have resulted in Mr. Johnson's acquittal at trial and vindicated his innocence, which he has steadfastly maintained before, during, and after his trial.
164. Gary Brame pleaded guilty to murder for his role in shooting Jerome Wakefield and was sentenced to 7 ½ to 15 years in prison. Mr. Brame was alleged to have given a statement to the police implicating Mr. Johnson in the offense.
165. Although Gary Brame did not testify, the prosecutor was permitted to make an unchallenged statement to the jury, based on no evidence of record, that Mr. Brame would have testified against Mr. Johnson, but was scared to do so. The prosecutor further stated that he could not require Mr. Brame to testify because of his Fifth Amendment right against self-incrimination – a statement which was not merely untrue, but was a blatant lie.
166. Had Mr. Brame testified truthfully to the information contained in his recent statement at Mr. Johnson's trial, the outcome would have certainly been different.
167. Mr. Johnson testified consistently at trial that he had nothing to do with Jerome Wakefield's death and that the alleged "confession" presented to the jury was untrue. Mr. Johnson further testified that he was beaten by the police, that he had not read the confession because he could not read, and that he signed and made corrections to the statement solely because the police told him to and told him what to write.
168. Mr. Brame's statement corroborates key portions of Mr. Johnson's testimony and, also, completely exculpates Mr. Johnson of any involvement in Mr. Wakefield's death.

169. Like Mr. Johnson's testimony, Mr. Brame's statement indicates that Mr. Johnson was beaten by police and that Mr. Brame himself was also beaten.
170. Mr. Brame's statement also alleges that police told him to sign a statement that he did not read after hours of interrogation and beatings.
171. Had this testimony been presented, the jury likely would have believed Mr. Johnson's testimony about the circumstances of his interrogation.
172. Most importantly, Mr. Brame's statement exonerates Mr. Johnson. If Mr. Brame, an admitted participant in Mr. Wakefield's death, testified that Mr. Johnson was not with him and named the other two actual participants, it would likely have compelled a different verdict.
173. Mr. Johnson could not have discovered this evidence at or before trial through reasonable diligence.
174. As discussed in detail *supra*, Mr. Brame would not have come forward sooner, the information only recently obtained from the police homicide file was instrumental in eliciting the exculpatory information from Mr. Brame, and neither Mr. Johnson nor his counsel had any indication that Mr. Brame had ever made any statement besides the one implicating Mr. Johnson.
175. Mr. Johnson has also recently discovered that Alexander Payne, the alleged source of the police's knowledge that Mr. Johnson participated in Jerome Wakefield's homicide, was subjected to previously undisclosed detention and interrogation and told the police a version of events which contradicted those presented at trial.
176. Mr. Payne told the police that he was not involved in Mr. Wakefield's death and had no knowledge of how he died. Mr. Payne stated that he was driving around Philadelphia

- with Sylvester Brame during the time that Mr. Wakefield was killed.
177. Mr. Johnson received another previously undisclosed police interview sheet from Sylvester Brame, who corroborated Mr. Payne's story and wholly contradicted the police and prosecution's version of events.
  178. Both of these pieces of evidence were suppressed by police and were inaccessible to Mr. Johnson, thus they could not have been discovered sooner
  179. Detective Snyder testified that Mr. Payne provided the police with a statement that Mr. Johnson was involved in Mr. Wakefield's death – testimony that Mr. Johnson's trial counsel was unable to challenge or call into question without the suppressed interview sheets from Payne and Sylvester Brame.
  180. Mr. Johnson's defense counsel could have used these interview sheets to undermine Snyder's credibility, cast doubt on the quality or thoroughness of the police's investigation, and bolstered Mr. Johnson's credibility.
  181. Mr. Johnson's trial counsel could have introduced these documents into evidence through cross-examination of Detective Snyder or, after investigation, by calling them as witnesses, in either case presenting evidence that contradicted the police version of events.
  182. The prosecutor, ADA Brereton, also improperly vouched for his case by referencing Mr. Payne's identification of Mr. Johnson, which could not be effectively rebutted by pointing to the inconsistent statements and extraordinarily long interrogation that this 15-year-old child was subjected to.
  183. Defense counsel would not have merely been able to make use of these statements to impeach the prosecution witnesses or the prosecutor himself, however. Both Mr. Payne

and Sylvester Brame's interview sheets would have provided a new area for investigation by the defense.

184. Sylvester Brame was not previously a known potential witness in Mr. Johnson's case. Had Mr. Johnson's counsel been in possession of the interview sheets, he would have been able to seek out and interview Sylvester Brame.
185. Gary Brame, Sylvester's brother, recently disclosed that Sylvester was one of the two other individuals who were with him when Gary shot Jerome Wakefield. Had Mr. Johnson's counsel been able to discuss Sylvester Brame with other witnesses or with Sylvester himself, this discovery could have been made before or at the time of trial, or Sylvester Brame could have at least shared that Mr. Johnson was not with him and Gary Brame that evening.
186. This, in fact, is precisely what occurred when Mr. Johnson's current defense team were able to discuss Sylvester Brame with Gary Brame.
187. In a trial in which the sole evidence of the defendant's guilt is the defendant's purported confession to police, credibility of witnesses is of paramount importance. ADA Brereton attempted to bolster the credibility of the prosecution witnesses and undermine Mr. Johnson and his defense witnesses' credibility through improper remarks about the absence of Gary Brame and Alexander Payne at Mr. Johnson's trial.
188. ADA Brereton falsely claimed that Gary Brame could not be forced to testify because of his Fifth Amendment right against compelled self-incrimination. This remark was not merely false, but was an outright lie. Brereton was the prosecuting attorney at Gary Brame's guilty plea hearing, in which Brame's judge engaged in a lengthy colloquy with Brame about his upcoming testimony against Mr. Johnson. Brereton heard the judge tell

- Brame that he had forfeited his right not to testify by pleading guilty and that the judge would take into account Brame's testimony against Mr. Johnson in imposing a sentence.
189. In addition to the falsehood told to the jury about Gary Brame not testifying due to his right against self-incrimination, Mr. Brereton also told the jury, based on no record evidence and without further explanation, that Mr. Brame was too scared to testify. Even assuming this is true, it is easy to see why Mr. Brame would have reason to fear testifying given that his choices were to lie about Mr. Johnson's involvement and risk contributing to a frame-up, or tell the truth and exculpate Mr. Johnson and risk having his plea agreement thrown out and then being prosecuted for first degree murder.
  190. The combination of all of this after-discovered evidence would have led to the jury finding Mr. Johnson not guilty at trial.
  191. The prosecution presented no evidence against Mr. Johnson besides his purported confession. The jury at Mr. Johnson's trial was essentially given one decision – whether to believe the testimony of a police officer or Mr. Johnson. It evidently decided that the police testimony was more credible.
  192. Had all of the aforementioned evidence been presented to the jury, the police officer's credibility would have been substantially undermined, the prosecution's narrative about who participated in Jerome Wakefield's killing would have been shattered, Mr. Johnson's testimony would have been corroborated in every material respect, and an admitted participant in Mr. Wakefield's murder would have testified under oath that Mr. Johnson was not with him when he shot Mr. Wakefield.
  193. When combined with Mr. Johnson's consistent testimony about the police officer's actions and his own innocence, and unrebutted expert testimony that Mr. Johnson likely

could not understand his rights or read the typed statement presented to him, the jury likely would have found Mr. Johnson not guilty

**ii. . The Exculpatory Suppressed Evidence Regarding Alexander Payne and Sylvester Brame Requires Vacatur of Mr. Johnson’s Conviction Based on Their Individual and Cumulative Impact.**

194. Mr. Johnson recently received evidence previously suppressed in violation of *Brady v. Maryland* and its progeny. *Brady* violations can entitle a PCRA petition to relief under 42 Pa.C.S. § 9543(a)(2)(i).
195. The Due Process Clause requires the prosecution to disclose exculpatory evidence to the accused. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The duty to disclose exculpatory evidence is applicable even if there has been no request by the accused and applies to both impeachment evidence and direct evidence. *United States v. Agurs*, 427 U.S. 97, 107 (1976); *United States v. Bagley*, 473 U.S. 667, 676 (1985). As the Supreme Court has recognized, the prosecution must disclose exculpatory evidence even if that evidence is not in the prosecution's possession but solely in the possession of police. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995); *Commonwealth v. Burke*, 781 A.2d 1136, 1142 (Pa. 2001).
196. A PCRA petitioner asserting a *Brady* violation must meet three elements: 1) evidence was suppressed; 2) the suppressed evidence is material and favorable to the accused; and 3) there is a reasonable probability that, if the evidence had been disclosed, the outcome of the trial would have been different. *Commonwealth v. Mitchell*, 839 A.2d 202, 216 (Pa. 2003).
197. Exculpatory evidence includes evidence bearing directly on a defendant’s culpability as well as impeachment evidence that is material to the defendant’s guilt or innocence.

*Commonwealth v. Strong*, 761 A.2d 1167, 1171 (Pa. 2000).

198. The Philadelphia DAO recently disclosed files including interview sheets from Alexander Payne and Sylvester Brame which are exculpatory and were previously suppressed.
199. The interview sheets from Payne and Sylvester Brame directly contradict the prosecution's theory that Mr. Johnson, Payne, and Gary Brame participated in Jerome Wakefield's murder.
200. Both Payne and Sylvester Brame's interview sheets indicate that they were driving around Philadelphia at the time of Mr. Wakefield's death and were not involved.
201. These interview sheets are also exculpatory in that they serve as valuable impeachment evidence for the prosecution's sole material witness to Mr. Johnson's guilt – Detective Robert Snyder, who read Mr. Johnson's purported confession to the jury and testified to the police's investigation of Mr. Wakefield's death.
202. Payne and Sylvester Brame's interview sheets undermine Snyder's credibility in his testimony that Payne was the source of information for Mr. Johnson's arrest, which led to this alleged confession and also served to inform the jury that another alleged participant in the offense implicated Mr. Johnson.
203. Mr. Johnson's trial counsel could have used these interview sheets to undermine the reliability of Payne's implication of Mr. Johnson, and thus undermine the police's investigation and interrogation of Mr. Johnson.
204. Armed with Payne and Sylvester Brame's interview sheet, trial counsel for Mr. Johnson could have questioned Detective Snyder on Mr. Payne's prior inconsistent statements, the fact that Payne was interrogated for 21 hours, including 16 consecutive hours, and that his initial denial was corroborated by Sylvester Brame. In sum, the defense could have

presented a devastating picture of the reality of the police investigation in this case: they picked out the most vulnerable person they could find – a 15-year-old child – and held him in custody for nearly an entire day cumulatively, 16 hours consecutively, and had him sign and alter statements provided by the police to fit their own version of events, allowing them to arrest the two individuals they wanted to pin the case on – Gary Brame and Arthur Johnson – despite the presence of other suspects and the lack of *any* corroborating evidence.

205. Furthermore, Mr. Johnson’s defense counsel could have questioned Snyder as to why, if police believed that Alexander Payne told them truthfully that he was involved in Mr. Wakefield’s murder, no follow up investigation was made into Sylveter Brame, even though he told the same story that Alexander Payne initially told.
206. These lines of questioning and argument both undermine Snyder’s credibility and bolster Mr. Johnson’s claims that his purported confession was false and the product of improper police conduct.
207. Mr. Johnson was convicted based solely on this alleged confession. There were no other witnesses against him, so the credibility of Snyder’s testimony, the propriety of police conduct, the lack of integrity in their investigation, and the credibility of Mr. Johnson were central to the jury’s determination of Mr. Johnson’s guilt.
208. Coupled with unrebutted expert testimony from Mr. Johnson’s defense that Mr. Johnson likely could not have understood the police’s instructions, explanation of his rights, or even read the purported confession prior to signing it, the impeachment and substantive evidence that Mr. Johnson’s defense counsel could have derived from the suppressed interview sheets would have resulted in his acquittal.

**iii. Mr. Johnson’s Sentence of Life Without Parole Violates the Eighth Amendment’s Prohibition of Mandatory Life Without Parole Sentences for Young Defendants Whose Crimes Reflect the Transient Immaturity of Youth**

209. As stated in Mr. Johnson’s motion to amend, Petitioner incorporates by reference his original PCRA filed in 2016 to include his claims that his mandatory life without parole sentence is unconstitutional pursuant to *Miller v. Alabama* and *Montgomery v. Louisiana*.

**VI. Conclusion**

For the foregoing reasons it is requested that this court grant the following requests for relief:

- a. Hold an evidentiary hearing on the claims presented herein;
- b. Vacate Mr. Johnson’s conviction;
- c. Order the immediate release of Mr. Johnson from state custody.

Respectfully submitted,

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Dated: December 8, 2020

**CERTIFICATE OF SERVICE**

I, hereby certify that on this date, I caused the foregoing Petition to be served on the District Attorney of Philadelphia County via electronic court filing.

*/s/ Bret Grote*

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Dated: December 8, 2020