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IN THE SUPREME COURT OF PENNSYLVANIA

No. 34 EAP 2026

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

JEROME COFFEY ,

Petitioner

BRIEF OF *AMICI CURIAE* THE PENNSYLVANIA INNOCENCE PROJECT AND PHILLIPS BLACK IN SUPPORT OF PETITIONER

On Appeal from the March 6, 2026, Order of the Superior Court of Pennsylvania, 1452 EDA 2024, and the April 25, 2024 Order of the Philadelphia County Court of Common Pleas, CP-51-CR-0441911-1993

Nilam A. Sanghvi
(Bar No. 209989)
Elizabeth A. DeLosa
(Bar No. 309521)
Ryan Grosso
(Bar No. 323359)
THE PENNSYLVANIA INNOCENCE PROJECT
1515 Market Street, Ste. 300
Philadelphia, PA 19102

Jennifer Merrigan
(Bar No. 318243)
Elie Kirshner
(Bar No. 330863)
Joshua Freitag
(Bar No. 340604)
PHILLIPS BLACK
1901 S. 9th Street, Ste. 608
Philadelphia, PA 19148

Attorneys for Amici Curiae

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STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

The Pennsylvania Innocence Project

The Pennsylvania Innocence Project (the "Project") is a nonprofit legal clinic and resource center housed at Temple University's Beasley School of Law and the Thomas R. Kline Law School of Duquesne University. Its board of directors includes, among others, practicing lawyers, law professors, former prosecutors, and wrongly convicted individuals who have been exonerated. Working with *pro bono* counsel, the Project provides investigative and legal services to indigent incarcerated people throughout Pennsylvania who have claims of actual innocence that are supported by the results of DNA testing or other powerful exculpatory evidence or have claims that, after a preliminary investigation, evince a substantial potential for discovery of such evidence. Additionally, the Project works to remedy the underlying causes of wrongful convictions to ensure that no one will be convicted and imprisoned for a crime they did not commit. The Project seeks to prevent punishment of innocent people and to prevent wrongdoers from escaping justice because an innocent person was convicted instead.

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[1] Pursuant to Rule of Appellate Procedure 531(b)(2), *amici* certify that no other person or entity was paid in whole or in part to prepare this brief or authored this brief in whole or in part.

Phillips Black

Phillips Black is a non-profit, public interest law practice whose practitioners represent incarcerated individuals sentenced to the severest penalties under the law across the United States, including in the Commonwealth of Pennsylvania. Phillips Black practitioners are nationally recognized as experts in state post-conviction and federal habeas corpus procedure and are regularly invited to train and consult with counsel. Phillips Black's Philadelphia office provides *pro bono* representation to petitioners in Post Convcition Relief Act ("PCRA") and habeas corpus proceedings, and conducts research aimed at making the legal system more just. Through this work, Phillips Black strives to ensure that post-conviction review in Pennsylvania and elsewhere is conducted pursuant to the highest standards, which is critical in light of the severe resource constraints on court-appointed counsel and the substantial restrictions on federal habeas corpus review.

Amici, by virtue of their advocacy and research, have unique insight into the systemic flaws and steep procedural hurdles for Pennsylvanians serving the harshest sentences under law, significant issues in the present case.

INTRODUCTION

Due to systemic flaws that are prevalent in Pennsylvania's criminal legal system and jurors' erroneous use of second-degree murder as a mitigated verdict, many innocent people are currently serving sentences of life without the possibility of parole. Many more convictions tainted by significant constitutional violations remain intact. As a result of the strict procedural hurdles of the PCRA and federal habeas review, some of these individuals may never obtain relief from their convictions. Retroactive eligibility for re-sentencing and the corresponding possibility of parole would comport with proportionality and historical practice in the Commonwealth and would serve as a critical safety valve for the many individuals who were wrongly convicted of second-degree murder.

I. THE HIGH NUMBER OF EXONERATIONS IN SECOND-DEGREE CASES ACROSS PENNSYLVANIA AND DATA HIGHLIGHTING THE PRESENCE OF CONTRIBUTING FACTORS OF WRONGFUL CONVICTIONS SHOWS THAT THE CRIMINAL LEGAL SYSTEM IS SYSTEMICALLY FLAWED AND HIGHLIGHTS THE NEED FOR RETROACTIVITY

Of the more than 1,100 people in the Commonwealth convicted of second-degree murder, approximately 125 are in various stages of the Pennsylvania Innocence Project's review process. A review of the Pennsylvania exonerations tracked in the National Registry of Exonerations reveals that more than 54

Pennsylvania exonerees were convicted of second-degree murder.[2] There have been 113 exonerations in Pennsylvania involving homicide convictions since 1989, so second-degree murder convictions represent at least 48 percent of them. While not all of the more than 100 people in the Project's review process will necessarily be exonerated, the 48 percent of exonerees who had been convicted of second-degree murder strongly suggests that a significant number of those currently serving life without parole sentences for second-degree murder in the Commonwealth are innocent.

Additionally, compelling evidence suggests that many of those 1,100 people are not only innocent but have likely suffered intolerable constitutional violations, highlighting both systemic flaws of the criminal legal system and, more importantly, why safety valves such as sentencing relief are imperative in such a system. As Figure 1 illustrates, Pennsylvania's rates exceed the national rates for most of the leading factors contributing to wrongful convictions and match them for the rest:

[2] It is impossible to determine this number with absolute certainty given the lack of available data for some of the Pennsylvania exonerations.

Figure 1: Contributing Factors of Wrongful Convictions Nationally Compared to Pennsylvania[3]

Contributing Factor	National	Pennsylvania
Mistaken Witness ID	27%	34%
False Confession	13%	13%
Perjury or False Accusation	64%	73.60%
False or Misleading Forensic Evidence	29%	29%
Official Misconduct	61%	73.6%
Inadequate Legal Defense	28%	43%

The data above is indicative of the pervasively flawed criminal legal system in Pennsylvania. These factors contribute to the incarceration of the innocent and reflect the prevalence of fundamental constitutional violations. Due to the restrictions and structural failures outlined below, many petitioners are left without any recourse and will never obtain relief from their convictions. Full retroactivity is critical to ensuring that individuals wrongfully convicted of second-degree murder have a meaningful opportunity for release that does not depend on the illusory promise of clemency. For those whose continued imprisonment may represent a

[3] Data for this figure was retrieved from the National Registry of Exonerations, which "collects, analyzes and disseminates information about all known exonerations of innocent criminal defendants in the United States." Nat'l Registry of Exonerations, "What We Do," *available at* https://exonerationregistry.org/about (last accessed Nov. 8, 2026).

profound miscarriage of justice, retroactivity offers a final, meaningful opportunity for resentencing and a return home.

II. DUE TO A CONFLUENCE OF FACTORS, PENNSYLVANIA HAS AN OUTSIZED POPULATION OF WRONGFULLY CONVICTED AND UNCONSTITUTIONALLY TRIED INDIVIDUALS SERVING MANDATORY LIFE WITHOUT PAROLE SENTENCES FOR SECOND-DEGREE MURDER

Over five thousand people are currently serving life sentences in Pennsylvania, among the highest of any state. THE SENT'G PROJECT, *Pennsylvania Supreme Court Ends Mandatory Life Without Parole for Those Who Did Not Intentionally Kill* (Mar. 26, 2026), https://www.sentencingproject.org/press-releases/pennsylvania-supreme-court-ends-mandatory-life-without-parole-for-those-who-did-not-intentionally-kill/ (last accessed Nov. 8, 2026). More than one thousand of those people are serving mandatory life without parole sentences for second-degree murder. *Id.* The circumstances surrounding these convictions give rise to an exceptionally substantial risk of constitutional violations, rendering their validity deeply suspect. These concerns stem from systemic deficiencies in indigent defense, jurors' treatment of second-degree convictions as compromise verdicts, and the inherently disproportionate nature of a mandatory sentencing scheme in the context of Pennsylvania's sentencing statute. Such defects are exacerbated by a precipitous decline in commutation which was once commonplace and served as an essential safety valve in second-degree cases.

A. Frequently no other mechanism exists to correct unjust second-degree murder convictions, due to profound delay in post-conviction litigation, strict limitations in post-conviction remedies, and structural problems endemic at the time they became final

The cruelty of existing life without parole sentences for second-degree murder is compounded by structural failures, delays, and restrictions associated with litigating claims under Pennsylvania's PCRA and the federal Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). "State court post-conviction delays have been the object of much dismay. . . ." Donald J. Harris, Kim Nieves & Thomas M. Place, *Dispatch & Delay: Post Conviction Relief Act Litigation in Non-Capital Cases*, 41 DUQ. L. REV. 467, 467 (2003). "For the innocent or illegally sentenced defendant, delays exacerbate the miscarriage of justice." *Id.* Yet, as this Court has noted, "few, if any, initial PCRA petitions proceed to final judgment (including appeal) within [a] year of sentence. . . ." Thomas M. Place, *Commonwealth v. Holmes and the Rule of Deferral: Short Sentences, Long Sentences and the Illusory Nature of the Good Cause Exception*, 25 WIDENER L.J. 49, 52 n.20 (2016) (quoting *Commonwealth v. Holmes*, 79 A.3d 562, 579 (Pa. 2013)). In fact, "[a] study published in 2003 noted that [across the Commonwealth] it was 'not unusual to find PCRA cases . . . pending for two, three or even four years.'" *Id.* (quoting *Harris, Nieves & Place*, *supra*, at 492).

In addition to delays, strict legal and procedural hurdles also bar many from bringing their post-conviction claims to court in the first place, including the

PCRA's presumption against successive petition except in extremely limited circumstances. *See Harris, Nieves & Place*, *supra*, at 469–74 (citations omitted) (discussing the many legal and procedural hurdles under the PCRA); *see also* 42 Pa. C.S. § 9545(b) (setting forth presumption against successive petitions).

Federal habeas review offers little more opportunity for meaningful review. Under AEDPA, a petitioner generally must file within one year after the conviction becomes final, 28 U.S.C. § 2244(d)(1), and that clock does not stop while an untimely PCRA petition is pending because a petition the state court rejects as untimely is not "properly filed," *Pace v. DiGuglielmo*, 544 U.S. 408, 417 (2005); *see* 28 U.S.C. § 2244(d)(2). A petitioner must also exhaust every claim in state court, 28 U.S.C. § 2254(b)(1)(A), and any claim the state courts deemed procedurally defaulted is barred unless the petitioner can show cause and prejudice or a fundamental miscarriage of justice. *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). Even claims that clear these thresholds face extraordinary deference: relief is unavailable unless the state court's decision was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or rested on "an unreasonable determination of the facts." 28 U.S.C. § 2254(d)(1)–(2). As the Supreme Court has acknowledged, "[i]f this standard is difficult to meet, that is because it was meant to be." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

Federal review is generally confined to the state-court record, *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011), and a federal court may not consider new evidence to remedy the failures of state post-conviction counsel, *Shinn v. Ramirez*, 596 U.S. 366, 382 (2022) (construing 28 U.S.C. § 2254(e)(2)). Second or successive petitions are permitted only on narrow grounds and with prior authorization from the court of appeals. 28 U.S.C. § 2244(b)(2)–(3). And while a credible showing of actual innocence can open the door to otherwise barred claims, the United States Supreme Court has cautioned that "tenable actual-innocence gateway pleas are rare." *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013). Taken together, these restrictions mean that federal habeas, like the PCRA, offers no reliable path to relief for many people serving life without parole for second-degree murder.

Delays and rigid restrictions of review are compounded by a fundamentally flawed indigent defense services system, which has produced a pervasive pattern of deficient representation. As explained further below, the Court has repeatedly recognized significant deficits in representation in the most complex and serious cases. The combination of defective counsel and rigid procedural bars leaves victims of unreliable second-degree verdicts who were appointed woefully underfunded and frequently ineffective counsel without cognizable claims under the PCRA or in federal habeas. Retroactive application of the Court's decision in *Lee* is the only

realistic avenue for wrongfully convicted individuals who are currently serving unconstitutionally cruel mandatory life sentences for second-degree murder.

B. A pattern of deficient representation: Jerome Coffey

Pennsylvania's fundamentally flawed indigent defense services system has created a crisis in representation, further promulgating delay, procedural barriers, and wrongful incarceration. The systemic breakdown faced by many who are currently serving life without parole sentences for second-degree murder is epitomized by the case before the Court.

There has long been a dearth of funding for public defense in the Commonwealth. Until 2024, Pennsylvania remained one of only two states nationwide that provided no funding for public defense, leaving it to individual counties to fulfill the constitutional demand. To cope with this deficit, judicial districts throughout the Commonwealth have adopted some of the lowest fee caps for court-appointed defense counsel in the country. In Philadelphia in the 1990s, appointed capital trial counsel would have been paid $2,000 for proceeding to trial and $400 for every court day after the morning of day one that lasted more than three hours. James M. Anderson & Paul Heaton, *How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes*, 122 YALE L.J. 154, 162–63 (2012). Adjusted for cost of living, this is less than capital counsel would have earned in Mississippi, Arkansas, Tennessee, Montana, or North Carolina

and was assailed as "outrageous even by Southern standards" by the former president of the Southern Center for Human Rights. *Id.* at 163–64 n.28. This fee structure constructively guaranteed ineffective assistance of counsel in capital cases.

Philadelphia has always disproportionately relied on court-appointed defense counsel in homicide cases. Before April 1993, all indigent people charged with a homicide in Philadelphia were appointed a lawyer from the private bar who was subject to a fee cap. *Id.* at 160–61. In addition to facially undercompensating defense lawyers, fee caps create perverse incentives. Most straightforwardly, paying lawyers too little for cases incentivizes them to take more cases than they can responsibly handle, leading to overwhelmed lawyers missing filing deadlines, defaulting claims, foregoing investigations, and abandoning clients. These irresponsible and, in *amici*'s experience, disturbingly frequent attorney errors both severely prejudice clients' rights and create massive inefficiencies. For example—as occurred *twice* in Jerome Coffey's case[4]—private PCRA counsel is regularly appointed solely to litigate the reinstatement of direct appeal rights because appointed direct appeal counsel failed to file a brief. *See, e.g.*, *Commonwealth v. Brown*, No. 1542 EDA 2020, 2021 WL 2472960, at *2 (Pa. Super. Ct. June 17, 2021); *Commonwealth v. Jones*, 960 A.2d 481, 486–87 (Pa. Super. Ct. Oct. 31, 2008).

[4] *See Commonwealth v. Coffey*, No. 1749 EDA 2011, 2012 WL 8455333, Br. and Reproduced Record for Appellant, at *5 (Dec. 5, 2012).

Chronically deficient defense lawyering in the most serious cases has drawn harsh criticism from this Court. Assailing the "dismal advocacy" of one defense lawyer, Justice McCaffery acknowledged "long-standing issues with capital representation in Pennsylvania and the great harm ineffective lawyering poses to capital defendants." *Commonwealth v. Anderson*, 323 A.3d 744, 762 (Pa. 2024) (McCaffery, J., concurring). Former Chief Justice Saylor also called out the "pattern of deficient representation that we have seen in capital litigation in Pennsylvania." *Commonwealth v. Cousar*, 154 A.3d 287, 314 (Pa. 2017) (Saylor, C.J., concurring and dissenting); *see also Commonwealth v. King*, 57 A.3d 607, 636 (Pa. 2012) (Saylor, C.J., concurring) (doubting the "accuracy" of the presumption of effective capital defense representation in the Commonwealth); *Commonwealth v. Johnson*, 985 A.2d 915, 928 (Pa. 2009) (Saylor, C.J., concurring) (identifying pattern of counsel failing "to provide the professional services necessary to secure appellate review on the merits of a capital defendant's or petitioner's claims").

This pattern of deficient defense lawyering is not limited to capital cases; it is the direct result of financially incentivizing deficient lawyering in homicide cases. In individual cases, this pattern reveals the presumption of attorney competence to be a hollow fiction. *See, e.g.*, *Commonwealth v. Bolden,* 534 A.2d 456, 459 (Pa. 1987) ("[T]here was no strategy which dictated this action, but rather, this was an

oversight due solely to inadvertence"). System-wide, this pattern impugns the Commonwealth's ability to fairly administer the criminal laws. *See id*.

Pennsylvania's layered system of reliance on court-appointed defense counsel operating under low fee caps at the trial, direct appeal, and post-conviction stages has created a systematically unexamined crisis of representation in the Commonwealth. Mr. Coffey's case exemplifies this crisis. It is a case study in the systemic failures that are endemic in our public defense system, particularly for those facing life sentences for second-degree murder. Because of a series of ineffective lawyers, Mr. Coffey had to wait three decades before his ineffective assistance of counsel claims were finally adjudicated. *Commonwealth v. Coffey*, No. 1452 EDA 2024, 2025 WL 3725363 (Pa. Super. Ct. Dec. 24, 2025). Issues related to the delay and deficient record—both caused by his own prior ineffective lawyers—were resolved to the detriment of Mr. Coffey's claims. His procedural history is not anomalous in the Commonwealth. It is the product of a dysfunctional system that has shielded many other existing second-degree murder convictions and life sentences from proper scrutiny. These injustices will continue in perpetuity without retroactive sentencing relief or an opportunity for parole.

C. Compromise and delay: Eddie Ramirez

Eddie Ramirez serves as an example of the cruelty associated with both having a jury impose a "compromise" verdict for second-degree murder and contending

with the time delays and restrictions associated with collateral review. After being sentenced to automatic life without parole for second-degree murder in March of 1998, Mr. Ramirez diligently pursued appellate and post-conviction relief. However, he remained incarcerated until he was finally exonerated in the late fall of 2023. Including his time in jail pre-conviction, Mr. Ramirez spent 27 years wrongly incarcerated without any possibility of parole. The round of post-conviction proceedings that finally led to his exoneration lasted a full 8 years. An overview of those proceedings highlights the difficulty of obtaining post-conviction relief for those who have been wrongfully convicted of second-degree murder.

In the early 2000s, post-conviction DNA testing of new evidence—nail clippings taken from the female victim—excluded Mr. Ramirez as the source of male DNA found in the clippings. However, even though the Medical Examiner testified at trial that the victim had struggled with her attacker, the PCRA court found that these results were not exculpatory, denying post-conviction relief.

Mr. Ramirez then sought post-conviction relief in federal court, where attorneys from the Federal Community Defender Office were appointed to represent him. During their investigation, several teenagers and young adults who had once implicated Mr. Ramirez described the police misconduct that led to their giving false statements. Each of these individuals consistently cited police pressure and other improper police tactics as the reason they made statements against Mr. Ramirez. In

2015, Mr. Ramirez filed another state post-conviction petition based on these revelations.

In 2016, after conducting a thorough review of Ramirez's case, the Pennsylvania Innocence Project joined his legal team and sought additional post-conviction DNA testing. Although the Commonwealth initially opposed that testing, it later reversed its position, and the testing went forward. DNA testing both excluded Mr. Ramirez from DNA on multiple items recovered at the crime scene and revealed the DNA of another man on critical evidence. The District Attorney's Office then allowed the Project to review its files in this case. Those files contained multiple items of suppressed favorable evidence that would have bolstered every aspect of Mr. Ramirez's trial defense—that the perpetrator would have been covered in blood, that only cash, not coins, was stolen, and that the witnesses against him were unreliable—and contained information about other suspects that would have allowed him to mount an alternate perpetrator defense.

Mr. Ramirez's conviction was finally vacated on November 2, 2023, and the Court of Common Pleas granted the Commonwealth's motion to dismiss on November 30th, issuing orders calling for Mr. Ramirez's immediate release. In sum, despite such weak trial evidence and strong and voluminous exculpatory evidence uncovered in the post-conviction process, it still took Mr. Ramirez and a large team of legal counsel and experts 8 long years of hard-fought legal advocacy to obtain

PCRA relief. During a significant portion of that time, Mr. Ramirez could have been home on parole living with his family and being a productive member of society while fighting to clear his name. Instead, he spent that time in prison. Mr. Ramirez's experience and the experiences of other innocent people convicted of felony murder stand in stark contrast to the experience of those whose sentences allow them to seek release on parole while their very lengthy court proceedings continue to unfold with no certainty of the outcome.

D. Jurors have unwittingly misused second-degree murder to soften verdicts where the evidence is weak without knowing it carried a life without parole sentence

In cases built on thin or weak evidence, where first-degree murder is the highest degree of murder charged, jurors may erroneously treat second-degree murder as a presumed compromise or mitigated verdict. This occurs because jurors often have difficulty applying the court's instructions on reasonable doubt. Max Rogers, *Laypeople as Learners: Applying Educational Principles to Improve Juror Comprehension of Instructions*, 115 NW. U. L. REV. 1185, 1194 (2021) (describing the application of the burden of proof in criminal cases as "[o]ne particularly dangerous opportunity for juror error"). Jurors' questions and prolonged deliberations reflect this difficulty and suggest that their central concern is whether the evidence establishes guilt beyond a reasonable doubt. Additionally, this misuse occurs because jurors are deliberately kept unaware of the punishment their verdict

carries. *See* Pa. SSJI (Crim.) § 2.07 (2024) (suggested instruction for non-capital cases: "Do not concern yourself with what the punishment might be if you should find the defendant guilty."). Therefore, jurors did not realize that their compromise still carried a mandatory sentence of life without parole.

Amici have repeatedly observed jurors in homicide cases struggle to apply the court's instructions on reasonable doubt, particularly in cases involving factually innocent defendants and razor-thin evidence. Under these circumstances, jurors may attempt in good faith to reach a compromise verdict that they perceive as a lesser outcome, thereby building consensus among jurors who disagree or remain undecided about the defendant's guilt. This phenomenon generally arises in cases featuring prolonged deliberations, juror questions concerning degrees of culpability or even the definition of reasonable doubt, and a resulting verdict that is nominally less severe than the most serious charge, e.g., a conviction for second-degree rather than first-degree murder.

For example, in *Commonwealth v. Willie Veasy*, the victim of an armed robbery was fatally shot, and a second victim, apparently an innocent bystander, was also shot nearby. Relying on Willie Veasy's purported confession and a weak identification from a witness who admittedly was legally blind, the Commonwealth charged Mr. Veasy with first-degree murder and sought the death penalty. At Mr. Veasy's trial, the Commonwealth implored the jury to ignore alibi evidence

demonstrating that, at the time of the crime, Mr. Veasy was working as a dishwasher 8 miles away and to credit only his purported confession because "[n]o one confesses to a murder that they did not commit, no one." *Commonwealth v. Veasy*, CP-51-CR-641521-1992, N.T. 2/11/1993, 108. The *Veasy* jury ultimately rejected the alibi evidence, but only after deliberating for more than four days and asking numerous questions, including questions about the eyewitness testimony (specifically regarding whether Mr. Veasy was even present) and the meaning of reasonable doubt. Notably, the questions did not concern Mr. Veasy's actual role in the crime or his intent, suggesting that the reasonable-doubt standard was the primary point of contention during deliberations. Following those lengthy deliberations, the jury convicted Mr. Veasy of second-degree murder. On October 15, 2019, Mr. Veasy was exonerated after spending 27 years in prison.

Commonwealth v. Eddie Ramirez, discussed above, presents another example of this harsh phenomenon. That case arose from a robbery at an all-night laundromat during which the victim was beaten to death with a metal pipe. The Commonwealth prosecuted Eddie Ramirez for first-degree murder, robbery, and conspiracy and, like *Veasy*, sought the death penalty. Yet the case against Mr. Ramirez rested on incentivized witnesses, including teenagers and an alleged co-conspirator who signed his statement only after he pleaded down his charges dramatically. Additionally, the Commonwealth argued at Mr. Ramirez's trial that loose change

recovered from his person after his arrest was indicative of guilt. However, trial testimony established that the laundromat did not keep large quantities of loose change and that none was missing. The Commonwealth nonetheless urged the jury to discredit Mr. Ramirez's alibi that he was elsewhere at the time of the crime and to convict him by "us[ing] their common sense" that laundromats have coins. *Commonwealth v. Ramirez*, CP-51-CR-0903912-1996, N.T. 12/29/1997, 120.

The jury deliberated for two days and, during its deliberations, asked to rehear the testimony of an incentivized witness who claimed to have overheard Mr. Ramirez confess at a party. It also asked to be reinstructed on accomplice liability *and* third-degree murder. These questions, like those in *Veasy*, indicate that the jury held reservations about Mr. Ramirez's overall participation and the strength of the evidence. Nevertheless, the jury found Mr. Ramirez guilty of second-degree murder. On November 30, 2023, Mr. Ramirez was exonerated after spending 27 years in prison.

These case studies strongly suggest that the juries used second-degree murder to reflect their doubts about guilt and to soften their verdicts. In such cases, the punishment imposed directly conflicts with the jury's underlying intent, rendering the mandatory sentence of life without parole historically associated with second-degree murder particularly harsh and, in many cases, unjustifiably cruel. Consequently, what the jury may have intended as an act of leniency, or even as a

measured compromise, can instead result in a punishment far more severe than it anticipated. Such outcomes ultimately raise serious concerns about the fairness, proportionality, and legitimacy of these sentences.

E. Existing life sentences for second-degree murder that are not the product of wrongful convictions are still disproportionate compared to the punishments available for other crimes

In Pennsylvania, most homicide offenses carry a sentence of a term of years with a path to parole. The over one thousand existing mandatory life sentences for second-degree murder are cruel, disproportionate, and do not meet the goals of deterrence and reformation when considered within the statutory sentencing scheme for crimes of equal or arguably worse culpability.

Attempted murder, solicitation to commit murder, and conspiracy to commit first-degree murder all require a specific intent to kill[5], yet all carry far lighter sentences than second-degree murder. *See* 18 Pa. C.S. § 1102(c) ("a person who has been convicted of attempt, solicitation or conspiracy to commit murder, murder of an unborn child or murder of a law enforcement officer where serious bodily injury

[5] *Commonwealth v. Geathers*, 847 A.3d 730, 734 (Pa. Super. Ct. 2004) ("For a defendant to be found guilty of attempted murder, the Commonwealth must establish specific intent to kill."); *Commonwealth v. Stokes*, 38 A.3d 846, 855 (Pa. Super. Ct. 2011) ("To establish conspiracy to commit murder, the Commonwealth must show that the defendant, with the specific intent to kill, agreed with one or more persons to commit murder, or agreed to attempt to commit murder, or solicited someone to commit such crime or agreed to aid in the commission, attempt, or solicitation of such crime, and committed an overt act towards the commission of the murder.")

results may be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.").

Other offenses that cause the death of another and that are equally or arguably more aggravated than second-degree murder likewise cannot result in life imprisonment. Third-degree murder and voluntary manslaughter are killings that contain an element of intentionality. Third-degree murder is a killing that results from an intentional malicious act. *Commonwealth v. Fisher*, 80 A.3d 1186, 1195 (Pa. 2013). For this offense, the sentencing guidelines recommend a minimum sentence of 72 months, minus 12 months for the mitigated range (204 PA. CODE § 303.16(a)), and there is a statutory maximum sentence of 20 to 40 years of imprisonment (18 Pa. C.S. § 1102(d)). Voluntary manslaughter is a "nonmalicious felonious killing with a specific intent either to kill or to seriously injure." *Commonwealth v. Moore*, 157 A.2d 65, 68 n.2 (Pa. 1959). Although voluntary manslaughter may be more morally reprehensible than second-degree murder, its maximum penalty is "not more than 20 years," 18 Pa. C.S. § 1103(1), and can result in a sentence as low as probation. *Commonwealth v. Vanderhorst*, 501 A.2d 262, 265 (Pa. 1985) (holding lower court did not abuse discretion by imposing probation for voluntary manslaughter).

Involuntary manslaughter, like second-degree murder, does not require an intent to kill. It involves committing an unlawful act in a reckless or negligent

manner that results in the death of another. 18 Pa. C.S. § 2504. Involuntary manslaughter can be graded a misdemeanor of the first degree, carrying a maximum 5 years of imprisonment, 18 Pa. C.S. § 1104(1), or a felony of the second degree resulting in a maximum sentence of 10 years of imprisonment. 18 Pa. C.S. § 1103(2). Here, the sentence can likewise be as short as probation. Finally, drug delivery resulting in death ("DDRD") occurs when a person administers, dispenses, gives, prescribes, or sells a controlled substance to another person and that person dies as a result of the substance. 18 Pa. C.S. § 2506. Although a person convicted of DDRD must be sentenced to imprisonment, there is no statutory minimum term, and the maximum term may not exceed 40 years. These comparisons underscore the disproportionality and cruelty of existing mandatory life sentences for second-degree murder.

This disproportionality and the structural failures outlined above are synergistic, compounding the cruelty and unfairness of existing second-degree murder sentences. Retroactivity is in the interests of justice to ensure that these existing sentences are proportional and just, comporting with this Court's decision in *Lee* and our constitution. Furthermore, retroactivity would effectuate the intent and understanding of many courts and prosecutors at the time many second-degree mandatory sentences were imposed.

F. Historically, there was a safety valve for wrongful, flawed, and disproportionate mandatory sentences for persons convicted of second-degree murder through frequent grants of commutation

The Parole Act of 1941 excluded those sentenced to life imprisonment from eligibility for parole, creating on paper a regime where "life means life." Mark Rowan & Brian S. Kane, *Life Means Life, Maybe? An Analysis of Pennsylvania's Policy Toward Lifers*, 30 DUQ. L. REV. 661, 661 (1992). The reality of this era was vastly different though. Through widespread use of executive clemency in the mid- to late-20th century, many persons sentenced to life in prison could expect to come home, having their sentences commuted to parole-eligible sentences. Clemency acted as a safety valve, mitigating the disproportionate nature of a mandatory life sentence for second-degree murder by providing an opportunity to return home when no penological justification existed for further imprisonment.

There was a common understanding amongst prosecutors, defense attorneys, judges, and legislators that a life sentence for second-degree murder in Pennsylvania courts would not rob an individual of an opportunity to demonstrate rehabilitation typically offered by parole. *See, e.g.*, *Consideration of Probation or Parole for Life Sentenced Inmates: Hearing on H.B. 1382 Before the H. Jud. Comm.*, 1992 Leg. 59–60 (Pa. 1992) (statement of Angus Love, Executive Director, Pennsylvania Institutional Law Project) (attributing Norris Gelman, former Assistant District Attorney, with saying "anyone who received a second-degree murder conviction

would be commuted in 10 to 12 years"); *Commonwealth v. Simpson*, 510 A.2d 760, 763 (Pa. Super. Ct. 1986) (claiming that a 30-year minimum sentence would be twice as long as average life sentence); *Commonwealth v. Divincenzo*, 523 A.2d 758, 763 (Pa. Super. Ct. 1987) (Tamilia, J., concurring) (considering a minimum sentence of 81 years to be six times the average life sentence); *Commonwealth v. Pfender*, 540 A.2d 543, 548 (Pa. Super. Ct. 1988) (sentencing judge made sentences consecutive because "a life sentence in this state is not a life sentence" and defendant would be eligible for release in 15 to 20 years). To quote one legislator in 1961, "[i]n the year 1954, life imprisonment in Pennsylvania meant that a prisoner had to serve 19.6 years in the penitentiary . . . in 1958, it meant that he had to serve 17.2. . . . .This is what life imprisonment means." Christopher Seeds, *Governors and Prisoners: The Death of Clemency and the Making of Life Sentences without Release in Pennsylvania*, Vol. 46 SOCIAL JUSTICE No. 4, at 88 (2019) (quoting Leg. Journal, Gen. Assemb. 38-70, 145th Sess., at 2694 (Pa. 1961)). The data supports this understanding, with large numbers of commutations being granted relatively early into lifers' sentences.

From 1971 to 1978, the Board of Pardons heard 733 clemency petitions, recommending 267 of those to then-Governor Shapp, who commuted 251 life sentences. PA. BD. OF PARDONS, *Commutation of Life Sentences: 1971–Present* (Sept. 1, 2026), https://www.pa.gov/agencies/bop/about-the-board/about-

statistics/commutation-of-life-sentences (last accessed Nov. 8, 2026) . This number represented a substantial proportion of lifers, with 848 people serving life sentences in 1980. COMMONWEALTH OF PA. DEP'T OF CORR., *Stat. Rep. for the Years 1980–1985*, at 24 (1985), https://www.pa.gov/content/dam/copapwp-pagov/en/cor/documents/about-us/statistics/old-statistical-reports/1980-85annualreport.pdf (last accessed Nov. 8, 2026). The usual practice was for the governor to commute a life sentence to a sentence of six to twelve months out so that the prison could evaluate and prepare the incarcerated individaul for release. Seeds, *supra*, at 88. For the 203 commuted lifers who were released from 1971 to 1979, their average sentence was 17.2 years.[6] *Id.* at 20.

That reality changed, however, in the 1980s when political winds shifted and governors stopped accepting the recommendations of the Board of Pardons. The Board continued hearing a large number of petitions over the next two decades (624 in the fifteen years from 1979 to 1994), recommending 193 petitioners for clemency. PA. BD. OF PARDONS, *supra*. Only 34 commutations were granted in that 15-year window. *Id.* The nail in the coffin of executive clemency as a regular path to freedom was the 1997 constitutional amendment passed by referendum requiring a

[6] The number of 203 commuted lifers reflects those that were actually released; some of the aforementioned 251 lifers were commuted but died in prison before being paroled.

unanimous board of pardons vote to commute a life sentence. Seeds, *supra*, at 97–98. In the two-decade window from 1995 to 2014, only 6 commutations were granted. PA. BD. OF PARDONS, *supra*. Commutations have picked up in recent years but are nowhere near pre-1980s numbers, and the unanimity requirement remains prohibitively onerous and entrenched in the Constitution.

The constitutional infirmities inherent in mandatory life sentences without parole for second-degree murder were mitigated (although not erased) by the historical availability of commutation. That safety valve has been gone for many decades. This Court in *Lee* ultimately rejected the Commonwealth's argument that commutations provide an adequate remedy for the disproportionality of mandatory life imprisonment without parole. *Commonwealth v. Lee*, 357 A.3d 356, 377–78 (Pa. 2026); *see also id.* at 401 (Pa. 2026) (Dougherty, J., concurring) (noting that commutations are "rare"). The historical use of commutations merely highlights what this Court has already recognized: those sentenced to life in prison without parole for second-degree murder are not categorically incorrigible. The cruelty of existing sentences is no less simply because they were handed down before *Lee* was decided. The need for retroactive application is all the more apparent in light of the historical availability of relief through commutation.

III. RETROACTIVE APPLICATION OF THIS COURT'S *LEE* DECISION IS NECESSARY TO GIVE INDIVIDUALS SERVING UNJUST LIFE SENTENCES IN THIS FLAWED SYSTEM A PATHWAY TO RELIEF

As the Court recognized in *Lee*, the mandatory nature of life without parole poses too great a risk of disproportionate punishment for second-degree murder. *See Id.* at 393 (citing *Miller v. Alabama*, 567 U.S. 460, 479 (2012)). Over a thousand people currently suffer from such punishment across the Commonwealth. As discussed above, ineffective assistance of counsel, a systemic dearth of indigent defense funding, the likelihood of compromise verdicts, and the inherent cruelty and disproportionality of the mandatory sentencing scheme create an unbearable risk of unconstitutionality for existing second-degree murder sentences. The cruelty of such sentences is exacerbated by systemic problems with postconviction and appellate processes and an inadequate clemency system. The new rule established in *Lee* must be given retroactive effect to provide relief to the many people serving flawed and disproportionate sentences for second-degree murder.

Respectfully submitted,

/s/ *Nilam A. Sanghvi*

Nilam A. Sanghvi
Attorney No. 209989
Elizabeth A. DeLosa
Attorney No. 309521
Ryan Grosso
Attorney No. 323359
THE PENNSYLVANIA INNOCENCE PROJECT
1515 Market Street, Suite 300

Philadelphia, PA 19102
(215) 204-4255
nilam.sanghvi@painnocence.org
elizabeth.delosa@painnocence.org
ryan.grosso@painnocence.org

Jennifer Merrigan
Attorney No. 318243
Elie Kirshner
Attorney No. 330863
Joshua Freitag
Attorney No. 340604
PHILLIPS BLACK
1901 S. 9th Street, Ste. 608
Philadelphia, PA 19148
(971) 255-5610
j.merrigan@phillipsblack.com
e.kirshner@phillipsblack.com
j.freitag@phillipsblack.com

Counsel for Amici Curiae

Dated: Nov. 9, 2026

IN THE SUPREME COURT OF PENNSYLVANIA

No. 34 EAP 2026

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

JEROME COFFEY,

Petitioner

CERTIFICATE OF COMPLIANCE

I hereby certify that the preceding petition complies with the word count limits set forth in Pa. R. App. P. 531 and contains 5,937 words.

I hereby certify that the preceding petition complies with the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that requires filing confidential information and documents differently than non-confidential information and documents.

/s/ *Nilam A. Sanghvi*
Nilam A. Sanghvi, Esq.

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PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing *Brief of Amici Curiae The Pennsylvania Innocence Project and Phillips Black in Support of Petitioner* upon all counsel of record via PACFile, which service satisfies the requirements of Pa. R. App. P. 121.

/s/ *Nilam A. Sanghvi*
Nilam A. Sanghvi, Esq.

Dated: Nov. 9, 2026