

**DEFENDER ASSOCIATION OF PHILADELPHIA**

**BY: Ellen T. Greenlee, Defender and**  
Bradley S. Bridge and Shonda Williams  
Identification No. 00001  
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COMMONWEALTH OF PENNSYLVANIA : THE COURT OF COMMON PLEAS  
: CRIMINAL TRIAL DIVISION  
  
: Docket number  
VS.  
: CHARGES: Charges  
Def First Def Last  
PPN: PPN

**MOTION FOR A NEW TRIAL BASED UPON AFTER DISCOVERED EVIDENCE;**  
**ALTERNATIVELY, FOR POST CONVICTION COLLATERAL RELIEF;**  
**OR ALTERNATIVELY, FOR A WRIT OF HABEAS CORPUS**

Def First Def Last, by Bradley S. Bridge, Assistant  
Defender, Assistant Defender, Shonda Williams, Assistant  
Defender, Karl Baker, Assistant Defender, Chief, Appeals Unit,  
and Ellen T. Greenlee, Defender, hereby requests relief under  
Rule 720(C), Pa.R.Cr.P., as after discovered evidence,  
alternatively under the Post Conviction Relief Act, or  
alternatively as a writ of Habeas Corpus pursuant to the  
Pennsylvania and United States Constitutions and 42 Pa.C.S.A.  
§6501 **et. seq.**, and in support thereof avers:

1. Petitioner Def First Def Last was arrested on Arrest Date, and charged with Lead Charge. He or She pled guilty before the Honorable Sentencing Judge on verdict Date. Def He or She was sentenced on Sentence Date to Sentence Text.

2. Def First Def Last was represented by attorney's name.

3. Def First Def Last neither filed a post-conviction petition nor a habeas corpus petition in state or federal court.

4. There have been substantial developments following Def First Def Last's plea that entitles Def him or her to a new trial based upon after discovered evidence and based upon due process of law, under both the Pennsylvania and United States' Constitutions. An examination of the facts and the applicable law demonstrate this conclusion.

#### FACTS

5. The critical police officer in the instant case was Officer Jeffrey Walker.

6. On May 22, 2013, Officer Walker was arrested by the federal government and charged with robbery and theft. The federal complaint reveals that Officer Walker had regularly made facts in his arrests regarding probable cause. He had planted drugs, stolen drugs, stolen money and lied about it in police paperwork and, presumably, in court. Of course, that everything

Officer Walker had claimed to have occurred was, presumably, false, was unknown to defense counsel at the time of trial in the instant matter. Had counsel known that Officer Walker was a drug dealer, thief and liar who had no compunctions about planting drugs and falsifying police paperwork to justify his actions, counsel would have recommended going to trial instead of a plea.

7. While the prosecution has not turned over any Brady material, counsel is filing this petition within 60 days of Officer Jeffrey Walker pleading guilty in federal court on February 24, 2014. Moreover, the failure of the District Attorney's Office to provide Brady material, whether or not it had been requested, constitutes an exception pursuant to 42 Pa.C.S.A. §9545(b)(1)(i).

The Law Applicable To After Discovered Evidence

8. Pennsylvania law regarding after-discovered evidence is well established. It must be discovered after trial or could not have been discovered before or during trial through reasonable diligence, it must not be merely corroborative or cumulative, it can not be used solely for impeaching a witness's credibility and a different verdict likely to result if there were a new trial utilizing this evidence. **Commonwealth v.**

Brosnick, 530 Pa. 158, 607 A.2d 725 (1992); Commonwealth v. McCracken, 540 Pa. 541, 659 A.2d 541 (1995). That standard is easily met by the facts presented here. It was not until the federal government arrested and charged Officer Walker that the facts regarding his criminality became known. These facts could not have been discovered earlier through due diligence.

9. It is clear that this new evidence is not merely corroborative or cumulative. There was no similar impeachment available to be used in this case.

10. This new evidence would not be used solely to impeach Officer Walker. It could have been utilized to support a CI motion, a Motion to Suppress and/or it could have been utilized to undermine Officer Walker's reliability by demonstrating that he had, for example, had lied about the drugs or the actions of the CI in this case and in other cases. See Commonwealth v. Castro, 55 A.3d 1242 (Pa. Super. 2012) (*en banc*).

11. A defendant need only establish by a preponderance of evidence that the newly discovered evidence would likely compel a different verdict. Commonwealth v. Fiore, 780 A.2d 704, 711 (Pa. Super. 2001). He need not prove the impossibility of his guilt. Here, if the fact finder had been aware of Officer Walker's practice of lying in the past about other drug cases,

planting and stealing drugs and/or lying about confidential informants, it is likely that the verdict would have been different.

12. A comparison to the facts presented here to those in **McCracken** demonstrates the strength of the instant claim. In **McCracken** the Pennsylvania Supreme Court affirmed the granting of a new trial by the trial court where the only eyewitness later recanted his testimony. The Supreme Court held that where, as there and as here, the accused denied committing the crime, where the critical evidence is undercut by after discovered evidence, a new trial is appropriate if the newly discovered evidence "was the essence of [the] defense and the ultimate question in [the] trial. Thus Aldridge's recantation is neither cumulative, corroborative, nor for impeachment purposes." **Commonwealth v. McCracken**, *supra* at 550. That is similarly true here. This Honorable Court should grant a new trial based upon after discovered evidence.

#### Alternative Bases For Relief

13. The Due Process Clauses of both the United States and Pennsylvania Constitutions provide an alternative basis for granting relief. Due process demands that petitioner be given

the opportunity to put this new information before a fact finder.

14. Given the above, if this Court or a jury had been aware that Officer Walker was, for example, lying about the drugs, about the confidential informant or other matters in this case and in others, this Court or the jury would likely have found petitioner not guilty. In the unlikely event that a fact finder would have found petitioner guilty, that verdict would have been so untenable that such a verdict would have been arbitrary and so contrary to the truth-determining process that the verdict would not have been a reliable adjudication of guilt.

15. Any or all of the above would be cognizable through a federal writ of habeas corpus. The violations of the federal constitutional rights to due process of law and a fair prosecution as set forth above would require the granting of federal habeas corpus relief. It should, therefore, be cognizable as such under the PCRA, as an alternative basis for relief. To the extent that the recent amendments to Pennsylvania's PCRA abrogate this as a ground for relief, the recent amendments must be recognized as unconstitutionally enacted and without force or effect, and the prior applicable

provisions of the PCRA deemed applicable here. See *Commonwealth ex rel. Dадario v. Goldberg*, \_\_\_Pa.\_\_\_\_, 773 A.2d 126, 131, fn. 5 (2001).

16. The violation of state and federal constitutional rights to due process of law set forth above constitutes grounds for the grant of a state writ of habeas corpus, as guaranteed by Article I, §14 of the Pennsylvania Constitution and 42 Pa.C.S.A. §6102 *et seq.* To the extent that the PCRA purports to, or might be interpreted to supplant or subsume the remedy of habeas corpus as guaranteed by the Pennsylvania Constitution and protected by 42 Pa.C.S.A. §6102 *et seq.*, while at the same time denying petitioner the right to seek or receive a writ of habeas corpus in a context like that presented here, the PCRA constitutes an unconstitutional infringement upon the state constitutional right of habeas corpus.

17. While petitioner pled guilty, it was only because neither petitioner nor defense counsel were in possession of the information described above. This Honorable Court and defense counsel were kept in the dark about critical and vital facts involving the instant officer's corruption. This Honorable Court should, therefore, grant a new trial where these facts can properly be presented to the fact finder.

WHEREFORE, Petitioner, by and through counsel, respectfully requests that this Honorable Court grant relief as after-discovered evidence, or under the Post-Conviction Relief Act or grant a writ of Habeas Corpus, and grant a new trial.

Respectfully submitted,

BRADLEY S. BRIDGE  
Assistant Defender

Shonda Williams  
Assistant Defender

ELLEN T. GREENLEE  
Defender

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Def First Def Last  
PPN: PPN

ORDER FOR HEARING

AND NOW, this            day of            , 2013, upon examination  
of the Motion For A New Trial Based Upon After Discovered  
Evidence; Alternatively, For Post Conviction Collateral Relief,  
Or Alternatively, For Writ Of Habeas Corpus, a hearing is set  
for the            day of            , 2013, at            AM/PM, in  
Courtroom            , Criminal Justice Center, Philadelphia, PA.

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J.

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: CHARGES: «LeadCharge»

«First\_Name» «Last\_Name»  
PPN: «PPN»

ORDER

AND NOW, this            day of            , 2013, upon examination  
of the Motion For A New Trial Based Upon After Discovered  
Evidence; Alternatively, For Post Conviction Collateral Relief,  
Or Alternatively, For Writ Of Habeas Corpus, it is HEREBY  
ORDERED and DECREED, that a new trial is granted.

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J.