IN THE SUPREME COURT
OF PENNSYLVANIA - WESTERN DISTRICT

NO. WAD - 2015

COMMONWEALTH OF PENNSYLVANIA,

RESPONDENT,

v.

CHARLES J. GOLDBLUM,

PETITIONER.

PETITION FOR ALLOWANCE OF APPEAL

PETITION FOR ALLOWANCE OF APPEAL FROM THE
SUPERIOR COURT ORDER OF JULY 31, 2015 AT
NO. 769 WDA 2014 AFFIRMING THE DENIAL OF POST CONVICTION
COLLATERAL RELIEF, DATED APRIL 14, 2014 BY JUDGE
DONNA JO McDANIEL OF THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA AT CP-02-CR-0001267-1976,
CP-02-CR-0003198-1976, CP-02-CR-0004826-1976 & CP-02-CR-0004830-1976

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I. REFERENCE TO OPINIONS BELOW.

i. Reference is made to the Opinion (Non-Precedential – Superior Court I.O.P. 65.37 of the Superior Court at No. 769 WDA 2014, dated July 31, 2015. A copy of that Opinion is attached hereto as Exhibit A.

ii. Reference is made to the Trial Court Opinion, dated August 19, 2014, at CP-02-CR-0001267-1976, CP-02-CR-0003198-1976, CP-02-CR-0004826-1976 & CP-02-CR-0004830-1976. A copy is attached hereto as Exhibit B.

II. TEXT OF THE ORDER IN QUESTION.

Order affirmed.
Judge Lazarus joins the memorandum.
Judge Strassburger concurs in the result.

Judgment Entered.

/s/ Joseph D. Steleyn

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/31/2015

III. QUESTION PRESENTED FOR REVIEW.

Question:

Whether the Superior Court erred in Affirming the PCRA court's conclusion that Petitioner's Claims of Newly Discovered Evidence were untimely?

Suggested Answer:

Indeed, the Superior Court erred in concluding that Petitioner's Claims of Government Interference and Newly Discovered Evidence were Untimely.

IV. CONCISE STATEMENT OF THE CASE.

On the night of February 9, 1976, George Wilhelm was murdered on the roof top of the Smithfield-Liberty Avenue parking garage in downtown Pittsburgh. Petitioner Charles ("Zeke") Goldblum (hereinafter "Goldblum"), was charged and ultimately convicted of Wilhelm's murder. However, it is evident—now more than ever—that the only one responsible for Wilhelm's death was the Goldblum's co-defendant, Clarence Miller.

Goldblum was first introduced to Wilhelm by Clarence Miller, on Sunday, February 8, 1976 at a meeting in a downtown McDonald's. The purpose of this meeting was to discuss a debt owed by Miller to Wilhelm, born of a fraud perpetrated against Wilhelm by Miller and two accomplices, Thaddeus Dedo and Fred Orlosky. This fraud

involved the extraction of money from Wilhelm in exchange for their promise to deliver Wilhelm a mineral deed, which never existed.

Goldblum, a recently barred attorney, understood his role to be a mediator between Miller and Wilhelm.[1] At the time of this meeting, Goldblum believed that Miller was going to disclose the fraud to Wilhelm and promise repayment of the defrauded monies. However, as the meeting progressed, Goldblum came to realize that Miller had abandoned that plan and continued to lie to Wilhelm.

Miller asked Goldblum to again attend another meeting with himself (Miller) and Wilhelm at the same McDonald's. Goldblum reluctantly agreed and they again met on Monday evening, February 9, 1976, to discuss the debt situation. Goldblum was under the impression that Miller intended to pay Wilhelm back the money he defrauded from him. However, this was not the case.

This second meeting ran longer than expected and Wilhelm wanted to move his car from the street. To continue their conversation, Goldblum and Miller accompanied Wilhelm as he drove his vehicle into the Smithfield-Liberty Avenue parking garage. With Miller in the front passenger seat and Goldblum in the rear driver's side seat, Wilhelm parked his car on the roof of the garage.

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[1] Goldblum agreed to attend this meeting at Miller's behest as repayment for their previous criminal episode; Miller had been hired by the Appellant to burn down the Appellant's failing restaurant in order to collect the insurance proceeds.

As recalled by Goldblum, when Wilhelm shut off his engine, Miller finally told Wilhelm that he could not immediately repay the debt. Inflamed by what he had just been told, Wilhelm struck Miller in the face. This incited Miller, who lost control and retaliated by stabbing Wilhelm from the passenger seat with a pair of grass shears found within Wilhelm's car. Goldblum recalls that Wilhelm was bleeding from the wounds inside the car and exited the driver's side door. It was at this point that Miller exited the front passenger seat, came around the vehicle and continued stabbing Wilhelm. Goldblum then exited the left rear passenger door and ran in the direction of the exit. As Goldblum turned around, he witnessed Miller lift Wilhelm over the garage wall, from which Wilhelm fell onto the skywalk below.

Goldblum then walked back to Miller and looked over the wall, where he saw Wilhelm lying on the top of a skywalk below. As Miller and Goldblum were discussing why Miller had stabbed Wilhelm, an elevator door opened and a man, later identified as Richard Kurutz, exited and saw the two of them together. Goldblum then walked down the exit ramp and Miller followed him. As they left the scene, Goldblum agreed to provide Miller with an alibi from fear that Miller would tell the police about the arson.

After they left the garage, Miller removed his bloody gloves and discarded them. They were later found by a bystander and retrieved by the police. Analysis by the Crime Lab showed that the hairs found within the bloodied gloves were similar to those of Miller, but not those of Goldblum. Goldblum was beholden to Miller, who had

committed the arson for Goldblum. In a combination of fear and sense of self-preservation he agreed to provide Miller with an alibi and drove him home.

The police came to the scene and found Wilhelm on top of the walkway connecting the parking garage to Gimbel's Department store, one floor below the top floor parking area. Police Officer Thomas Pobicki climbed down to Wilhelm who declared, "Clarence Miller did this to me."[2]

Photographs were taken of the vehicle and scene. Evidence was gathered and protected. The vehicle and scene were photographed by Crime Scene Detective Sal Crisanti. During an interview with Jim Ramsey in 2011, Police Sergeant Joe Modispatcher, who administered a polygraph to Miller, recalled that in the days before the Goldblum trial he saw interior photos of Wilhelm's vehicle, including those of blood spatter on the dashboard of the vehicle. These photos were never turned over to the defense and have since gone missing along with the entirety of the homicide division's investigative file (kept in triplicate). Without these photos Goldblum's defense could not call expert witnesses to testify as to who wielded the grass sheer inside the vehicle.

In a deposition of Miller taken on September 9th, 2004 by Goldblum's attorney Lee Markovitz, Miller stated that a "hand-shake" agreement was made between his attorney, Vincent Murovich, and Detective Ronald Freeman, who spearheaded the investigation, and Peter Dixon, the ADA who tried the case. According to Miller, in

[2] This dying declaration verified Miller's PCHA petition claiming he blacked out due to a state of extreme mental stress and instability and could not recall or testify truthfully as to what happened on that rooftop.

exchange for his total cooperation, he would be pled out as an accessory to homicide and given a sentence of 10-20 years. Both the police and prosecutor claim there was no official promise or deal made to Miller. In an April 24, 2008 deposition of Detective Freeman taken by Goldblum's attorney Stan Levenson, Freeman stated that if Miller asked for a deal he would have given him one.

Once the police and prosecutors secured Miller as a cooperative witness, willing to falsely accuse Goldblum, they needed a motive. In an April 2, 1976 interview of Miller, conducted by Detectives Freeman and Gorny, Miller mentioned the land fraud scheme perpetrated against Wilhelm and falsely accused Goldblum as the mastermind behind the scheme. This was the first mention of the land fraud made by Miller nearly 2 months into the investigation. Miller stated that in late 1973 or early 1974 he became a part of a conspiracy to defraud Wilhelm of money he gained from a worker's compensation settlement by selling falsified deeds to Federal land in North Carolina, using his "political connections." Miller claimed that after Wilhelm expressed interest in purchasing land, he informed Goldblum who supposedly headed the scheme.

Miller testified that his friend Ted Dedo posed as Ken Manella, an aide to US Senator Schweiker, in order to further the fraud and misrepresent that the North Carolina land could be purchased through back door political influence. Fred Orlowsky acted as a go between and traveled to North Carolina. According to Miller, Goldblum was the mastermind who called the shots, collected the money from Wilhelm, and distributed the money to the co-conspirators.

However, the police only found one witness other than Miller willing to testify that Goldblum was acquainted with or was seen with George Wilhelm in 1973 or 1974. This witness was William J. Hill, a friend of Wilhelm's. Hill testified that he never recalled seeing Goldblum and Wilhelm together, but recalled Wilhelm mentioning Goldblum's name in casual conversation. Despite Goldblum's defense attorney Rothman's objections that Hill's testimony was pure hearsay, it was ultimately admitted at trial.

To make matters worse, during Goldblum's trial, Thaddeus Dedo, one of the co-conspirators in the land fraud perpetrated against Wilhelm, made it known that he would have testified that Goldblum was not part of the conspiracy if given immunity by the prosecution or Court. However, Dedo was not granted immunity and, as such, refused to testify.

Goldblum denied any involvement in the land fraud and conspiracy and denied knowing Wilhelm in 1973 or 1974. The only "evidence" which ties Goldblum to this land fraud which the police used as motive for Goldblum to kill Wilhelm is Miller's false testimony. Two of Miller's co-conspirators, Dedo and Orlowsky, have cleared Goldblum of participating in the land fraud and conspiracy. Orlowsky claimed that he told the police Goldblum was not part of the conspiracy. A review of the FBI's initial investigative file into the matter showed no mention of Goldblum's name.

During a March 2, 1976 interview with Detective Ronald Freeman, Miller told police that Goldblum recruited Wilhelm to burn down his restaurant for the insurance,

despite the fact that Wilhelm had no criminal past or inclination. Although nobody in the District Attorney's office believed Wilhelm was involved in the arson, this story was nevertheless presented at trial. In fact, it was widely believed that it was actually Miller who set the fire, as later admitted by members of the District Attorney's office. The initial investigation into the November 30, 1975 fire yielded no suspicion of wrongdoing and the case was closed.

Miller claimed that he had nothing to do with the fire, and that Goldblum and Wilhelm were the perpetrators due to the supposed debt Goldblum owed Wilhelm for "masterminding" the land fraud. This was accepted by the police in spite of Miller's failure of an unrecorded polygraph on May 25, 1976, in which polygraph operator Det. Joseph Stottlemyer claimed Miller lied when asked if he was involved in the arson. The report documenting this polygraph interview was not put into Wilhelm's homicide file until January 27, 1978, well after Goldblum's trial.

On February 13, 1976, Clarence Miller was given the first of three polygraphs. The first polygraph was administered by Sgt. Joe Modispatcher who determined that Miller failed. He told Det. Freeman that Miller was the lone assailant. The polygraphs confirm and verify that Miller was guilty of Wilhelm's murder, that he lied and testified falsely that Wilhelm was involved in the arson, that he lied and testified falsely about his own involvement in the arson, and corroborates Miller's PCRA Petition, wherein he admits that his statements made against Goldblum were false.

Interestingly, two subsequent polygraphs were administered to Miller by Det. Joseph Stottlemyer on May 10, 1976 and May 25, 1976. Stottlemyer did not enter either polygraph into the Master Log, required by procedure, and there were no disclosures of the polygraphs to Goldblum's defense because no report was prepared at that time. After the May 10th 1976, polygraph Miller admitted to participating in the murder by holding Wilhelm down, which starkly contrasted with his trial testimony. Miller's admission was kept from the defense at Goldblum's trial and the prosecutor allowed Miller to testify that he had nothing to do with the murder. The jury was allowed to hear this patently false and damning testimony.

The polygraph information was not turned over to Goldblum's attorney and remained a secret until Miller's trial some fifteen months later. The prosecutor identified Wilhelm as the arsonist of Goldblum's restaurant to provide false motive. Several years later the District Attorney's office publically apologized to the Wilhelm family for falsely portraying Wilhelm as an arsonist. The false motive was planted in the jury's minds to help convict Goldblum. The police knew on May 25, 1976 that Miller was lying about his involvement in the arson, but the prosecutor nevertheless allowed him to falsely testify before the court and jury.

The prosecutor claimed during Goldblum's trial that Wilhelm assisted Goldblum in the arson, which was extremely damaging. Goldblum later admitted his involvement in the arson and named Miller as the person who set the fire, (which corroborates the impartial witness testimony of Edith Wilson and, once again, disputes the false, but

convenient assertions of the police, prosecution and Miller). Miller blamed Wilhelm because he was dead and could not defend himself. The prosecutors later admitted their misrepresentation to the Wilhelm family and apologized to them during a 1999 Board of Pardons hearing for characterizing Wilhelm as an arsonist when he was a good and decent person.[3]

At trial, when examined regarding photographs taken of the scene, Detective Crisanti testified that only one photo was taken of the vehicle interior. This photograph, though made available to Goldblum's defense, did not capture the blood spatter on the vehicle's dashboard. Despite many of the investigating officers recalling the blood spatter, including a detailed description by Detective Ronald Freeman during his trial testimony, only one photograph of the vehicle's interior has ever been made available. Additionally, reports by the Mobile Crime Unit, documented that blood spatters were scraped and preserved from the vehicle's dashboard. It was standard procedure to document such evidence with a photograph before scraping and bagging it. Either due to an incompetent job of the Mobile Crime Unit in failing to photograph the blood spatter or the failure of the prosecution to make all of the photographs available, Goldblum's defense was deprived of key evidence.

The blood soaked gloves were examined by the Allegheny County Crime Lab and a hair, consistent with Miller's was found inside the glove. It was not consistent with a

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[3] In his appeal to the Superior Court, GGoldblum sought remand for an evidentiary hearing to develop the record's disturbing indication that the prosecutor failed to correct false testimony on the part of Clarence Miller, one of the government's principal witness.

hair sample taken from Goldblum. The Crime Lab did not find any hair or other evidence that Goldblum wore the blood soaked gloves. The Crime Lab also identified the blood on the gloves as that of Wilhelm.

In an interview on March 2, 1976, Miller told the police he disposed of bloody clothing in a City Garbage Truck at the top of his hill. This was corroborated by a neighbor at trial, William Held, who testified he believed he saw blood on the clothing Miller disposed of. The fact that Miller's clothing was covered in blood and that he felt the need to dispose of it, further corroborates that Miller was the killer. The police reports verify that there was a lot of blood at the scene and therefore anyone close to the victim should have had blood on them and their clothing. The Pathologist noted in his report approximately how much blood was spilt. A separate report, along with photographs of the clothing Goldblum wore that night, showed that Goldblum had no blood on his clothing, indicating he was not involved in the murder.

On February 10, 1976, the police interviewed Miller at his home. The police noticed scratches on his face and arms consistent with a struggle. Miller initially blamed his cat for the scratches; however, Goldblum would confirm that there was a struggle between Miller and Wilhelm in the front seat of the vehicle prior to the initial stabbing and that Miller was struck in the face.

Goldblum's home and vehicle were searched yielding no evidence indicating his involvement in the homicide. This verifies Goldblum's contentions and further corroborates Miller's statements in his 1980 PCHA petition. Furthermore, there were no

scratches, lacerations or wounds on Goldblum, suggesting that he was not involved in any altercation.

After arraignment, Miller called his attorney, Vincent Murovich. According to Miller, Murovich was present when Ronald Freeman and Peter Dixon made an informal plea offer of a 10 to 20 year prison sentence if Miller provided information against Goldblum. This recollection clarifies why Murovich, an experienced litigator, allowed the police unfettered and unsupervised access to a client accused of such a serious crime.

By February 12th 1976, Murovich had surrendered Miller to the police for cooperation and was not present during questioning by the detectives or prosecutors, a strange occurrence for an experienced lawyer representing a client charged with serious crimes, unless there was, in fact, an understanding that Miller would be given consideration at sentencing. There was no discussion concerning Miller pleading temporary insanity. Miller took advantage of this opportunity to reduce his sentence and began to weave false stories that would give motive for Goldblum to injure or kill Wilhelm.

To recap, investigators and prosecutors used Miller to construct a theory that Goldblum's involvement in the land fraud and Wilhelm's involvement in the arson formed the motive for Goldblum to murder Wilhelm, all of which was untrue and wholly reliant on Miller's inconsistent, constantly evolving statements. Dedo and Orlowsky, both members of the land fraud conspiracy with Miller, have independently claimed that Goldblum had nothing to do with the crime and therefore had no motive to harm

Wilhelm. To make matters worse, Goldblum did not even know Wilhelm at the time of the fraud.

In Miller's PCHA petition, dated May 9, 1980, he stated the following: he became extremely ill at his home when the police questioned him; on the ride to police headquarters; he was taken to the hospital for treatment; he reported this illness to his attorneys Murovich and Harry Stump; Attorney Stump never told him that he could present a defense of not guilty by reason of temporary insanity; his mental state was not normal at the time of interrogation by the police; the statements that he gave to the police were not true and not of his making or his free will, but instead a product of the police interrogator's own design and personal conviction.

In his PCHA petition Miller stated:

> "That the statements that I gave to the police and signed that I saw Charles Zeke Goldblum stabb [sic] George Wilhelm are not true because at that point I blacked out and remember nothing. I wasn't even aware of my own existence let alone anything that happened about George Wilhelm...Petitioner states that the statements the police gave him to sign were a product of their minds and not Petitioner's and further that the statement was signed under the threat of personal physical injury by the police and put Petitioner in a mental state of extreme fear that he blacked out at least twice during the police's intimidating interrogation and had to be hospitalized forwith [sic] for mental psychological stress...I did not knowingly know that I had a right under the law to plea not guilty by reason of temporary insanity and further my trial attorney did not explain this defense to me so I did not know it was available to me had I knew this I would have plead not guilty by reason of temporary insanity."

Miller's arguments have been corroborated by police reports showing his transfer to Southside Hospital for treatment after passing out multiple times during police

interrogation. Miller was kept at the hospital for at least one day then returned to police for further interrogation.

Miller's actions and false statements were the product of police suggestion. This is verified and corroborated by the mental health professionals who examined Miller, the police reports and the witness testimony, evidence, and admissions by representatives of the District Attorney's office conflicting with Miller's testimony at Goldblum's trial. Miller reacted to the police the way he did because he suffered from confabulatory amnesia; a condition that was brought on by a brain injury suffered when he was struck by a trolley as a child. What's more, Miller was highly susceptible to manipulation, fearful of a lengthy prison sentence, and laboring under the assumption that a bargain was struck for a sentence of 10 to 20 years. Telling lies was a way of life for Miller due to his mental illness.

Since Goldblum's conviction, a number of experts have authored reports to the effect that Goldblum could not have been the assailant based on the blood spatter pattern:

a. Dr. Joshua Perper, the Pathologist in this case issued a report stating that after reviewing all of the available information in this case, in his medical opinion, the perpetrator was most likely the person to the right of the victim, Clarence Miller.
b. Dr. Cyril Wecht, the Coroner, has issued affidavits stating that after reviewing all of the available reports in this case, it is his medical opinion

that the person to the right of the victim stabbed the victim. That person was Clarence Miller.

c. Dr. Henry Lee, a forensic scientist and blood spatter expert issued an affidavit which states that after reviewing all of the available reports in this case, it is his professional opinion the person to the right of the victim stabbed the victim. That person was Clarence Miller.

d. Drs. Michael M. Baden and Barbara C. Wolf, both forensic pathologists, issued an affidavit which states that after reviewing all of the available reports in this case, it is their professional opinion the person to the right of the victim stabbed the victim. That person was Clarence Miller.

e. Dr. Herbert L. MacDonnell, a forensic scientist, primarily a blood spatter expert, issued an affidavit which states that after reviewing all of the available reports in this case, it is his professional opinion the person to the right of the victim stabbed the victim. That person was Clarence Miller.

f. Dr. Toby Wolson, of Miami Dade County, Crime Lab, who was brought into the case by Det. Freeman, claimed that after reviewing all of the available reports in this investigation that he could not render an opinion because there is no photographic evidence to review. Dr. Wolson claimed that no blood spatter expert can render an opinion without photographic evidence because they did not see the blood spatter personally and they would need the photos to examine the blood spatter. Wolson, however, did state that if the blood on the dashboard appeared as Det. Freeman described

it, then he would have to agree with the other doctors that the most likely person to stab Wilhelm was the person to the right. That person was Clarence Miller.

Detective Freeman testified both in a deposition and at trial that he saw the blood spatter on the dashboard and gave a detailed description of same at trial. Freeman, a trained homicide detective, recalled that the spatter on the dashboard had traveled from left to right and the tail of blood was facing the passenger side door. This is of great importance as Freeman, being an experienced homicide investigator, should have understood that if the blood spatter tail is facing right then the blood had to come from the left. Freeman had training and practical application of this scientific fact. He knew that if the blood spatter came from left to right then the person to the right of the victim was the person who stabbed the victim. The person to the right of the victim in the vehicle was Clarence Miller, as stipulated at trial. Freeman also knew that for a blood spatter expert to testify on what direction the blood came from and who the likely person was to have stabbed the victim, he (the expert) likely would want photographs because he would not have been at the crime scene and would not have viewed the blood spatter personally.

A few days prior to trial, Sgt. Modispatcher recalled seeing blood spatter photos in the case file and they were never turned over to the defense (as required) prior to trial, as related to Jim Ramsey during a 2011 interview. Freeman admitted in a deposition with Attorney Chris Eyster that he recalled seeing the photos but could not remember where or

when. In an October 19, 2001, interview with Investigator William Myers, Freeman admitted to testifying that he saw blood inside the Wilhelm vehicle and he may have seen photographs but he could not remember where or when. Freeman also stated that he believed he shared the photos with Pete Dixon but that Dixon did not use them at trial, which corroborates Modispatcher's statements that photos of the blood spatter existed.

The Goldblum case has a long and tortured history which is described below by reference to what has been become known as the Coffey No Merit Letter which came about as a result of the filing on July 1, 2013, of Goldblum's 3rd *pro se* PCRA Petition. Judge McDaniel of the Court of Common Pleas of Allegheny County, appointed counsel, Attorney Scott Coffey to represent Goldblum, however, contrary to the wishes of Goldblum, Coffey filed a *Finley/Turner*[4]"No Merit" letter and sought permission to withdraw as counsel.[5] Judge McDaniel issued a Notice of Intent to Dismiss and subsequently dismissed Goldblum's PCRA Petition, without a hearing, on April 14, 2014. Goldblum appealed the Order of April 14, 2014. Briefs were timely filed by the parties, including a Reply Brief by Goldblum.

Goldblum's Reply Brief, (containing an Affidavit from Alex Homyak and a copy of the Final Perper Report of May 22, 2015) sets forth the circumstances under which Goldblum's defense team (Attorneys Villanova and Alex Homyak and investigator James

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[4] Commonwealth v. Finley, 550 A.2d 213 (Pa.Super. 1988)(en banc); Commonwealth v. Turner, 518 Pa. 491, 544 A.2d 927 (Pa. 1988)

[5] A copy of the Coffey No Merit letter which includes a lengthy procedural history of the Goldblum case is included in the Superior Court Appendix filed with this Petition. See, RR000112a-RR000138a.

Ramsey) obtained Dr. Perper's cooperation and commissioned a report that Goldblum contended constituted after-discovered evidence which formed the basis of Goldblum's 3rd PCRA Petition.[6] In his final report of May 22, 2013 Dr. Perper analyzed the unusual circumstances under which the files and evidence in the Goldblum case, particularly the blood spatter photographs disappeared at the time of the Goldblum trial. On July 31, 2015 the Superior Court issued a Memorandum Opinion affirming the PCRA Court on grounds of untimeliness.

Thereafter, the Prothonotary of the Superior Court advised the Commonwealth of the filing of the Opinion, however, it failed to give Goldblum's attorney notice of the filing of or issuance of that Opinion. Goldblum's counsel later discovered the filing, however, by that time, the thirty days for the filing of a Petition for Allowance of Appeal to the Supreme Court had passed. The Superior Court Prothonotary acknowledged that it had not given notice to Goldblum's counsel and counsel then filed, on October 2, 2015 at No. 68 WM-2015, a Motion for Leave to File Petition for Allowance of Appeal, *Nunc Pro Tunc.* On October 29, 2015 the Prothonotary of the Supreme Court entered an Order granting Goldblum's Petition for Leave to File Petition for Allowance of Appeal *Nunc Pro Tunc*. This Petition is filed in compliance with that Order.

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[6] Goldblum filed his most recent PCRA Petition within sixty (60) days of the date Dr. Perper authored his final report.

V. CONCISE STATEMENT OF REASONS RELIED UPON.

Pursuant to Pa.R.A.P. 1114, review of a final order of the Superior Court is not a matter of right, but of "sound judicial discretion, and an appeal will be allowed only when there are special and important reasons therefor." ***Pa.R.A.P. 1114(a)***. The present appeal meets this standard, as the issue raised herein involves both a question of first impression and one of substantial public importance. To wit, the question presented herein is whether this Court should recognize a claim of actual innocence as a gateway to time-barred PCRA claims as accepted by the Supreme Court in federal habeas proceedings. Goldblum contends that his newly discovered evidence is, in fact, newly discovered based upon the circumstances described relating to the Perper Final Report and the materials contained therein. Further, Goldblum notified the court of the newly discovered evidence within the requisite 60 days of receiving Perper's Report.

In the instant case, the Superior Court rejected Goldblum's claims of governmental interference and after-discovered evidence as untimely, neglecting to address the Appellant's claim of actual innocence. In his PCRA Petition, the Appellant sought relief pursuant to a claim of actual innocence, using this claim as a gateway to his allegedly defaulted PCRA claims. However, as our Commonwealth has yet to recognize such a claim in post-conviction proceedings, Goldblum was without recourse in this regard at the Superior Court level. As such, Goldblum now seeks relief from this Honorable Court by asking that it recognize a claim of actual innocence.

As discussed in ***Schlup v. Delo***, 513 U.S. 298 (1995), where a "miscarriage of justice" has occurred, the Supreme Court will allow a habeas petitioner to have his

defaulted constitutional claims heard based on convincing evidence of his innocence. In ***Schlup***, the Court rejected a claim of actual innocence as an independent basis for recovery, but reasoned that such a claim is viable when it acts as "a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits." ***Schlup***, 513 U.S. at 315 (citing ***Herrera v. Collins***, 506 U.S. 390 (1993)) (quotations omitted). The Court then held that "if a petitioner such as Schlup presents evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error, the petitioner should be allowed to pass through the gateway and argue the merits of his underlying claims." ***Id.*** at 316.

In the case at bar, Goldblum was denied the due process right to a fair trial as a result of ineffective assistance of counsel and numerous *Brady* violations committed by the prosecution. Although these claims are now considered untimely under 42 Pa.C.S.A. § 9545 (due in large part to the government's interference with Goldblum's ability to develop the same), Goldblum has come forward with convincing evidence of his innocence which places his conviction in doubt.

As indicated above, there is no authority within Pennsylvania authorizing the relief sought by Goldblum. Recognizing the exclusive statutory nature of the Post-Conviction Relief Act, it is Goldblum's position that the relief sought herein is procedural in nature and does not constitute a new form of collateral relief beyond that established in the PCRA. As such, there is nothing preventing this Court from using its jurisprudence to adopt a gateway claim of actual innocence in collateral proceedings. Indeed, the

extraordinary circumstances surrounding Goldblum's case provide the perfect setting to do so given the overwhelming evidence of his innocence.

"As a general rule, claims forfeited under state law may support federal habeas relief only if the prisoner demonstrates cause for the default and prejudice from the asserted error." ***House v. Bell***, 547 U.S. 518, 536 (2006). This rule is not unqualified, however:

> In an effort to balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary cases, the Court has recognized a miscarriage-of-justice exception. In appropriate cases, the Court has said, the principles of comity and finality that inform the concepts of cause and prejudice must yield to the imperative of correcting a fundamentally unjust incarceration.

House, 547 U.S. at 536 (internal quotation marks and citations omitted).

"[P]risoners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence, it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." ***Id.*** at 536-537. "This formulation [...] ensures that the petitioner's case is truly 'extraordinary,' while providing petitioner a meaningful avenue by which to avoid manifest injustice." ***Id.*** at 537 (quotation marks omitted).

A claim of actual innocence must be supported by new and reliable evidence, whether in the form of exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence, that was not presented at trial. ***Id.*** (citing ***Schlup***, *supra*). Although "new" evidence has generally been equated to "newly discovered" evidence for purposes of an actual innocence claim, exceptions have been allowed in certain cases.

For instance, the Seventh Circuit has held that in cases where the underlying constitutional violation claimed is the ineffective assistance of counsel premised on a failure to present evidence, "a requirement that new evidence be unknown to the defense at the time of trial would operate as a roadblock to the actual innocence gateway." ***Gomez v. Jaimet***, 350 F.3d 673, 679-680 (7th Cir. 2003). As such, the ***Gomez*** Court concluded that evidence will be regarded as new even if it was not newly discovered as long as it was "not presented to the trier of fact[.]" ***Gomez***, 350 F.3d at 680.

More recently, the Third Circuit also addressed the issue presented in ***Gomez***, but refused to accept the Seventh Circuit's approach to the definition of "new" evidence. *See* ***Houck v. Stickman***, 625 F.3d 88 (3rd Cir. 2010). Instead, the Third Circuit adopted the Eighth Circuit's analysis that "evidence is new only if it was not available at trial and could not have been discovered earlier through the exercise of due diligence." ***Houck***, 625 F.3d at 93-94 (quoting ***Amrine v. Bowersox***, 128 F.3d 1222, 1230 (8th Cir. 1997)).

In ***Houck***, the Third Circuit recognized the potential dilemma a petitioner faces when he "claims he had ineffective assistance of counsel by reason of his attorney not discovering exculpatory evidence when the petitioner is relying on that very evidence as being the evidence of actual innocence in a gateway [claim] to reach the ineffective assistance of counsel claim." ***Id.*** at 94. However, in reaching its holding, the Court rejected the ***Gomez*** Court's definition of "new" as "too expansive," and accepted the Eighth Circuits approach, with the "narrow limitation that if the evidence was not discovered for use at trial because trial counsel was ineffective, the evidence may be

regarded as new provided that it is the very evidence that the petitioner claims demonstrates his innocence." ***Id.***

Here, in addition to his governmental interference claim, the Appellant is using his claim of actual innocence as a gateway to his other, allegedly defaulted claims (ineffective assistance of counsel and due process/*Brady* violations). In so doing, it is the Appellant's position that "new" evidence in the context of his actual innocence claim should be liberally defined and applied as it was by the Seventh Circuit in ***Gomez***. Even if the Court does not adopt the ***Gomez*** approach to what constitutes "new" evidence, it is the Appellant's position that he is nevertheless entitled to relief under ***Houck***.

Similar to both ***Gomez*** and ***Houck***, evidence upon which the Appellant bases his claim of actual innocence was not, and could not be, presented at trial due to governmental interference and the numerous *Brady* violations discussed above. This evidence primarily includes: the interpretation the blood spatter evidence (photographs of which were not disclosed to the defense prior to trial for their experts to review); the fact that Miller was a known confabulator; Miller's admission during his second polygraph test that he participated in the attack on Wilhelm, and; ADA Dixon's admitted disbelief of Miller regarding Appellant's participation in the land fraud scheme. [7]

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[7] Indeed, if a hearing was granted, James R. Ramsey, Sr., the investigator retained by the Appellant would testify that during his investigation and conversations with ADA Dixon, he (Dixon) stated that he did not believe Clarence Miller when he claimed that the Appellant was involved in the land fraud scheme. ADA Dixon related to Mr. Ramsey that if Dedo had testified that the Appellant was not involved in the land fraud scheme, Miller's credibility would have been irreparably damaged and the jury would most likely not have believed anything Miller said from the witness stand. ADA Dixon made a similar statement in his Pardon Board testimony.

Had the foregoing evidence been presented at the time of trial, it is more likely than not that no reasonable juror would have convicted the Appellant of first degree murder. As such, the merits of the Appellant's PCRA claims are entitled to review on the grounds of actual innocence, notwithstanding their alleged procedural defects.

When the government obtains a conviction through the knowing use of false testimony, it violates a defendant's due process rights. To obtain a new trial, the defendant must establish: (1) that there was false testimony; (2) that the government knew or should have known it was false; and (3) that there is a likelihood that the false testimony affected the judgment of the jury. ***U.S. v. Freeman***, 650 F.3d 673, 678 (7th Cir. 2011).

When the government learns that part of its case may be inaccurate, it must investigate. It cannot simply ignore that its witness is lying. ***Freeman***, 650 F.3d at 679. If testimony is false and the government knew or should have known it was false, the issue becomes whether there was a "reasonable likelihood that the false testimony could have affected the jury." ***Freeman***, 650 F.3d at 681. The question of prejudice in cases of knowing use of false testimony is whether there is a reasonable probability that had it not been for the improprieties, the defendant would have been acquitted. ***U.S. v. Boyd***, 55 F.3d 239, 245 (7th Cir. 1995). As eloquently stated by the Ninth Circuit Court of Appeals:

> An attorney for the government is a representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.

United States v. Blueford, 312 F.3d 962, 968 (9th Cir. 2002).

As discussed *infra*, an abundance of evidence exists to conclude that the prosecution knew or should have known that Clarence Miller's trial testimony was false and that it affected the judgment of the jury. Based on the evidence set forth above, ADA Dixon knew or should have known that Miller's testimony was false.[8] Taken together, this evidence provided Dixon with constructive knowledge that Miller's testimony (that the Appellant hired Wilhelm as the arsonist, participated in the land fraud scheme, and was the sole assailant) was false.

Furthermore, there is little doubt that the false testimony affected the judgment of the jury; indeed, Miller's false testimony was the foundation of the Commonwealth's case; without it, they could not have convicted the Appellant of first degree murder. As such, Dixon's knowing use of Miller's perjured testimony constituted a due process violation and denied the Appellant of his constitutional right to a fair trial.

In combination with ADA Dixon's knowing use of Miller's false testimony as discussed above, numerous *Brady* violations also occurred throughout the Appellant's trial that prevented him from presenting the exculpatory evidence discussed above.

"The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." ***Brady v. Maryland***, 373 U.S. 83, 87 (1963). Evidence is material under *Brady* if there is a "reasonable probability

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[8] The Appellant hereby incorporates by reference subparagraphs "a" through "g" on pages 32 and 33 above.

that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." ***United States v. Bagley***, 473 U.S. 667, 682 (1985). Further, the duty to disclose such evidence is applicable even though there has been no request by the accused; said duty encompasses impeachment evidence as well as exculpatory evidence. ***Agurs***, 427 U.S. at 107; ***Bagley***, 473 U.S. at 675.

Brady has been held to include evidence known only to police investigators and not to the prosecutor. ***Kyles v. Whitley***, 514 U.S. 419, 438 (1995). Therefore, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." ***Kyles***, 514 U.S. at 437. As stated by the Supreme Court,

> These [line of *Brady*] cases, together with earlier cases condemning the knowing use of perjured testimony, illustrate the special role played by the American prosecutor in the search for truth in criminal trials. Within the federal system, for example, we have said that the United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.

Strickler v. Greene, 527 U.S. 263, 281 (1999) (quoting ***Berger v. United States,*** 295 U.S. 78, 88 (1935)) (quotation marks omitted).

As thoroughly discussed above, much of the physical evidence in this case has disappeared under very unusual circumstances. This trend began at trial, where both exculpatory and impeachment evidence was knowingly suppressed by the prosecution. For example, no pictures of the blood spatter in the victim's car were presented or disclosed to the defense, which would have provided visual evidence that the assailant

was sitting in the passenger seat (and not in the back seat, where Goldblum was admittedly located).

Although the police testified at trial that no such pictures were taken (which would be an anomaly for a case of this magnitude), it has recently been discovered that these photographs did in fact exist. The lead investigator in Goldblum's case, Ronald Freeman, has since testified in a deposition that he saw the blood spatter photographs prior to trial. Taking this testimony as true, the prosecution, having been imputed with any and all information in the possession of the police, committed an egregious *Brady* violation by suppressing these exculpatory photos. Had these photos been disclosed, Goldblum's position that he could not have caused the injuries inflicted upon the victim while in the victim's car would have been clearly confirmed.

In further violation of *Brady*, the prosecution inexcusably withheld Miller's admission during his second polygraph test that he participated in Wilhelm's murder. This admission directly contradicted his trial testimony that he played no part in the attack. As such, had these polygraph results been disclosed to the defense prior to trial, it would have undermined Miller's credibility and likely resulted in Goldblum's acquittal.

In ***Smith v. Cain***, 132 S.Ct. 627 (2012), the Court held that the prosecution's failure to disclose contradictory statements of the prosecution's key eyewitness constituted a *Brady* violation and warranted a reversal of the Petitioner's conviction. In ***Cain***, the Petitioner was convicted of first-degree murder based on the testimony of a single eyewitness. During the post-conviction proceedings, the Petitioner obtained police

files containing statements by the eyewitness that contradicted his trial testimony but which were never disclosed to the defense.

In reversing the Petitioner's conviction, the Court reasoned that, pursuant to *Brady*, the statements were material because there was a "reasonable probability that, had the evidence been disclosed, the result of the proceedings would have been different." ***Smith***, 132 A.2d at 630. Significantly, the Court made note of the fact that the eye witness's testimony was the only evidence linking the Petitioner to the crime and, thus, his contradictory statements were material to the determination of guilt. ***Id.*** (Citing ***U.S. v. Agurs***, 427 U.S. 97 (1976)).

Similarly, in ***U.S. v. Tavera***, 719 F.3d 705 (6th Cir. 2013), the Petitioner learned after his conviction for a drug conspiracy that his co-defendant told the prosecution prior to the Petitioner's trial that the Petitioner had no knowledge of the conspiracy. The ***Tavera*** Court held that the statement was material for purposes of *Brady* as it not only corroborated the Petitioner's trial testimony, but directly contradicted the testimony of the prosecution's chief witness, who testified that the Petitioner knew the drugs were in the vehicle. Considering that this witness's testimony was the only direct evidence of the Petitioner's intent, and that said witness had existing credibility issues, the Court concluded that it "[could not] say with any confidence that the outcome of the trial would have been the same" had the statement been disclosed. ***Tavera***, 719 F.3d at 713-714.

In the instant case, akin to both ***Smith*** and ***Tavera***, Miller's testimony that Goldblum was the sole assailant was the only direct evidence that Goldblum murdered Wilhelm. Indeed, much of the evidence presented at trial tended to exculpate the

Appellant, including, but not limited to, Wilhelm's dying declaration, the scratches on Miller's face and hands, and the absence of any defensive wounds on Goldblum. What's more, Miller's credibility and competency as a witness was already in issue as evidenced by his criminal record and ADA Dixon's statement during closing argument that Miller had a difficult time telling the truth. As such, Miller's polygraph admission that he participated in the attack, when in fact he testified at trial that he did not, is necessarily material pursuant to *Brady*. That is to say, there is a reasonable probability that, had the admission been disclosed and used by the defense as impeachment evidence, Goldblum would have been acquitted.

In addition to the foregoing *Brady* violations, the Commonwealth also violated the Goldblum's right to a fair trial by failing to fully inform Dr. Perper, who performed the autopsy of Wilhelm, of all the relevant facts and evidence in the case. If the Commonwealth had done so, it would have been Perper's opinion based on all of the evidence that Miller, and not Goldblum, was the assailant.

Furthermore, as it relates to Dr. Perper's final report, it was believed and subsequently confirmed, as discussed above, that Dr. Perper had more detailed information relative to the blood spatter evidence than was known by Goldblum at trial. However, Goldblums post-conviction relief teams were unable to secure the cooperation of Dr. Perper for a number of years prior to the time he was retained to draft a report and thereafter issue a final report. Prior requests to Dr. Perper for information only resulted in Dr. Perper refusing to speak with the Appellant's team. It was not until Dr. Perper agreed to draft an expert report which included his outlining the extent of the blood spatter

evidence to Goldblum's PCRA team that it became clear how those photographs would have proven exculpatory for Goldblum.

Goldblum's Reply Brief sets forth the circumstances under which Goldblum's defense team (Attorneys Villanova and Alex Homyak and investigator James Ramsey) obtained Dr. Perper's cooperation and commissioned a report that Goldblum contended constituted after-discovered evidence which formed the basis of Goldblum's 3rd PCRA Petition.[9] In his final report of May 22, 2013 Dr. Perper analyzed the unusual circumstances under which the files and evidence in the Goldblum case, particularly the blood spatter photographs disappeared at the time of trial.

The cumulative effect of the foregoing due process violations was the obstruction of evidence which, but for the Commonwealth's interference therewith, would have established Goldblum's innocence. However, due to the statutory time-bar set forth in 42 Pa.C.S.A. § 9545, Goldblum has no recourse, despite the overwhelming evidence of his innocence. Without the help of this Court, innocent men such as the Goldblum will continue to remain unjustly incarcerated. Therefore, Goldblum respectfully requests that this Honorable Court, using the "new and reliable" evidence standard employed by the Seventh Circuit, adopt a claim of actual innocence as a gateway to procedurally defective PCRA claims and grant the Appellant relief pursuant thereto in the form of an evidentiary hearing.

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[9] As discussed, *supra*, Goldblum filed his most recent PCRA Petition within sixty (60) days of the date Dr. Perper authored his final report.

WHEREFORE, and based on the foregoing, it is respectfully requested that this Honorable Court permit Petitioner Charles J. Goldblum to file an appeal on the issue of raised in this Petition.

THE LINDSAY LAW FIRM, P.C.

ALEXANDER H. LINDSAY, ESQUIRE

November 30, 2015

Pa. Supreme Court Id. No.: 15088

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NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

CHARLES J. GOLDBLUM

Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 769 WDA 2014

Appeal from the PCRA Order April 14, 2014
In the Court of Common Pleas of Allegheny County
Criminal Division at Nos: CP-02-CR-0001267-1976
CP-02-CR-0003198-1976
CP-02-CR-0004826-1976
CP-02-CR-0004830-1976

BEFORE: PANELLA, J., LAZARUS, J., and STRASSBURGER, J.*

MEMORANDUM BY PANELLA, J.: **FILED JULY 31, 2015**

Appellant, Charles J. Goldblum, seeks review of the order entered by the Allegheny County Court of Common Pleas that denied as untimely his *third* petition filed pursuant to the Post Conviction Relief Act ("PCRA").[1] We affirm.

In 1977 a jury convicted Goldblum of first-degree murder, conspiracy to commit theft by deception, solicitation to commit arson, and arson in connection with the February 1975 murder of George Wilhelm in Pittsburgh.

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* Retired Senior Judge assigned to the Superior Court.

[1] 42 Pa.C.S.A. §§ 9541-9546.

EXHIBIT A

"Goldblum struck Wilhelm on the head with a wrench, and then stabbed him repeatedly."[2] ***Commonwealth v. Goldblum***, 447 A.2d 234, 238 (Pa. 1982). The trial court sentenced him to a term of life imprisonment for the murder conviction. Our Supreme Court affirmed his judgment of sentence on July 2, 1982. ***See id***. Goldblum did not seek a writ of *certiorari* from the United States Supreme Court; his judgment of sentence thus became final on August 31, 1982—60 days after our Supreme Court affirmed the judgment of sentence. ***See*** U.S. Sup. Ct. R. 20.

On July 1, 2013, Goldblum filed his third PCRA Petition, which is the subject of this appeal. The PCRA court appointed Scott Coffey, Esquire, to represent him, but shortly thereafter Coffey filed a "no merit" letter and a motion to withdraw. The PCRA court granted Coffey's motion to withdraw, and gave notice of its intent to dismiss without a hearing. The PCRA court then dismissed the petition as patently untimely. Goldblum through privately retained counsel timely appealed.

"On appeal from the denial of PCRA relief, our standard and scope of review is limited to determining whether the PCRA court's findings are supported by the record and without legal error." ***Commonwealth v. Edmiston***, 65 A.3d 339, 345 (Pa. 2013) (citation omitted), *cert. denied*, ***Edmiston v. Pennsylvania***, 134 S. Ct. 639 (2013). A PCRA petitioner is not

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[2] We direct the reader to our Supreme Court's decision for a further summary of the underlying facts.

automatically entitled to a hearing. It is within the PCRA court's discretion to grant or deny a hearing. ***See Commonwealth v. Roney***, 79 A.3d 595, 604 (Pa. 2013), *cert. denied*, 135 S.Ct. 56 (2014). We review the denial of a petition without a hearing for an abuse of discretion. ***See id***.

Before we address the merits of a PCRA petition, we must first consider the petition's timeliness. "The PCRA timeliness requirements are jurisdictional in nature and, accordingly, a court cannot hear untimely PCRA petitions." ***Commonwealth v. Flanagan***, 854 A.2d 489, 509 (Pa. 2004) (citation omitted). A petitioner must file a PCRA petition within one year of the date that his or her judgment becomes final. ***See*** 42 Pa.C.S.A. § 9545(b)(1). A judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking review. ***See Commonwealth v. Fahy***, 737 A.2d 214 (Pa. 1999).

The 1995 amendments to the PCRA provide that if the judgment of sentence became final before the effective date of the amendments (*i.e.*, January 16, 1996), a PCRA petition could be filed within one year, or by January 16, 1997. However, this grace period does not apply to second or subsequent petitions, regardless of when the first petition was filed. ***See Commonwealth v. Fairiror***, 809 A.2d 396, 398 (Pa.Super. 2002).

As noted, Goldblum's judgment of sentence became final on August 31, 1982. He filed his first PCRA petition in 1986, and his second in 1996. This *third* PCRA petition, filed July 1, 2013, is facially untimely.

Goldblum contends that the instant petition falls within two exceptions to the PCRA's time-bar, governmental interference and after-discovered facts or evidence. ***See*** 42 Pa.C.S.A. § 9545(b)(1)(i) and (ii). With respect to the PCRA's governmental interference exception of § 9545(b)(1)(i), our Supreme Court has noted that

> [a]lthough a ***Brady***[3] violation may fall within the governmental interference exception, the petitioner must plead and prove that the failure to previously raise these claims was the result of interference by government officials, and that information could not have been obtained earlier with the exercise of due diligence. [***Commonwealth v.***] ***Breakiron***, [781 A.2d 94,] 98 [(Pa. 2001).] The newly discovered evidence exception requires that the facts upon which the ***Brady*** claim is predicated were not previously known to the petitioner and could not have been ascertained through due diligence. ***Commonwealth v. Lambert***, 884 A.2d 848, 852 (Pa. 2005); ***see also Commonwealth v. Chester***, 895 A.2d 520, 523 (Pa. 2006).

Commonwealth v. Hawkins, 953 A.2d 1248, 1253 (Pa. 2008) (*OAJC*).

To succeed on an after-discovered evidence claim, a petitioner must establish that: (1) the evidence was 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. ***See***

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[3] ***Brady v. Maryland***, 373 U.S. 83 (1963).

Commonwealth v. D'Amato, 856 A.2d 806, 823 (Pa. 2004). If exceptions to the PCRA time-bar apply, a petitioner must assert them within sixty days of discovering the facts comprising the exception. ***See*** 42 Pa.C.S.A. § 9545(b)(2).

Goldblum contends, "it has only recently been ascertained that there may have been pictures taken of the blood spatter inside of Wilhelm's car." Appellant's Brief at 24. He avers that the Commonwealth concealed and/or destroyed files containing the blood spatter photographs, and failed to disclose "exculpatory evidence," *i.e.*, the photographs, to the defense at or before trial in violation of ***Brady***. ***Id***. He also avers that he had "just recently (within 60 days of the filing of his PCRA petition) been apprised of the circumstances under which [photographs of blood spatter] disappeared." ***Id***.

Contrary to Goldblum's contention, he has known since his trial that photographs had been taken of blood spatter. Police Officer Salvatore S. Crisanti testified at Goldblum's trial that he had taken photographs of the dashboard, but that he had no recollection at all of a pattern of blood spatter. ***See*** Notes of Testimony Trial, 8/25/77, at 1902-1904. Detective Ronald B. Freeman testified at trial and at a deposition regarding photographs of "blood spatter on the dashboard and gave a detailed

description of same at trial." Appellant's Brief at 17 (citing RR-718A).[4] In August 27, 1996, Officer Crisanti, testified at a deposition that the blood spatter photographs would have been stored by the homicide unit. Other police officers testified about having seen blood spatter photographs in the case file. ***See id***. at 18. Thus, Goldblum was aware well before he filed this latest PCRA petition in July 2013 that photographs of blood spatter on the dashboard had been taken.

Alternatively, Goldblum avers that he did not learn that the photographs had gone missing from the police files until Dr. Joshua Perper compiled a report in 2013 summarizing certain record evidence.[5] Goldblum asserts that "Dr. Perper's *confirmation* of these missing records in his report, in the very least, provides grounds to grant a hearing to determine how the records disappeared and to what extent they contain exculpatory evidence of which Appellant was previously unaware." Appellant's Brief at 25 (emphasis added). Goldblum's statement indicates that he knew before 2013 that the

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[4] Goldblum's pinpoint citation corresponds with only the cover page of a transcript of a deposition taken in April 2008.

[5] In that report, Dr Perper, the coroner who performed the autopsy of Golblum's victim, reviewed all of the evidence produced at trial and post-trial before opining that it had most likely been Goldblum's accomplice, not Goldblum, who had committed the murder. Dr. Perper did not present any new evidence that would warrant a hearing on Goldblum's third PCRA petition.

records had existed and had disappeared, and Dr. Perper simply confirmed it.

Because Goldblum has known since 1977 that photographs had been taken, his attempt—38 years later—to raise an issue as to their existence, represents the polar opposite of diligence. ***See Amato***. ***See also Commonwealth v. Brown***, 111 A.3d 171, 178 (Pa. Super. 2015) (concluding that the appellant failed to meet new facts exception to establish jurisdiction due to lack of diligence). Moreover, a "PCRA hearing is not meant to function as a fishing expedition[.]" ***Roney***, 79 A.3d at 605.

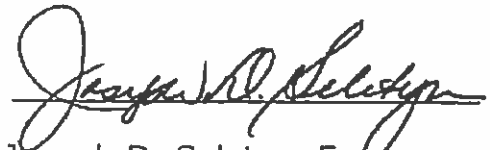
We conclude that Goldblum's claims of government interference and after-discovered evidence are untimely. Accordingly, neither the PCRA nor this Court has jurisdiction to address his petition, and the PCRA court did not err in dismissing the petition without a hearing.

Order affirmed.

Judge Lazarus joins the memorandum.

Judge Strassburger concurs in the result.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/31/2015

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

v.

CC: 7601267, 7603918
7604826, 7604830

CHARLES GOLDBLUM,

Defendant

OPINION

Filed By:

Honorable Donna Jo McDaniel
Court of Common Pleas of Allegheny County
323 Courthouse
Pittsburgh, PA 15219

(412) 350-5434

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

v. CC: 7601267, 7603918
7604826, 7604830

CHARLES GOLDBLUM,

Defendant

OPINION

The Defendant has appealed from this Court's Order of April 14, 2014, which dismissed the Defendant's third Post Conviction Relief Act Petition without a hearing. A review of the record reveals that because the Petition was untimely filed, this Court lacked the jurisdiction to address it. Therefore, this Court's Order should be affirmed.

The Defendant was charged with Murder, Voluntary Manslaughter, Criminal Conspiracy, Arson and Criminal Solicitation in connection with a land fraud matter between Clarence Miller, George Wilhelm and the Defendant which evolved into the arson of the Defendant's restaurant and eventually resulted in the death of George Wilhelm. Following a jury trial before the Honorable Donald Ziegler, then of this Court, the Defendant was convicted of First-Degree Murder and all remaining charges. On October 3, 1977 he was sentenced to a term of life imprisonment plus additional consecutive terms of imprisonment of 10 to 20 years and five (5) to 10 years at the Arson and Solicitation convictions, respectively. The judgment of sentence was affirmed at all except the Criminal Conspiracy charge on May 23, 1980 and on July 2, 1982, the Pennsylvania Supreme Court affirmed the judgment of sentence at all informations.

On March 7, 1986, the Defendant filed a Post Conviction Hearing Act Petition. It was denied without a hearing on June 23, 1986 and that Order was later affirmed by the Superior Court. Allocatur was denied on July 27, 1988.

On July 14, 1989, the Defendant filed a Petition for Writ of Habeas Corpus in Federal Court, which was later dismissed on October 31, 1990. That Order was affirmed by the Third Circuit Court of Appeals on November 26, 1991 and certiorari was denied on April 22, 1992.

No further action was taken until January 12, 1996, when the Defendant filed a pro se Post Conviction Relief Act Petition. Counsel was appointed and an Amended Petition followed. The Petition was dismissed without a hearing on February 14, 1997. A direct appeal was taken, and the Superior Court remanded the case for an evidentiary hearing on the ineffective assistance of counsel. The hearing was held before this Court on December 21, 2000, at the conclusion of which this Court found that counsel was not ineffective. The Order was affirmed on October 24, 2002 and the subsequent Petition for Allowance of Appeal was denied on May 20, 2003.

Once again, no further action was taken until July 1, 2013, when the Defendant filed his third pro se PCRA Petition. Counsel was appointed to represent the Defendant, but he filed a Turner "No-Merit" letter and sought permission to withdraw. After giving notice of its intent to do so, this Court dismissed the Petition without a hearing on April 14, 2014. This appeal followed.

On appeal, the Defendant takes issue with this Court's dismissal of his Petition without an evidentiary hearing. His claims are meritless.

Pursuant to 42 PA.C.S.A. §9545(b), any and all PCRA Petitions, "including a second or subsequent petition, shall be filed within one year of the date the judgment of sentence becomes final..." 42 Pa.C.S.A. §9545(b)(1). Petitioners whose judgments of sentence became final

before January 16, 1996 – the effective date of 42 Pa.C.S.A. §9545 – must have filed all PCRA Petitions within one (1) year of the effective date – or by January 16, 1997, in order to be timely. In this case, the Defendant's judgment of sentence became final on September 30, 1982, ninety (90) days after the Pennsylvania Supreme Court's ruling, when he failed to petition for certiorari to the United States Supreme Court. Therefore, because the Defendant's judgment of sentence became final before the effective date of the Post Conviction Relief Act, in order to be timely, any PCRA Petitions should have been filed by January 16, 1997. The instant Petition, filed on July 1, 2013, is well outside of that time limitation. However, the Defendant has averred after-discovered exception to that time limitation.

The Post Conviction Relief Act states, in relevant part:

§9545. Jurisdiction and proceedings.

(b) Time for filing petition. –

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

(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.

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

42 Pa.C.S.A. §9545.

In order to sustain an untimely PCRA Petition under the after-discovered evidence exception, a petitioner must show that the evidence: (1) has been discovered after the trial and could not have been obtained prior to the conclusion of the trial by the exercise of reasonable diligence; (2) is not merely corroborative or cumulative; (3) will not be used solely for

impeachment purposes; and (4) is of such a nature and character that a different verdict will likely result if a new trial is granted." Commonwealth v. Johnson, 841 A.2d 136, 140-141 (Pa.Super. 2003). "Exception (b)(1)(ii) requires the petitioner to allege and prove that there were 'facts' that were 'unknown to him' and that he could not have ascertained those *facts* by the exercise of 'due diligence'... The focus of the exception 'is on [the] newly discovered *facts*, not on a newly discovered or newly willing source for previously known facts.'" Commonwealth v. Marshall, 947 A.2d 716, 720 (Pa. 2008), internal citations omitted.

In his pro se PCRA Petition, the Defendant submits a report from Dr. Joshua Perper, the former Allegheny County Coroner and the forensic pathologist who performed the autopsy on George Wilhelm. The report is dated May 22, 2013 and is, essentially, a review of records and trial materials from 1976 as well as expert reports from Drs. Michael Baden and Barbara Wolf from 1996, from Dr. Henry Lee in 1997, from Herbert MacDonnell in 2000 and an interview from Cyril Wecht on November 22, 2012. After discussing the various records he reviewed, Dr. Perper opines on the ineffective assistance of trial counsel and names Clarence Miller as the killer.

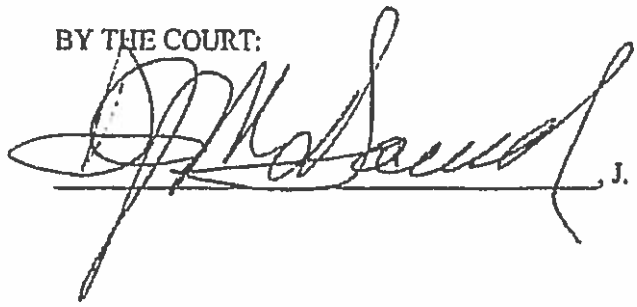
A careful examination of Dr. Perper's report indicates that it contains no new information. The report is based on trial evidence from 1976 and expert reports from 1996 and 1997. Although the report discusses an interview with Dr. Cyril Wecht from 2012, the issue of Dr. Wecht's expert testimony was already litigated in 1996 in the course of the Defendant's second PCRA Petition. Dr. Perper himself performed the autopsy and testified at trial. Although the report is dated May 22, 2013, it is based on pre-existing information and there is no reason it could not have been prepared sooner. The Defendant's vague assertion that he was "unable to contact" Dr. Perper is not sufficient to rescue an untimely Petition.

There is no reasonable argument that the expert report and purported testimony of Dr. Perper could not have been discovered earlier than May 22, 2013. As such, the Defendant has failed to satisfy the after-discovered evidence exception to the time limitation provisions of the Post Conviction Relief Act. This claim must fail.

Inasmuch as the Defendant has failed to satisfy the requirements of the after-discovered evidence exception to the Post Conviction Relief Act, his Petition was properly classified as untimely. "Given the fact that the PCRA's timeliness requirements are mandatory and jurisdictional in nature, no court may properly disregard or alter them in order to reach the merits of the claims raised in a PCRA Petition that is filed in an untimely manner." Commonwealth v. Mazzarone, 856 A.2d 1208, 1210 (Pa.Super. 2004). See also Commonwealth v. Bennett, 842 A.2d 953, 956 (Pa.Super. 2004) and Commonwealth v. Fahy, 737 A.2d 214 (Pa. 1999). As such, this Court is bound by the time limitation provisions of the Act and, therefore, properly dismissed the Defendant's third Post Conviction Relief Act Petition.

Accordingly, for the above reasons of fact and law, this Court's Order April 14, 2014 must be affirmed.

BY THE COURT:



J.

August 19, 2014

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA	:
	:
v.	:
	:
CHARLES J. GOLDBLUM,	
	:
Petitioner.	:

CERTIFICATE OF SERVICE

THE UNDERSIGNED hereby certifies that on the 30th day of November, 2015 he caused an exact copy of the foregoing Petition for Allowance of Appeal, to be served upon the following via First Class United States Mail, postage prepaid.

Office of the District Attorney of Allegheny County
Attention: DDA Sandra Preuhs, Esquire
At
Allegheny County Courthouse
436 Grant Street
Pittsburgh, Pennsylvania 15219.

THE LINDSAY LAW FIRM, P.C.

ALEXANDER H. LIINDSAY, JR.

November 30, 2015

Pa. Supreme Court Id. No.: 15088

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