IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	**CP-14-CR-2421-2011**
	:	**CR-14-CR-2422-2011**
GERALD A. SANDUSKY	:	

COMMONWEALTH'S RESPONSE TO DEFENDANT'S THIRD UNTIMELY PETITION UNDER THE PCRA

TO THE HONORABLE MAUREEEN A. SKERDA, SPECIALLY PRESIDING:

DAVE W. SUNDAY, JR., Attorney General of the Commonwealth of Pennsylvania, by and through CARI L. MAHLER, Senior Deputy Attorney General, hereby represents the following in support of the Commonwealth's Response to Defendant's Third Untimely Petition Under the PCRA:

I. INTRODUCTION

In 2012, a jury convicted Gerald Sandusky ("defendant") of 45 counts relating to his sexual abuse of 10 young boys he met through a non-profit organization he founded called The Second Mile, an organization with the declared purpose of serving Pennsylvania's underprivileged and at-risk youth. The evidence presented at trial demonstrated that over a 13-year period, 1995 to 2008, defendant was a serial pedophile who preyed on the most vulnerable and weakest victims in need of a father figure and mentor. Over the last 13 years, his convictions have been affirmed on direct appeal, and his numerous claims of after-discovered evidence, *Brady* violations, and ineffective assistance of counsel have repeatedly been rejected by the PCRA courts and those denials affirmed on appeal.

Now, more than 10 years after his judgment of sentence became final, defendant has filed his *third* petition for relief under the PCRA, in which he rehashes many of the same debunked

theories contained in his first and second PCRA petitions. Defendant also submits a 2025 affidavit from victim R.R., in which he alleges he was induced to make false allegations against defendant, and a 2024 affidavit from the mother of victim S.P., alleging that, *inter alia*, prosecutors had a financial incentive to induce her son's allegations and that aspects of his 2012 trial testimony supposedly were false. Defendant further asserts claims of ineffective assistance of prior counsel. Because all of defendant's claims are time-barred under the PCRA and he has failed to establish any exception to the time-bar, no evidentiary hearing is warranted and his claims should be dismissed.

II. FACTS & PROCEDURAL HISTORY

To assist this Court in assessing defendant's current claims of "new" evidence in the context of the complete trial record, the Commonwealth sets forth the overwhelming evidence of his guilt, consisting of testimony from 8 of the victims, each of whom were adults at the time of trial, and the extensive evidence corroborating their testimony. *See Commonwealth v. Murchison,* 328 A.3d 5, 17 (Pa. 2024) (when assessing the likelihood that after-discovered evidence will produce a different result, courts must review the totality of all the trial circumstances, including, but not limited to, the trial evidence and the parties' closing arguments).

A. The Ten Victims & Corroborating Evidence

Victim D.S.

Born in 1984, D.S. was 27 years old when he testified at trial (N.T. 6/13/12, 85).

In 1995, when D.S. was 10 years old, he lived in Milesburg, Centre County, with his parents and two sisters. Because he was having problems in school, his guidance counselor directed him to attend summer camp at The Second Mile on Penn State University's (PSU) campus in State College, Centre County. During one of his first years at the camp, D.S. met defendant at the

natatorium. Defendant approached him and asked if he liked PSU and if he was interested in attending PSU football games. He said yes. After that, defendant called D.S.'s mother for permission to pick him up and D.S. began staying at defendant's house, generally over weekends (N.T. 6/13/12, 85-89).

Defendant picked up D.S. at his house on Friday nights and they attended a high school football game. D.S. spent the night at the Sandusky house and then attended the PSU football games on Saturday. D.S. attended every PSU home game between 1995 and 2000 (N.T. 6/13/12, 88-93).

While D.S. was sitting in the passenger seat of defendant's car, defendant had a "habit" of putting his hand on D.S.'s leg and squeezing. Defendant then worked his hand up D.S.'s leg. If D.S. wore shorts, defendant put his hand inside his shorts, towards his groin area. This happened on several occasions. Once, in 1995, defendant put his hand inside D.S.'s pants and touched his penis. D.S. scooted far to the right "to get away" from this (N.T. 6/13/12, 88-98).

D.S. slept in an upstairs bedroom at defendant's home. When he was lying down on the bed and reading, defendant came up behind him and cuddled in bed with him, pressing the front of his body against the back of D.S.'s body. On a few occasions, defendant reached around to the front of D.S. body and caressed his chest area and nipples. Once, he turned D.S. over and blew on his stomach. D.S. rolled away and said he was ready to go to sleep and defendant left. Sometimes defendant was not wearing a shirt when this happened (N.T. 6/13/12, 99-102).

Defendant also wrestled with D.S. in the basement. It was uncomfortable for D.S. because he was a scrawny, lean kid and defendant was four times his size (N.T. 6/13/12, 102-04, 154-55).

On one occasion, when D.S. was about 11 years old, D.S. was with defendant at PSU's Holuba Hall throwing a football when defendant said they were sweaty and needed to shower

before returning to the Sandusky home. D.S., thinking this suggestion was odd because they had just been throwing the football around, replied he did not believe he needed a shower. Defendant, however, insisted. They went to a locker room in a building across the street, removed their clothes and went into the shower. Defendant tried to shampoo D.S.'s hair, back and shoulders. D.S. tried to get away by moving down to another shower stall. When D.S. got out of the shower, defendant tried to dry him off, but D.S. said he could dry himself (N.T. 6/13/12, 105-08).

D.S. showered with defendant on at least five other occasions, during which defendant tried to put soap on him, but D.S. moved away. Once defendant came up behind D.S., put the front of his body to D.S.'s back, gave him a bear hug, and lifted him off the ground. Defendant's private area was then pressed against D.S.'s backside (N.T. 6/13/12, 109-16).

At some point, the relationship between defendant and D.S. changed. Defendant stopped calling and they did not spend time together (N.T. 6/13/12, 114-17, 120-21).

D.S. did not tell his parents about defendant's sexual abuse until after he was questioned by police. Police did not ask him to say anything in particular (N.T. 6/13/12, 118-19).

D.S. testified that the trial prosecutor (Attorney McGettigan) never told him what to say and never asked him to say anything specific about anything. Attorney McGettigan just told him around "100 times" to tell the truth as best as he could recollect. D.S. testified that no one ever told him what to say to police or the jury when testifying at trial. No one ever asked him to say anything other than the truth in the courtroom (N.T. 6/13/12, 133, 162-63).[1]

[1] Moreover, by the time of trial, D.S. was represented by counsel. He retained a lawyer shortly after his grand jury testimony because he wanted someone to help him get through the process, help him behind the scenes, and help him maintain his anonymity to the extent possible (N.T. 6/13/12, 134-36).

Victim B.S.H.

Born in 1983, B.S.H. was 28 years old at the time of his trial testimony (N.T. 6/11/12, 42).

In 1996 and 1997, when B.S.H. was around 12 or 13 years old, he lived in Snow Shoe, Centre County, with his mother and stepfather, but spent most of his time at his grandmother's house nearby because he did not get along with his stepfather. B.S.H.'s natural father was not around. In 1996, when he was getting into trouble outside of school, his guidance counselor referred him to The Second Mile camp in Reading, PA (N.T. 6/11/12, 42-43, 142-42).

The next year (1997), B.S.H. attended The Second Mile overnight camp on PSU's campus. His roommate in the dormitory knew defendant, and B.S.H. met defendant when he visited his roommate. At some point, defendant learned that B.S.H. lived in Centre County and invited him to play basketball. Later, defendant invited B.S.H. to a family picnic at Sayer Dam, during which B.S.H. swam with the family at a beach area. Defendant held the children by their buttocks and threw them into the air. But when defendant "was having trouble getting a good grip," he brushed his hand over the child's genitals before throwing them. Defendant did this to B.S.H. about twice (N.T. 6/11/12, 44-47, 149).

About a week or two later (when B.S.H. was 13), defendant invited him to play basketball, racquetball or work out. B.S.H. agreed to go.

The first time B.S.H. rode in a car with defendant, defendant put his hand on his leg like "I was his girlfriend." This "freaked [B.S.H] out like extremely bad" and he "could not stand it." This happened almost every time B.S.H. rode in the car with defendant. B.S.H. brushed defendant's hand off and tried to keep his arm there instead, but defendant put his hand back as soon as B.S.H. was not paying attention. B.S.H. had a vivid recollection of this, stating it "drove [him] nuts" (N.T. 6/11/12, 55-57, 85, 157-58).

After that first time playing racquetball, defendant suggested they take a shower. They left the building where they had played racquetball and went to shower at the coaches' locker room in the East Area Locker Room. Other than feeling uncomfortable about taking a shower with someone else, nothing unusual happened during that first shower with defendant (N.T. 6/11/12, 47-51).

For the following weeks and leading into the fall of 1997, B.S.H. continued to play basketball or racquetball with defendant and then shower with him. Eventually, the activity in the shower became more physical, including play fighting and "slapping around." B.S.H. was 13 years old (going on 14) and weighed about ninety pounds. Defendant started the play fighting, which he called "horsing around" (N.T. 6/11/12, 51-53).

About two months after B.S.H. had attended The Second Mile camp at PSU, and after about fifteen showers of "horsing around," the showers evolved with defendant throwing soap from a dispenser at B.S.H., who thought this was a game and went along with it. This led to defendant "bear hugging" and "grappling" B.S.H. Defendant used the soap to wash himself and then B.S.H., which B.S.H. described as a way of hugging and caressing him. Defendant's hands touched parts of B.S.H's body with the soap, and defendant caused B.S.H's hands to touch parts of defendant's body, including his penis.

Later, the soap battles in the shower led to defendant wrestling B.S.H. to the ground. Defendant maneuvered their bodies so his penis was in B.S.H.'s face and defendant's head was between B.S.H.'s legs. Defendant kissed B.S.H's thighs. Defendant then rubbed his penis on B.S.H.'s face and become erect. Sometimes defendant tried to put his penis in B.S.H.'s mouth. If B.S.H. resisted, defendant became angry and the play fighting became more physical with

defendant slapping B.S.H. harder. B.S.H. was too small to resist and fight back (N.T. 6/11/12, 58-63).

During this time, B.S.H. attended PSU home football games. Defendant picked up B.S.H. from school on Friday and he spent the night at the Sandusky home. He slept in an upstairs bedroom next to defendant's bedroom. Defendant tucked him into bed at night and at times rubbed or blew on his stomach. On Saturday morning, they went to the football game. B.S.H. sat in the stands with the Sandusky family and there were a few occasions when defendant put him on the sidelines, which was a big deal to B.S.H. (N.T. 6/11/12, 55-56-58, 82-84).

Defendant's sexual abuse of B.S.H. continued in the shower. On one occasion, defendant tried to slide his finger into B.S.H.'s buttocks. On another occasion in the Lasch Building locker room, defendant tried to penetrate B.S.H. with his penis. B.S.H. left the shower on both occasions (N.T. 6/11/12, 67-70, 133-36, 141).

As time passed, the sexual abuse progressed to defendant putting his penis into B.S.H.'s mouth and at times ejaculating. B.S.H. was about 14 years old at this time. This occurred in the shower in the East Area Locker Room and the Lasch Building sauna and shower. B.S.H. testified that, after the first time defendant put his penis in B.S.H.'s mouth, it happened two to three times a week, over the course of years when he was with defendant. B.S.H. estimated that defendant put his penis in B.S.H.'s mouth more than 40 times (N.T. 6/11/12, 67-70, 141).

B.S.H. described one instance when he, defendant, and defendant's adopted son Matt Sandusky played racquetball and went to the locker room afterwards. The three of them were in the shower and defendant began "horsing around," throwing soap at B.S.H. Matt left the shower with a "nervous" expression on his face (N.T. 6/11/12, 86-87).

B.S.H. did not tell anyone about these events in the shower and sauna because he was too scared. He also did not want to lose going places with defendant and participating in experiences he otherwise never would have had. He had "somebody actually paying attention to [him]." He did not have a dad around, he saw defendant as a father figure, and there was "good happening" to him from his associations with defendant (N.T. 6/11/12, 53-61, 70-71, 160-61).

Defendant arranged to have B.S.H. be a part of a *Sports Illustrated* article about The Second Mile, and his photograph appeared in the magazine (N.T. 6/11/12, 72-73).

In addition, B.S.H. became a huge football fan from attending at least two seasons of PSU games with defendant. Defendant told B.S.H. he could arrange for him to have a walk-on spot on the PSU football team. Defendant also gave B.S.H. a uniform worn by LaVar Arrington, a "very good" player at PSU. B.S.H. once stayed at Toftrees, a hotel where the PSU players and coaches stayed the night before a game (N.T. 6/11/12, 55-60, 74-77).

B.S.H. also traveled with defendant to The Second Mile events, such as golf tournaments, which entailed staying in hotels or motels. Defendant woke up early to exercise and B.S.H. sometimes was awakened to defendant rubbing his stomach or reaching down his underwear (N.T. 6/11/12, 77-81).

Over the summer, B.S.H. helped defendant run drills at the PSU football camp (N.T. 6/11/12, 78-79).

B.S.H. attended two Bowl games with defendant, the Outback Bowl in Florida and the Alamo Bowl in Texas. On both occasions, B.S.H. flew on a plane with the PSU coaches and players and stayed in a hotel with defendant and his wife. While B.S.H. was at the Outback Bowl, B.S.H. was in a hotel room with defendant and was preparing to take a shower when defendant approached and began caressing B.S.H. Defendant began to push on B.S.H. as if he wanted B.S.H.

to perform oral sex on him. When B.S.H. resisted, defendant threatened by stating: "You don't want to go back to Snow Shoe, do you?" A few seconds later, defendant's wife entered the hotel room and called for him. Defendant left the bathroom and B.S.H. got into the shower; when B.S.H. emerged, defendant's wife was gone (N.T. 6/11/12, 81-82, 91-94, 182).

Defendant bought B.S.H. gifts, including golf clubs, golf bag, skateboard, snowboards, snow boots, football and hockey pads, hockey sticks, jerseys, shirts, goggles, drum set, multiple pairs of shoes, sweat suits, memorabilia-type things (such as a watch from the Orange Bowl, a game football from Ohio State), and PSU items (N.T. 6/11/12, 87-88, 128-30).

B.S.H.'s contact with defendant lasted about five years (N.T. 6/11/12, 89).

Eventually, as he got older and had a girlfriend, B.S.H. grew tired of defendant's conduct and began to avoid him. He had his grandmother tell defendant he was not home when defendant called, or he was not home after arranging to meet defendant (after which defendant "was pissed off because [he] wasn't there"), or he hid in a closet when defendant appeared. In response to B.S.H. trying to distance himself from him, defendant called more and "wasn't very happy about it." Defendant also wrote B.S.H. many letters, some of which were "creepy love letters,"[2] but that eventually stopped (N.T. 6/11/12, 89-91, 94-95).[3]

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[2] Letters defendant wrote to B.S.H. were presented at trial. Furthermore, the jury viewed numerous photographs, depicting B.S.H. with defendant (including at Toftrees and the football Bowls), B.S.H. with various PSU football players, B.S.H. from a linebacker training video that he participated in at Holuba Hall, locations where defendant sexually abused B.S.H (including the player's locker room and sauna in the Lasch Building), and gifts he received from defendant (N.T. 6/11/12, 97-128).

[3] B.S.H. explained that during the first time he talked to police and the first time he talked to a lawyer (retained by his natural father), he did not disclose what had happened to him. He told police he wanted to talk to his lawyer before he said anything. The second time he spoke to police he had a civil attorney with him. The first time he provided details about what had happened to him was when he testified before the grand jury; his attorney was with him then. B.S.H. never

B.S.H. testified that no one ever asked him to say anything other than the truth in court. When B.S.H. spoke to the trial prosecutor (Attorney McGettigan), no other lawyers were present other than the other trial prosecutor (Attorney Fina). No one ever asked him to say anything other than what actually occurred. Everything he told the jury about what defendant did to him in the shower and sauna was truthful (N.T. 6/11/12, 225-26).

Victim M.K.

Born in 1988, M.K. was 23 years old when he testified at trial.

From 1999 to 2001, he lived in State College with his parents and older brother. In 1999, when he was almost 11 years old, M.K., at the suggestion of his school counselor, attended The Second Mile overnight summer camp on PSU's campus. There, he met defendant. Later, defendant invited M.K. to PSU football games. Defendant picked him up at his house and drove him to the games along with some other kids (N.T. 6/13/12, 165-71).

Over the course of a few football seasons, M.K. went to at least eight football games. When M.K. rode in the front passenger seat, defendant put his hand on M.K.'s left leg while he drove the car (N.T. 6/13/12, 171-72)

In 2001, at the end of the summer, defendant invited M.K. to workout. After a short workout in the building next to Holuba Hall on PSU's campus, defendant suggested they go to the sauna. They went to the sauna wearing only towels. Defendant removed his towel and sat on it,

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(continued . . .)
paid the attorney any money and never discussed a civil action with him (N.T. 6/11/12, 166-71, 207-12, 217).

B.S.H.'s civil attorney, Bejamin Andreozzi, Esquire, also testified at trial. He began representing B.S.H. in April 2011. Neither he, nor anyone else, ever suggested to B.S.H. what to say during interviews with law enforcement (N.T. 6/19/12, 83, 92-93).

exposing himself to M.K. They then went to a shower area, where defendant hung up his towel and turned on some shower heads. M.K. went to the far end of the shower room, stood under the showerhead, and faced the wall, with his back to defendant. He saw defendant looking at him and his penis was "enlarged." Defendant came over to M.K., threw soap on him, and started lathering his shoulders. M.K. tried to move away from defendant but there was no room; eventually, he felt defendant's penis on his back. Defendant then reached his arm around M.K., touching first his hip and then his genitals. Defendant then placed M.K.'s hand on defendant's genitals. M.K. managed to escape around a corner and get away from defendant. Defendant left the shower room after he did. Defendant was upset and did not speak to M.K. afterwards (N.T. 6/13/12, 174-85, 192-94).

M.K. did not go to any football games after that and defendant never called him again. M.K. never told anyone what defendant had done until speaking about it to his girlfriend in 2011 (N.T. 6/13/12, 180-82).

M.K. told police what had occurred with defendant the first time he spoke to them and he testified before the Grand Jury. He had only been told to tell the truth about what had happened with defendant (N.T. 6/13/12, 182).

Victim R.R. (2025 Recanting Witness)

Born in 1987, R.R. was 25 years old when he testified at defendant's trial. He told the jury at the outset of his testimony that he did not want to be there, but he was there because he was asked to testify and "it's the right thing to do" (N.T. 6/13/12, 28, 30).

In 1998, when he was 11 years old, R.R. lived in Moshannon, Centre County, with his mother, stepfather and stepbrother; his father, who he last saw when he was 4, was out of the picture. Later that year he moved to Milesburg, Centre County, where he lived with his foster mother, Cheryl Sharer.

R.R. first interacted with defendant at The Second Mile summer camp in 1997. Defendant introduced himself to R.R. and other kids in the pool. R.R. told the jury about his 1998 encounter with defendant in the pool, during which he came up behind him, swam underneath his legs, picked him up to put him on his shoulders, and stuck his hands up the front of his swimsuit and grabbed his genitals. R.R. tried to get off his shoulders (N.T. 6/13/12, 41-42).

In the fall of 1998, when R.R. was 11, defendant contacted his guardian and took R.R. to a football game (N.T. 6/13/12, 28-31, 43).

After that (around October, November, December 1998), R.R. went to defendant's home. On the drive there, defendant put his right hand on R.R.'s inner thigh as he sat in the front passenger seat (N.T. 6/13/12, 45-46).

At defendant's home, R.R. was alone with him in the basement. They were wrestling and defendant pinned R.R. to the ground. Defendant then pulled R.R.'s shorts down and began to perform oral sex on him. R.R. "freaked out" and was nervous and scared as this conduct lasted a few minutes. Defendant then went upstairs. Defendant later told R.R., who was living in foster care at the time, that if he told anyone what happened he would never see his family again. Defendant later apologized for his threat, stating he did not mean it and he loved him (N.T. 6/13/12, 31-33, 46-47).

Defendant took R.R. shopping at the mall, where he bought him clothes and other gifts. Afterwards, defendant took R.R. back to his (defendant's) house and performed oral sex on him in the basement (N.T. 6/13/12, 49-50).

R.R. went to defendant's house at least five times. He did not want to go. At some point, he told his foster mother (Cheryl Sharer) he did not want to go to defendant's house anymore, but he did not say why.

Because he was scared, ashamed and embarrassed, he never told anyone what defendant did to him until he talked to law enforcement after defendant's arrest. He came forward and called police over a hotline. In addition, he told his foster mom (Cheryl Sharer) what defendant did to him around the time he testified before the Grand Jury (December 2011) (N.T. 6/13/12, 33-34, 54-55, 67-68).[4]

As discussed below, R.R. did not disavow his trial account of defendant's sexual abuse until the defense investigator contacted him in 2025, thirteen years after trial.

R.R.'s Foster Mom - Corroboration of R.R.'s Testimony

R.R.'s foster mom, Cheryl Sharer, corroborated R.R.'s testimony at trial. She testified that, when she was R.R.'s foster mother, defendant called and asked to take R.R. on outings. At one point when defendant called, R.R. told her he did not want to go with him anymore (N.T. 6/13/12, 69-74).

Around November or December 2011, R.R. told her defendant had molested him when he lived with her. R.R. reiterated that to her on June 12, 2012, when the two of them spoke the night before he testified at trial. Sharer believed R.R.'s accusations against defendant (N.T. 6/13/12, 69-76).

Victim Z.K.

Born in 1986, Z.K. was 25 years old when he testified at defendant's trial.

In 1998, when he was 11 years old, he lived in an apartment in State College with his mother and sisters. He met defendant at a picnic for The Second Mile. Having grown up a PSU football fan, Z.K. was excited to meet defendant and introduced himself (N.T. 6/14/12, 4-7).

[4] As of the time of trial, R.R. had not retained private counsel in this case (N.T. 6/13/12, 60).

In May of 1998, defendant arranged through Z.K.'s mother to pick him up for a workout at the PSU facilities. In the car, defendant put his hand on Z.K.'s leg and left it there, even when Z.K. pulled his leg away a bit (N.T. 6/14/12, 8-9).

At the football facility, defendant showed Z.K. some of the players' equipment and let Z.K. try on equipment used by notable players. After playing some games, the two wrestled and defendant demonstrated on Z.K. how to pin an opponent. Defendant then gave Z.K. workout clothes (even though he was already wearing his own workout clothes) and helped Z.K. use the workout equipment (N.T. 6/14/12, 9-13).

After about 15 or 20 minutes and without working up a sweat, defendant announced it was time for a shower. They went to the coaches' locker room, where defendant removed his clothes and got into the shower. Z.K. undressed and wrapped himself in a towel, feeling uncomfortable because he had never been naked in front of anyone but his parents before. Defendant had the shower right next to him running when Z.K. entered the shower room. Z.K. went to a shower head across the room. Defendant asked Z.K. why he was not using the shower next to him because he had already warmed it up for him. Z.K. then went to the shower next to defendant (N.T. 6/14/12, 9-14, 26).

Defendant made jokes and started to tickle Z.K. under his arms, on his stomach, and on his chest area, calling himself the "tickle monster." At one point, defendant grabbed Z.K. from behind, gave him a big bear hug, lifted him up, and playfully said, "I'm going to squeeze your guts out." Defendant then squeezed Z.K. and made a growling sound. Z.K. tried to escape defendant's grasp but did so in a playful manner so he did not upset defendant (N.T. 6/14/12, 14-15).

Defendant then soaped Z.K.'s body and offered to help him wash his back where he could not reach. Defendant took the soap and lathered Z.K.'s back and shoulders. Defendant then put

his hands around Z.K.'s waist and lifted him up to the shower head to rinse the soap from his hair. At that point, Z.K.'s chest was at defendant's; Z.K. had a distinct recollection of being repulsed by defendant's chest hair. He did not remember anything about the shower experience after that point (N.T. 6/14/12, 15-16, 27).

When he arrived home, Z.K. told his mother about some of the things he saw on his outing with defendant and then told her, "And by the way, if you're wondering why my hair is wet, it's because we took a shower." He then left the room. She came into his room after a few minutes to follow-up on what he had just said, and Z.K. told her "bits and pieces" of what had occurred. Z.K's mother called the police. Z.K. gave three or four interviews shortly after that (N.T. 6/14/12, 18-20, 28).

Around January 2011, Z.K. realized as an adult that defendant's behavior was inappropriate. His change in perception had nothing to do with having recently hired an attorney. He was not aware of the circumstances of his agreement for representation (N.T. 6/14/12, 36-37, 46).

Z.K. testified that the trial prosecutor (Attorney McGettigan) always told him to tell the truth. Attorney McGettigan never said to remember anything that did not happen. No one asked him to change his story. No one told him to say worse, more or anything different from the truth (N.T. 6/14/12, 48-49).

Police Investigator Schreffler – Corroboration of Z.K.'s Testimony

One of the interviews Z.K. gave after his May 1998 shower with defendant was to Ronald Schreffler, a criminal investigator with the Penn State Police Department. What Z.K. told Schreffler in May of 1998 was consistent with Z.K.'s 2012 trial testimony (N.T. 6/14/12, 52-55).

Working with the District Attorney's Office, Schreffler had Z.K.'s mother contact defendant and invite him to her home in an attempt to discuss Z.K. having showered with him. When defendant arrived, Schreffler was in a bedroom and an investigator with the State College Police Department was in a restroom, trying to overhear the conversation. Z.K.'s mother told defendant that Z.K. had not been the same since he showered with defendant and was having trouble sleeping. Defendant asked several times if she wanted him to talk to Z.K., but she said she did not think that would be appropriate at that time (N.T. 6/14/12, 55-57).

On a second occasion, defendant came to the house thinking he would be picking up Z.K. During the conversation, Z.K.'s mother told defendant that Z.K. had been acting weird. Defendant told her, "I wish I could ask for forgiveness. I know I will not get it from you. I wish I were dead" (N.T. 6/14/12, 59-63).

After Schreffler had discussions with the District Attorney's Office, no charges were filed. The District Attorney made that decision despite Schreffler's belief that charges should be filed. Later, Schreffler and a representative of the Department of Public Welfare interviewed defendant. Defendant admitted he had showered with young boys but claimed nothing sexual had occurred. When Schreffler recommended that defendant not shower with young boys again, defendant agreed that maybe it was inappropriate and said he would not do it again (N.T. 6/14/12, 63-68).

Victim J.M.S.

Born in 1987, J.M.S. was 25 years old at the time of defendant's trial.

In 1998 and 1999, J.M.S. was living in Moshannon, Centre County, with his mother and younger brother. J.M.S. entered The Second Mile overnight camp through Big Brothers/Big Sisters because he "wasn't the best-behaved kid." During his second year at the camp, he met defendant at "Casino Night." Defendant asked if J.M.S. wanted to attend his overnight football

camp and J.M.S. agreed. Defendant drove J.M.S. to the camp in Latrobe, Westmoreland County. During the drive, defendant rubbed J.M.S.'s knee and the inside of his leg (N.T. 6/14/12, 82-89).

After that, J.M.S. attended PSU's Blue and White Game, where he watched the game from the sidelines with defendant. J.M.S. also accompanied defendant on a trip to Syracuse, New York, where they stayed in a hotel room together (N.T. 6/14/12, 89-91).

Following that trip, J.M.S. stayed at defendant's house about 50 times over a three-year period, mostly on school nights. J.M.S. wanted to stay at defendant's house because defendant was like a father to him and made him feel like he was part of a family. The routine was that, during the week, defendant picked up J.M.S. from middle school and drove him to the Sandusky house, sometimes engaging in an athletic activity first, after which they had dinner and J.M.S. slept over in the basement bedroom. Generally, J.M.S. was the only kid at the Sandusky house when he stayed overnight (N.T. 6/14/12, 91-94, 108, 123).

Between 1999 (when J.M.S. was 12 years old) and 2001, J.M.S. attended four or five football games (N.T. 6/14/12, 94-95).

When J.M.S. slept in the basement, defendant came downstairs without a shirt and asked why J.M.S. slept fully clothed. J.M.S. eventually stripped down to his underwear. Defendant sat on the edge of the bed and talked to J.M.S. Whenever defendant made him laugh, defendant got excited, jumped into bed with him, and started tickling him on his stomach and inside of his leg, up his thigh. He also rubbed J.M.S.'s stomach and blew on his stomach and pelvis. At times, defendant touched J.M.S.'s penis. On more than one occasion, defendant rubbed and kissed J.M.S.'s shoulders. Defendant did this on most of the 50 times he stayed overnight at defendant's home (N.T. 6/14/12, 96-100).

A few times, J.M.S. went to the gym with defendant, who worked out while J.M.S. did not do much of anything. After the first time they went to the gym, they took a shower. J.M.S. had never showered with a grown man before and was nervous. Defendant turned on two showers next to each other, but J.M.S. went to a shower further away because of his discomfort. Defendant made J.M.S. feel guilty about it and persuaded him to move closer. There, defendant washed J.M.S.'s shoulders, back and buttocks. Defendant also bear hugged J.M.S. and tossed him into the air. These events happened every time they went to the gym (N.T. 6/14/12, 100-02, 120).

When defendant got into bed with J.M.S. in the basement, he touched, rubbed and grabbed J.M.S.'s penis and gave him an erection. J.M.S. rolled over and tried to get away from him (N.T. 6/14/12, 103-04).

On "practically all" of the times he stayed overnight at defendant's house (in 1999, 2000 and into 2001), defendant kissed his shoulders, rubbed and blew on his stomach, tickled him, and touched his penis (N.T. 6/14/12, 106-08).

Eventually, J.M.S. was placed into foster care because of problems at home. During the three years he was in group homes or foster care, J.M.S. never heard from defendant and defendant never contacted J.M.S.'s mother to see what had happened to him. When asked if he still cared about defendant while placed in the group homes, J.M.S. replied, "Yes. I would pray he would call me and maybe find a way to get me out of there, adopt me or something. That never happened" (N.T. 6/14/12, 107-09).

J.M.S. testified that the trial prosecutor (Attorney McGettigan) never told him to say anything that was not true and never told him what to say. The trial prosecutor only ever told him to say what happened and that is all J.M.S. has done (N.T. 6/14/12, 126-27).[5]

Janitor Ronald Petrosky – Unnamed Shower Victim

In the fall of 2000, Ronald Petrosky was a janitor at PSU. His duties included cleaning the Lasch Football Building. One night, as he was preparing to clean the staff shower area, he heard the showers running. He heard another janitor, Jim Calhoun, cleaning the toilet area. As he was about to enter the shower area, he saw two sets of legs in there, one set of hairy legs and one set of skinny legs. He went into the hallway to wait for the people to finish showering and exit the locker room (there was only one way in and out of that locker room); he would then finish his cleaning. Approximately ten minutes later, Petrosky saw defendant exit the locker room with a boy, believed to be between 11 and 13 years old. Defendant took the boy's hand and they walked down the hallway together. Both had wet hair and were carrying gym bags (N.T. 6/13/12, 222-29, 238, 250; N.T. 6/14/12, 200).

As Petrosky again prepared to clean the shower, Calhoun appeared in the entry area of the locker room, looking upset. His face was white and his hands were trembling. Calhoun told Petrosky he saw the boy up against the wall and defendant "licking on his privates." Calhoun said he was sure it was the man that had just left, *i.e*. defendant. Petrosky took Calhoun down the hall to a meeting room where Calhoun was crying and shaking. There, Calhoun repeated to the other janitors the same thing he had told Petrosky – he saw defendant holding the boy up and "was sucking on his dick" (N.T. 6/13/12, 229-31).

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[5] J.M.S. testified before the Grand Jury in August 2011. After the preliminary hearing, a lawyer approached him and he agreed to be represented by him (N.T. 6/14/12, 110, 115-19).

Later, Petrosky saw defendant drive slowly by the building. This occurred twice, once between 10:00 p.m. and 11:30 p.m., and again at 2:00 a.m. or 2:30 a.m. (N.T. 6/13/12, 231-32).

Football Coach McQueary – Another Unnamed Shower Victim

In 2001, Michael McQueary was a graduate assistant football coach for PSU. On a Friday night in February, 2001, McQueary went to his PSU office to work. He drove to the Lasch Football Building and went to the support staff locker room to put sneakers in his locker. Upon entering the locker room, he heard showers running and "skin-on-skin smacking sounds." He became embarrassed he had interrupted something he did not want to see. He went to his locker and, as he opened the locker, he looked over his right shoulder at a mirror that reflected into the shower room. He saw defendant standing behind a boy who was propped up against the wall of the shower, with his hands up against the wall. Defendant had the front of his body up against the boy's back (N.T. 6/12/12, 186-93).

McQueary first turned back to his locker, trying to process what he just saw, and then took two or three paces to his right to get a better view and look directly into the shower room. He saw the same thing – defendant standing right against the back of the young boy with the boy's hands up on the shower wall. Defendant's arms were wrapped around the boy's midsection. McQueary saw subtle movement by defendant's midsection. McQueary described seeing defendant in an "extremely sexual position," what he believed was defendant sodomizing the boy (N.T. 6/12/12, 189-93, 196-97, 246, 274-77, 299-300).

"Extremely alarmed" and "extremely shocked" by what he saw, McQueary stepped back in front of his locker, put the sneakers inside, and slammed the locker door shut to make a loud sound, and then again stepped closer to the opening to the shower. This time, defendant and the boy were separated and looking and facing directly at McQueary. McQueary left the locker room.

The boy, seemingly between 10 and 12 years old, was about chest high. There were no other people in the locker room, so the slapping sounds had to have come from the shower (N.T. 6/12/12, 194-200, 246, 250).

McQueary immediately called his father, John McQueary, to discuss what he had seen. He then reported the incident to his immediate supervisor, Coach Joe Paterno, and had a subsequent meeting with PSU administrators.

John McQueary & Dr. Dranov – Corroboration of Coach McQueary

John McQueary corroborated that his son, Michael McQueary, contacted him by phone that night in February 2001, after he saw defendant in the shower with a young boy. John McQueary testified that Michael contacted him by phone, distraught and concerned, explaining he saw defendant engaged in a sexual act with a young boy in the shower. Michael visited John's house that night, rehashing what he had witnessed between defendant and the young boy. John McQueary then called his friend, Dr. Dranov, and the three men talked further. John told Michael to report the incident to PSU authorities and his immediate supervisor, Joe Paterno (N.T. 6/13/12, 4-19).

Dr. Dranov corroborated the testimony by John and Michael McQueary. Dr. Dranov said Michael McQueary was "visibly shaken" when describing what he had observed in the shower; his voice was trembling and his hands were shaking. Michael McQueary was not the type of person who was easily shaken (N.T. 6/20/12, 14-15).

Victim S.R.P.

Born in 1993, S.P. was 18 years old when he testified at trial. He told the jury he was there to "[s]peak the truth" (N.T. 6/14/12, 204).

In 2004 and 2005, he lived in a trailer in McClure, Snyder County, with his mother (Angella Marie Quidetto); his father's whereabouts were unknown. He participated in The Second Mile program for three or four summers. When he was 12 years old and playing in the pool, S.P. met defendant, who asked him if he wanted to hang out outside the camp. Because defendant was well-known and seemed nice, he thought it was a good idea and his mom agreed to it (N.T. 6/14/12, 203-09).

The first year he met defendant, S.P. accompanied him to multiple home football games. A few weeks after meeting defendant, S.P. began to stay overnight in the basement room at defendant's house. He did this for the next three or four years (N.T. 6/14/12, 207-08).

Defendant bought him gifts, including a running suit, racquetballs, a tennis racket, and sneakers. S.P. began to feel uncomfortable when defendant visited the basement bedroom when he was going to bed and started rubbing his stomach, cracking his back, and kissing and hugging him "all over." S.P. told defendant to stop. Defendant later told S.P. he loved him. Defendant took S.P. to the pool and gym and constantly had his arms around S.P. hugging him (N.T. 6/14/12, 209-13).

After that, defendant had S.P. touch his (defendant's) penis. S.P. did not want to keep returning to defendant's house after that but his mom wanted him to go back. He did not know how to tell her what defendant was doing to him (N.T. 6/14/12, 213-14).

On later occasions, defendant came into the bedroom, pulled down his pants, laid on top of S.P, and forced his penis into S.P.'s mouth, telling S.P. to suck it. S.P. did not want to do this but felt he could not resist because defendant was "way bigger" than him (N.T. 6/14/12, 214-15).

Between 2005 and 2008/2009, S.P. stayed at defendant's house almost every weekend, which he estimated was about 100 times. On each occasion, defendant kissed S.P. During some of the visits, defendant made S.P. suck his penis (N.T. 6/14/12, 212-16, 219-20, 229-31).

When he stayed overnight at defendant's house, S.P. slept alone in the basement. When S.P. was between 13 and 15 years old, defendant came into the basement, made S.P. suck his penis, and then became "very aggressive" and put his penis into S.P.'s anus. S.P. felt "there was no fighting against it," especially since he did not think anyone would be able to hear him in the basement. Defendant put his penis into S.P.'s anus a few times (N.T. 6/14/12, 216-19, 221, 232-35).

S.P. told the jury about one occasion when he called his mother to pick him up at defendant's house when "he was trying to be physical with [him] and [he] had enough of it" (N.T. 6/14/12, 219).

Defendant continued to take S.P. places (such as swimming at the Holiday Inn), give him gifts, and tell S.P. he loved him and wished the best for him (N.T. 6/14/12, 220-21).

S.P. eventually pushed back when his mom tried to convince him to go to defendant's house. He refused. The last time he stayed overnight at the Sandusky home was 2008/2009, when he was about 15 years old. Defendant called and tried to convince him to come over. S.P. made excuses (N.T. 6/14/12, 208-09, 221-23).

S.P. did not tell the police what had happened with defendant when they first interviewed him; he did not trust them and he did not want to be involved in the investigation. Nor did he reveal what had happened when he first testified before the Grand Jury. He explained his reasoning for his initial silence at trial: "Who would believe you? I mean, he's an important guy. Everybody knows him and he's a football coach. Like, for real, who would believe kids?" The trial prosecutor

(Attorney McGettigan) was the first person S.P. told about defendant's sexual abuse (N.T. 6/14/12, 208-09, 223-25).

He told the jury that no one ever told him to say anything other than the truth. The trial prosecutor (Attorney McGettigan) never told him what to say other than the truth. And no one forced him to come to court (N.T. 6/14/12, 225-26).[6]

For purposes of the claims raised in the current PCRA proceedings, it is significant to note that ***S.P. has never disavowed his 2012 trial testimony.***

S.P.'s Mother "Marie" – Corroboration of S.P.'s Testimony

S.P.'s mother, Angella Marie Quidetto (hereinafter "Marie"), corroborated her son S.P.'s testimony at trial.

Marie explained to the jury that, because she had two jobs and worked "all the time," she was not around much at home. S.P., who was then 9 or 10 years old, was "alone a good bit." She thought it was a good idea for S.P. to spend time with defendant given he was well known.

She testified that S.P. spent many weekends ("a lot of occasions") overnight at defendant's home. Over the course of two or three years, S.P. went to defendant's home a couple weekends a month, just about every month. There were times defendant called S.P. directly to initiate the weekend visit; she was at work when defendant's phone call came. S.P. then informed her by phone of his plans to stay with defendant. Defendant also bought S.P. gifts, including clothes, sneakers and a racquetball set (N.T. 6/18/12, 36-38, 43-45, 48, 52-53).

Marie told the jury about an occasion when she had to pick up S.P. at defendant's home late at night because he had called her and said he was sick. When she arrived, S.P. was waiting

[6] At the time of trial, S.P. did not have a civil lawyer and was not looking for one (N.T. 6/14/12, 225).

outside defendant's house without shoes on. He told her he was sick and wanted to go to bed. She did not ask questions after that (N.T. 6/18/12, 38-39, 46).

At one point, S.P. complained that he did not want to go to defendant's house anymore because he did not feel like it. But she made him go anyway on more than one occasion (N.T. 6/18/12, 38-40, 45).

Marie testified to health issues S.P. had during the time period she made him stay at defendant's home. S.P. complained of stomach problems (saying his stomach always hurt), he was sick a lot, had behavioral issues, different sleep patterns, and he was having difficulty with schoolwork. She also stated that S.P. was having trouble going to the bathroom, and his underwear was missing from the laundry. When she asked him where his underwear was, he said he had an accident and threw them out, which was odd to her (N.T. 6/18/12, 40, 54-55, 58-59).

When S.P. became older and said he did not want to go to defendant's house anymore, she let him decide and said he did not have to go if he did not want to. After S.P. stopped going to defendant's house, defendant called S.P. late at night (N.T. 6/18/12, 33-55, 45-46).

She testified that she never asked S.P. exactly what happened to him at defendant's home because she knew it would be tough for him to tell her. As of the date of her 2012 trial testimony, no one else had told her what S.P. said. And she was not in court when S.P. testified. Thus, as of the time of her trial testimony, she did not know specifically what happened to S.P. She did, however, feel somewhat responsible (N.T. 6/18/12, 44, 48).

She testified that she did not have a lawyer and did not seek a lawyer (N.T. 6/18/12, 47).

As detailed below, Marie did not change her 2012 account until twelve years later.

Victim A.S.F.

Born in 1993, A.S.F. was 18 years old when he testified at trial. The prosecution just told him to tell the truth when testifying (N.T. 6/12/12, 101).

In 2004, he lived in public housing in Lock Haven, Clinton County, with his mother and younger siblings. A.S.F. never knew his father (N.T. 6/12/12, 5-6).

In 2004, when he was 10 years old, A.S.F., at the suggestion of his grade school, went to The Second Mile summer overnight camp. A.S.F. met defendant during his second year at the camp when defendant asked him how he was enjoying the camp. After his second or third year at the camp, defendant came to Lock Haven with other boys to take A.S.F. to activities. At first, other kids were present during his outings with defendant. But as time passed, he began to spend more time alone with defendant (N.T. 6/12/12, 5-10).

Defendant came to his wrestling matches and took pictures of him (N.T. 6/12/12, 11).

Eventually, defendant suggested to A.S.F.'s mother that A.S.F. visit his home. His mother agreed and encouraged the activity, and A.S.F. went (N.T. 6/12/12, 11-12).

On the first occasion that A.S.F. stayed at defendant's house, they did activities with other children present. While they were in the car, defendant put his hand on A.S.F.'s leg and kept it there (N.T. 6/12/12, 12-13).

When A.S.F. slept at defendant's home, he stayed in an upstairs guest room on a few occasions but mostly slept in a room in the basement. He estimated that, between 2005 and 2008, he stayed at defendant's house more than 100 times (N.T. 6/12/12, 14-15).

When A.S.F. first started staying at defendant's house, defendant kissed him goodnight on the forehead. Later, on multiple occasions, defendant engaged in a ritual where he kissed A.S.F. on the cheek, pulled him on top of him so they were lying face to face on the bed, rubbed his back,

and then cracked his back. No one else was in the room when defendant did this. His wife was "always upstairs" (N.T. 6/12/12, 15-19).

Eventually, defendant began to kiss A.S.F. on the lips and rub him underneath his shorts, touching his buttocks. Defendant also lifted A.S.F.'s shirt and blew on his stomach. A.S.F. was 11 or 12 years old and weighed under 100 pounds (N.T. 6/12/12, 20-22).

At some point (after his usual routine of rubbing and cracking A.S.F.'s back, putting his hand down the back of A.S.F.'s shorts, and blowing on his stomach), defendant put his mouth on A.S.F.'s penis. A.S.F. froze and did not know what to do. He was too embarrassed and confused to tell defendant to stop or to tell his mother. After that time, defendant put his mouth on A.S.F.'s penis almost every time he stayed overnight in the basement room of defendant's house (approximately 80-90% of the overnights). A.S.F. was 12 and 13 years old then (N.T. 6/12/12, 22-26).

A.S.F. estimated that, during 2006 and 2007, defendant put his mouth on A.S.F.'s penis more than 25 times (N.T. 6/12/12, 43).

When A.S.F. was about to turn 13 years old and after a day of the usual activities, defendant engaged in the back cracking, rolling on the bed, back massage, and hand down the shorts ritual in the basement room. But this time, he told A.S.F., "It's you turn." He then made A.S.F. put his mouth on defendant's penis. A.S.F. was too embarrassed to tell his mother what had happened, and he was afraid she would not believe him. This activity continued in 2005, 2006, 2007 and 2008. A.S.F. estimated that defendant put his penis in A.S.F.'s mouth more than 25 times over the course of 2007 and 2008 (N.T. 6/12/12, 26-28, 33, 42-43).

After he started staying at defendant's house, A.S.F. "acted out," got into fights, and wet the bed. He also stopped playing football because he did not want to see defendant anymore.

Defendant came to activities at A.S.F.'s middle school but A.S.F. did not see defendant during the school day. Later, defendant was a volunteer football coach at A.S.F.'s high school and A.S.F. saw him then. Defendant had the assistant principal pull A.S.F. out of class so defendant could talk to him (N.T. 6/12/12, 29-32).

Once, when A.S.F. was in middle school, he was lifting weights with defendant and decided to climb a rock wall. Defendant came up behind him and lifted him off the rock wall and onto a mat. Defendant lay on top of A.S.F. and then rolled A.S.F. on top of him so he could rub and crack his back. When defendant then rolled on top of A.S.F., a door opened and A.S.F.'s coach, Joe Miller, walked in. Defendant "hopped up like a rabbit" and said "Oh, I was just showing him some wrestling moves" (N.T. 6/12/12, 32-33, 62-66).

In 2008 (when he was in ninth grade), A.S.F. tried to avoid defendant when he stayed at his house. He hid in different places in the basement until defendant either went upstairs or his wife called him upstairs. This only worked once. A.S.F. found there really was no place to hide (N.T. 6/12/12, 34).

In the spring of 2008, A.S.F. joined Big Brothers/Big Sisters and spent less time with defendant. Defendant came to A.S.F.'s house to talk to him about this. Defendant got angry and yelled at A.S.F. about spending more time with him (N.T. 6/12/12, 34-37).[7]

On another occasion, A.S.F. was called out of his history class to the principal's office and decided to skip out on both. He got onto the bus and saw a car like defendant's following the bus.

[7] Donald Fisher, A.S.F.'s grandfather, testified to one occasion when his daughter (A.S.F.'s mother) contacted him and asked him to come to the house because of an argument with defendant. Defendant had been there an hour and would not leave. He kept saying he needed A.S.F.'s schedule for the summer so he could make plans with A.S.F., and A.S.F. said he did not know his schedule. Mr. Fisher eventually told defendant that if A.S.F. did not want to go with him, he should take another kid he was mentoring instead (N.T. 6/12/12, 107-09).

He got off the bus near a friend's house but the friend was not home. As A.S.F. walked home, defendant hollered from his car, asking why A.S.F. was not spending time with him, why he was avoiding him, and why he was not answering his phone calls. A.S.F. became very scared and walked away. When defendant put his car in reverse to follow, A.S.F. ran off. Defendant followed a short distance but then left. When A.S.F. got home, he saw defendant in front of the house talking to his mother. A.S.F. hid behind a bush until his mother waved for him to go in the back door (N.T. 6/12/12, 34-37).

After that, defendant left A.S.F. alone for a bit but then began calling frequently. A.S.F. still did not tell his mother what defendant had been doing but asked her about the Megan's Law website and whether defendant was on the site, hoping she would realize what was happening. She did not (N.T. 6/12/12, 37-38).

Finally, A.S.F.'s mother began to feel uncomfortable about defendant repeatedly calling and trying to contact A.S.F. She arranged a meeting between A.S.F. and a guidance counselor. There, A.S.F. broke down crying and told the counselor that defendant had done something wrong to him. When A.S.F.'s mother said the police and Children & Youth Services needed to be contacted, school personnel cautioned they needed to think about that because defendant has "a heart of gold" and would not do anything like that, from which A.S.F. concluded the school did not believe him (N.T. 6/12/12, 38-39).

A.S.F. initially was hesitant disclosing defendant's sexual abuse. He had difficulty talking to Jessica Dershem from Clinton County Children and Youth Services because she was a girl (N.T. 6/12/12, 39). And when he first met psychologist Mike Gillum A.S.F. told him that more had

happened with defendant but he did not feel comfortable disclosing the details then (N.T. 6/12/12, 73-75, 95).[8]

Caseworker Jessica Dershem – Corroboration of A.S.F.

Caseworker Jessica Dershem from Clinton County Children and Youth Services testified to her interviews with A.S.F. and defendant during her investigation of sexual abuse by defendant.

During her first interview with A.S.F. on November 20, 2008, she felt he was withholding information because he was not comfortable. After her second interview with him on December 12, 2008, she felt there was enough information provided to meet the definition of child sexual abuse (N.T. 6/12/12, 124-130, 156).

Thereafter, on January 15, 2009, Dershem interviewed defendant (in the presence of his counsel). During the interview, defendant admitted he had a 3-year relationship with A.S.F., that he took him to activities, and viewed him as an extended family member. Defendant told Dershem he felt "used" by A.S.F. because he supposedly asked him for help with an event and A.S.F. declined. Defendant claimed A.S.F. only stayed overnight at his house 7 or 8 times. He admitted blowing raspberries on his stomach, having A.S.F. lay on top of him to crack his back (for 5-20 minutes), and rubbing his back underneath his shirt. Defendant could not answer whether his hands went below the waistline of A.S.F.'s pants ("I can't honestly answer if my hands were below his pants."). While defendant initially admitted to kissing A.S.F. on forehead, he then said he could not recall, he may have kissed him on the cheek. Defendant admitted taking A.S.F. out of school

[8] A.S.F. testified that his mother hired a civil attorney to keep the press away from him. He was unaware of the financial arrangements with the lawyer (N.T. 6/12/12, 68-69). A.S.F.'s mother, Dawn Daniels, also testified that she retained an attorney (Michael Boni, Esquire) in 2011 to protect her and her son's interests (*i.e.*, to keep the press away from her family, employment, and her kids' schools). Ms. Daniels signed an agreement with the lawyer, but she was not aware of the contents of the fee agreement; she had not paid him money yet (N.T. 6/19/12, 145-47).

to talk to him, but denied following him home from school, instead claiming he went in the direction the bus went to talk to A.S.F. Defendant admitted arguing with A.S.F. because he was not spending time with him, admitted he stayed in hotel rooms with A.S.F. on two occasions, and admitted making him homemade birthday cards and buying him gifts. Defendant denied having any sexual contact with A.S.F. (N.T. 6/12/12, 132-83).

Wrestling Coach Joe Miller – Further Corroboration of A.S.F.

Wrestling coach Joe Miller corroborated A.F.S.'s testimony regarding the rock wall incident with defendant.

Miller testified that during wrestling season in 2006/2007, at approximately 8:00 p.m., he entered the athletic facility and saw defendant and A.S.F. on an exercise mat, beneath the rock wall. They were laying face to face on their sides. Defendant quickly propped himself up on one arm and said, "Hey, Coach, [A.S.F.] and I are just working on some wrestling moves." Both defendant and A.S.F. seemed startled. Even though what he saw was unlike any wrestling move he had ever seen, and he never asked defendant to assist him with coaching wrestling, Miller did not think much of the incident. He had seen defendant with A.S.F. many times before at school and thought defendant was a father figure to A.S.F. (N.T. 6/12/12, 305-20).

Special Agent Anthony Sassano – How the Investigation Unfolded

Special Agent Anthony Sassano testified to how law enforcement's investigation into defendant's sexual abuse of The Second Mile boys unfolded after they received information from A.S.F. The Office of Attorney General and Pennsylvania State Police obtained lists of kids who attended The Second Mile camps and narrowed the list by interviewing kids who lived within one hour of State College. Investigators also tried to identify kids in photographs with defendant and

camp pamphlets. They received a tip to speak to Coach McQueary, spoke to janitors from PSU's campus, and received leads from other interviews (N.T. 6/14/12, 136-44).

During the investigation, law enforcement obtained numerous pieces of evidence that corroborated the accounts provided by the victims. In June of 2011, law enforcement executed a search warrant at defendant's home, from which time they recovered many photographs of victims (including A.S.F.), and a list of kids from The Second Mile camps with an asterisk next to their names (including victims A.S.F. and S.R.P.). Investigators also obtained a television clip of victim B.S.H. and defendant together at football games in 1999. Additionally, investigators recovered defendant's materials from the East Area Locker Room that included a 1999 video with coaching drills depicting victim B.S.H., and camper lists with victims' names (D.S., R.R., J.S.) starred (N.T. 6/14/12, 153-88).

On November 14, 2011, after defendant's arrest, he participated in a nationally broadcasted telephone interview with Bob Costas. During the interview, defendant was asked: "Are you sexually attracted to young boys, to underage boys." Defendant paused and repeated the question back to Costas. Defendant then replied, "sexually attracted, you know, I enjoy young people. I love to be around them. I, I, but no, I'm not sexually attracted to young boys."

B. Defendant's 2012 Jury Trial & Sentencing

Commencing on June 11, 2012, defendant was tried by a jury sitting before the Honorable John M. Cleland in Centre County. The Commonwealth presented the testimony and evidence set forth above.

The defense launched a full frontal attack on the credibility of the victims, which included arguing they were lying for a pay day from a civil suit. In their opening and closing statements,[9] trial counsel vigorously argued that the victims were motivated by financial gain and exhaustively explored this during their cross-examination of the victims.[10] In addition, through testimony by various witnesses (including law enforcement investigators), and their opening and closing

[9] *See* Defense Opening Statement N.T. 6/11/12, 16-18 (arguing money was a "very big" motivating factor for the victims to lie in this case: "Money is the root of all evil" and "the evidence is going to show I believe that six of these eight young men that are going to testify have civil lawyers." "We believe the evidence will show that these young men have a financial interest in this case in pursuing this case").

See Defense Closing Argument N.T. 6/21/12, 40-42 (trial counsel arguing that once a victim came forward and reported that defendant had "fondled" him, that victim's mother pushed him to pursue the allegations as part of a scheme to obtain money from defendant, and from that, this initial victim became motivated by money as well; N.T. 6/21/12, 52 ("Financial motive? You have to decide that. You have to decide if these kids and these lawyers who sat in this courtroom now for two weeks without being paid a penny are doing it out of the goodness of their hearts and whether they have a financial interest in the outcome of this case, a verdict of guilty. Doesn't make any sense. Everyone says, well, okay. They can have lawyers. I understand that but Mr. Sandusky can still be guilty. So the financial part of it doesn't make sense. We can buy that. We can understand that there's a financial interest. We can understand these kids now want to be compensated. We can understand the lawyers want to make millions of dollars but it still doesn't mean Mr. Sandusky did this."); N.T. 6/21/12, 55-60 (counsel arguing that victim's delay in reporting the abuse was because the abuse never occurred and that the victims made more serious allegations as they realized that more money might be available); N.T. 6/21/12, 86 ("Why would they come into court and be embarrassed? Out there, the lawyers. Money. We all know. What's the old saying? Money is the root of all evil. Money. But not only money, coaching").

[10] *See* Victim B.S.H. - N.T. 6/11/12, 207-17; Victim A.S.F. - N.T. 6/12/12, 68-70, 100; Victim D.S. - N.T. 6/13/12, 121, 124, 133, 135-39; Victim Z.K. - N.T. 6/14/12, 36-37, 45-46; Victim J.M.S. - N.T. 6/14/12, 115-19.

statements, the defense argued that law enforcement planted the seed of what the victims were supposed to say during interviews.[11] Defendant also presented numerous character witnesses.[12]

On June 22, 2012, the jury -- after considering the evidence, observing the demeanor of the many victims and witnesses, and assessing their credibility -- convicted defendant (then 68 years old) of 45 counts for his sexual abuse of 10 victims between 1995 and 2008. Specifically, he was convicted of:

- 8 counts of involuntary deviate sexual intercourse, 18 Pa.C.S. § 3123(a)(7);
- 7 counts of indecent assault, 18 Pa.C.S. § 3126(a)(7) and (8);
- 9 counts of unlawful contact with a minor, 18 Pa.C.S. § 6318(a)(1)(5);
- 10 counts of corruption of minors, 18 Pa.C.S. § 6301(a)(ii);
- 10 counts of endangering the welfare of children, 18 Pa.C.S. § 4304; and
- 1 count of criminal attempt to commit indecent assault, 18 Pa.C.S. § 901 (18 Pa.C.S. § 3126).

Joseph L. Amendola, Esquire, and Karl E. Rominger, Esquire, both represented defendant trial.

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[11] *See* Defense Opening Statement N.T. 6/11/12, 26-27 (trial counsel arguing that law enforcement suggested or told the victims what to say: "There's another aspect to this case and I think it will become apparent throughout the trial. Even the accusers were questioned multiple times. We believe when they were questioned and initially said nothing happened, the government went back until they got an answer they wanted to hear." . . . "We have all had occasions where if you keep telling somebody something, after a while it's simpler and easier to say, yeah, that's what happened.").

See Defense Closing Argument N.T. 6/21/12, 55-61 ("What is Corporal Leiter saying to him? You have to come to that conclusion."); N.T. 6/21/12, 63 ("I submit to you that they were going to get him hell or high water, even if they had to coach witnesses.").

[12] Responding to defendant's attempt to show there was suggestive interviewing by law enforcement, on cross-examination, PSP Corporal Scott S.C. Rossman, one of the lead investigators on the case, testified that he never told anyone what to say, he did not manufacture events for them to relate to him, and he never encouraged any victim to say anything particular involving defendant or anyone else (N.T. 6/19/12, 37-40). Likewise, former PSP Corporal Joseph A. Leiter, testified that he never told anyone what to say, he never suggested to anyone any particular thing that may or may not have happened to them, never told anyone they had to say anything, never told anyone they had to talk to him, never asked anyone to say that a particular sex act occurred by anybody, from anybody, to anybody, and never told anyone else to say anything in particular to him (N.T. 6/19/12, 41-52, 105-08).

Defendant's sentencing proceedings occurred on October 9, 2012, at which the trial court (Judge Cleland) determined he was a sexually violent predator.

Of relevance to the current proceedings, S.P.'s mother, Marie, provided the following statement at sentencing, during which she discussed the detrimental impact defendant's sexual abuse had on S.P. and her as his mother, and expressed her hatred of defendant for his criminal conduct:

> I have thought for a while of what I would say to you, Mr. Sandusky. Words cannot express the pain and impact or imprint that you have caused my son and my family. Nor only did you heap life-long problems on my son but you did it to satisfy your own sick and selfish needs for gratification, an act that is so wrong and unacceptable not only in my eyes but God's as well.
>
> For four years I mistakenly believed you were helping and supporting my son but instead you were molesting him and forever changing his life for the worse, and I was not able to understand why he was so troubled. He lost weight, was sick a lot, didn't sleep, was getting in trouble at school, had strange behaviors that as his mother I could not understand. I thought it was my fault. I blame myself and still do for your sick indulgences but how could I know you were molesting him?
>
> Because of you, not only had to move three times in one year but had to quit my job. How embarrassing for me as a mother to know something so disgusting happened to my son. Not only has it been mentally draining but physically exhausting as well. I have had to endure two attempts by my son on his life – on his own life. I have had to endure his animosity toward me. I have had to endure physical difficulties with him and all because of you and what you did to my son.
>
> For me to sit back and watch my sweet little boy turn into this person I don't even know is too much to bear. Many nights I sit up and cry worrying what I did for him to be like this. Not only did you molest him, Mr. Sandusky, you caused him to miss a lifetime – you caused him a lifetime of sorrow and suffering while helping your sexually. How cruel of you.
>
> But that's not all. You have caused me to have so many problems both as a mother and a person. I now question every decision I make for myself. You have destroyed my family. I cannot forgive you for that. My son and I are both in therapy likely for years, for the rest of our lives.
>
> You have damaged and hurt so many people. Yet still you proclaim your innocence. You have forever injured not only my son but all your other victims as

> well. How could you do this to so many people and to think anything of it? Shame on you. Shame on you, Mr. Sandusky, for your narcissistic selfish acts.
>
> This has been the most difficult thing I have endured in my life. My poor son. You took something from him that you can never be replaced – his childhood, his youth, and for that it makes me sick in my heart and soul. Sorrow will never be enough.
>
> Whatever comes to you, I hope it is tenfold for what you have done to my son and the other victims of your brutality. There is no punishment sufficient for you. You're a horrible person and when you come to terms with this and admit your wrongdoing, maybe, just maybe, you'll be forgiven.

(N.T. 10/9/12, 24-26). Judge Cleland sentenced defendant to an aggregate term of 30 to 60 years imprisonment.

While represented by both trial counsel and new counsel (Norris E. Gelman, Esquire), defendant filed post-sentence motions. The trial court denied the motions.

C. Direct Appeal

Still represented by Attorney Gelman, defendant appealed.[13] On October 2, 2013, the Superior Court affirmed the judgments of sentence. *See Commonwealth v. Sandusky*, 77 A.3d 663 (Pa. Super. 2013). Defendant's petition for allowance of appeal was denied on April 2, 2014. *See Commonwealth v. Sandusky*, 81 A.3d 77 (Pa. 2013). Defendant did not seek certiorari in the Supreme Court of the United States.

For purposes of these PCRA proceedings, and as detailed in Section H. below, defendant's judgment of sentence became final on July 1, 2014, at the ninety-day expiration of time for filing a writ of certiorari in the Supreme Court of the United States.

[13] On direct appeal, defendant claimed the trial court erred: (1) in declining to give the suggested standard criminal jury instruction on the failure of the complainants to make a prompt complaint to authorities; (2) in denying his objection that the prosecutor commented adversely on his decision not to testify at trial; (3) in denying his motion for a continuance; and (4) in instructing the jury on character evidence.

D. Defendant's First PCRA Proceedings

From 2015 to 2017, defendant litigated his first petition under the PCRA.

On April 2, 2015, defendant, while represented by Alexander Lindsay, Esquire, filed his first petition (consisting of a 105-page petition & 721-page Appendix) under the PCRA. On May 6, 2015, defendant filed an amended petition (consisting of 110 pages). On March 7, 2016, he filed a second amended petition (consisting of 150 pages).[14] Overall defendant raised nearly 30 claims, consisting of numerous claims of ineffective assistance of counsel, after-discovered evidence, and *Brady*.

In his current PCRA petition (his third), defendant resurrects some of the theories he raised in his first PCRA proceedings. In his first petition, defendant pursued his "repressed memory" myth, claiming the Commonwealth failed to disclose material impeachment evidence based on the purported fact that victims (including A.S.F., D.S., B.S.H., and J.M.S.) supposedly were undergoing repressed memory therapy. Defendant alleged he had after-discovered evidence that A.S.F., D.S. and Matt Sandusky (who did not even testify at trial) had no independent recollection of the crimes outside of receiving the purported repressed memory therapy. Defendant further asserted that trial counsel, to the extent they could have learned this prior to trial, were ineffective in failing to file a motion *in limine* to preclude any testimony based on repressed memory theory, or present expert testimony that called into question the theory of repressed memory and demonstrated the likelihood of false memories.

Second and relatedly, defendant, in his first petition, alleged these "repressed memories" were the product of serial suggestive interviews by law enforcement and that trial counsel were

[14] Current counsel (J. Andrew Salemme, Esquire) participated in this filing.

ineffective for failing to file a motion *in limine* to preclude the use at trial of the victims' prior statements to police that, he believed, were gleaned by suggestive and improper police questioning.

Third, defendant claimed the Commonwealth failed to disclose the victims' alleged financial incentives to testify against him, including contingent fee agreements with private attorneys to pursue private litigation against PSU. In support of this *Brady* theory, defendant referred to victims' civil lawsuits against PSU and subsequent settlements. Defendant alleged many of the victims' accounts of sexual abuse surfaced only after they retained civil counsel to pursue action against PSU. Interwoven with defendant's allegation that testimony was gleaned through suggestive interviewing was an assertion that counsel in the civil suit (namely Attorney Shubin) may have had a financial incentive in recruiting claimants against defendant and received payment as a result of civil settlements with PSU.

The PCRA court conducted *six* separate evidentiary hearings between August 12, 2016 and May 11, 2017.[15] At the hearings, defendant presented testimony from multiple witnesses, including himself, trial counsel Joseph Amendola, Esquire, trial counsel Karl Rominger, Esquire, Andrew Shubin, Esquire, psychologist Michael Gillum, PSP Corporal Rossman, victim D.S., Joseph Leiter, Special Agent Anthony Sassano, trial prosecutors Frank Fina, Esquire, Joseph E. McGettigan, III, Esquire, and Dr. Elizabeth Loftus (defendant's purported "repressed memory" expert).

On October 18, 2017, the PCRA court (Judge Foradora) denied defendant's petition. The PCRA court concluded that Dr. Gillum testified credibly when he unequivocally denied using repressed memory therapy on his patients (including victim A.S.F.); that D.S. testified credibly that

[15] Judge Cleland presided over part of the PCRA proceeding but recused himself on November 21, 2016. The Honorable John H. Foradora, President Judge of the Jefferson County Court of Common Pleas, was thereafter appointed to preside over the PCRA proceedings and conducted two of the evidentiary hearings.

he did not undergo repressed memory therapy prior to trial; and that Dr. Loftus' opinion and conclusions that D.S. underwent repressed memory therapy were unreliable and based on an incomplete version of the record.

E. Defendant's First PCRA Appeal

Defendant appealed the denial of his first PCRA petition, raising 22 claims for review.

Of relevance to the instant proceedings, defendant claimed the PCRA court erred in denying his ineffectiveness claims that trial counsel failed to present expert testimony that called into question the theory of repressed memory and demonstrated the likelihood of false memories, and that trial counsel fail to file a motion *in limine* and seek a hearing to preclude the use at trial of the victims' testimony that was supposedly gleaned by suggestive and improper police questioning. Defendant further challenged the PCRA court's denial of his after-discovered evidence claim that A.F., D.S., and Matt Sandusky's recollection of the alleged crimes was based on receiving therapy, and his *Brady* claim that the Commonwealth failed to disclose records showing that several of the victims had undergone repressed memory therapy prior to trial.[16]

[16] Defendant also claimed that the PCRA court erred in denying these 16 ineffectiveness claims: (1) trial counsel was ineffective in allowing him to be interviewed by Bob Costas without adequately advising him and preparing him for an interview; (2) trial counsel was ineffective in not seeking a mistrial after the prosecutor improperly made multiple comments based on his silence; (3) trial counsel was ineffective in failing to call A.M. to the stand or using A.M.'s prior exculpatory statements that defendant did not molest him as substantive and/or impeachment evidence; (4) trial counsel was ineffective in failing to present the grand jury testimony of Tim Curley, Gary Schultz and Graham Spanier; (5) trial counsel was ineffective for failing to introduce a recorded statement by James Calhoun in which he contradicted Ronald Petrosky's testimony and Calhoun denied observing defendant performing any sex acts with a boy in the shower; (6) appellate counsel was ineffective in not arguing on appeal that Petrosky's testimony, relative to Calhoun's hearsay statement, was inadmissible as an excited utterance; (7) trial counsel was ineffective in failing to adequately review discovery; (8) trial counsel was ineffective in advising defendant not to testify based on erroneous advice that Matt Sandusky would be called in rebuttal; (9) trial counsel was ineffective in declining to investigate juror bias, seek a change in venue, etc; (10) trial counsel was ineffective in waiving defendant's preliminary hearing; (11) trial counsel was ineffective for failing to file a motion to quash the grand jury presentment and charges arising

On February 5, 2019, the Superior Court affirmed the denial of PCRA relief as to defendant's claims challenging his conviction. The Court found the record supported the PCRA court's determination that the victims at issue did not undergo repressed memory therapy prior to trial, and that defendant could not establish the after-discovered evidence would be used for a purpose other than impeachment, or that would compel a different verdict. And because the record supported the PCRA court's conclusions that the victims did not undergo repressed memory therapy, defendant's *Brady* claim was without merit.

The Court, however, vacated his judgment of sentence as illegal pursuant to *Alleyne* and remanded for re-sentencing without the imposition of mandatory minimum terms. *See Commonwealth v. Sandusky*, 203 A.3d 1033 (Pa. Super. 2019). Defendant sought a petition for allowance of appeal, which was denied on July 24, 2019.

F. Resentencing & Appeal after Resentencing

On November 22, 2019, defendant was again sentenced to thirty to sixty years imprisonment and directed to pay restitution. Defendant's post-sentence motion seeking reconsideration of his sentence was denied on January 28, 2020.

While represented by Attorney Lindsay and Philip D. Lauer, Esquire, defendant appealed to the Superior Court, challenging his sentence of incarceration and restitution.

(continued . . .)
therefrom relating to victims 2 through 10; (12) trial counsel was ineffective in not seeking to quash the grand jury presentment on the basis that the grand jury lacked subject matter jurisdiction; (13) trial counsel was ineffective in eliciting inculpatory evidence against defendant and opening the door for the Commonwealth to introduce additional rebuttal evidence from Dr. Elliot Atkins; (14) trial counsel was ineffective for failing to object to improper opinion testimony by an unqualified expert; (15) trial counsel was ineffective in neglecting to object to the trial court's erroneous guilt instruction as part of its character evidence instruction; and (16) trial counsel was ineffective in not filing a collateral appeal after the denial of their motion to withdraw.

On May 9, 2020, while his appeal was pending, defendant filed in the Superior Court a motion seeking a new trial under Pa.R.Crim.P. 720(C) based on after-discovered evidence. Specifically, defendant relied on: (1) a photocopy of a diary allegedly maintained by Kathleen McChesney in her capacity as a member of the investigative team led by Louis Freeh, Esquire, who was appointed by the Penn State Board of Trustees to conduct an independent inquiry into events surrounding defendant's crimes; (2) "summaries" of alleged emails to and from various members of the Freeh team; and (3) an affidavit from defendant's trial counsel concerning his responses to this alleged information.

On May 13, 2021, the Superior Court denied his motion for a new trial on the basis that he did not raise his after-discovered evidence claim in a timely fashion. The Superior Court, however, vacated a portion of defendant's restitution and remanded for resolution of the restitution issue. *See Commonwealth v. Sandusky*, 256 A.3d 27, 2021 WL 1924157 (Pa. Super. May 13, 2021). Allowance of appeal was subsequently denied.

G. Remanded Proceedings Before This Court, Defendant's Second PCRA Petition & Appeal of Denial of Second PCRA Petition

On remand, the PCRA court (this Honorable Court) heard testimony on the issue of restitution and costs.

On or about June 14, 2022, defendant, while represented by Attorney Lindsay, filed his second PCRA petition (entitled "Motion for a New Trial") based on after-discovered evidence. Defendant -- once again -- asserted that victim testimony used against him at trial was tainted through the improper use of repressed memory theory and suggestive interviewing techniques. In support of his claim, he presented "new" evidence in the form of: (1) a transcript of civil attorney Shubin's (an unrelated party to this case) 2018 interview of his client, victim S.S. (another unrelated

party who did not testify at trial); and (2) an April 10, 2021 podcast in which Second Mile graduate and Sandusky supporter, A.J. Dillen, played audio recordings he surreptitiously obtained while falsely posing as a Sandusky victim in over 100 therapy sessions with Attorney's Shubin's chosen therapist, Cynthia MacNab. According to defendant, this new evidence showed that Attorney Shubin and therapist MacNab used improperly suggestive interviewing techniques and repressed memory therapy, respectively, to manipulate Second Mile participants who initially denied sexual abuse into changing their stories to claim sexual abuse victimization. Defendant further alleged this new evidence called into question the prior PCRA court's findings that neither suggestive interviewing techniques nor repressed memory therapy played a role in altering and enhancing purported memories of the victims who testified at trial, and further that this evidence calls into question prior statements of the prosecution that repressed or buried memories were not an issue.

On February 8, 2023, defendant filed an amendment incorporating his new expert's (Dr. Barden's) "scatter-shot hypotheses" regarding the so-called "new" evidence.

On June 27, 2023, this Court denied defendant's petition without an evidentiary hearing. This Court concluded that defendant failed to satisfy the after-discovered evidence test. This Court found that given the integrity and overall strength of the evidence supporting defendant's conviction, coupled with the lack of evidence to support the use of either unduly suggestive interview techniques or repressed memory therapy, defendant failed to show the new evidence was not meant solely to impeach and would likely result in a different verdict. Also, having rejected the claim that Attorney Shubin and Cynthia MacNab engaged in repressed memory therapy, this Court concluded that defendant's proposed report by a new expert on the potential effects of repressed memory therapy was rendered moot. *See* this Court's 1925(a) Opinion, p.5 (Sept. 2023)

("Dr. Barden's scatter-shot hypotheses address various conspiracy theories but do not advance any argument that was not previously explored at the PCRA proceedings in 2017.").

On September 19, 2024, the Superior Court affirmed this Court's denial of PCRA relief. *See Commonwealth v. Sandusky*, 324 A.3d 551 (Pa. Super. 2024). In reaching its conclusions, the Court referred to its 2019 review of the PCRA court's denial of his first PCRA petition, *Commonwealth v. Sandusky*, 203 A.3d 1033 (Pa. Super. 2019), in which he sought a new trial based on after-discovered evidence that some of the allegations against him stemmed from false witness memories recovered through repressed memory therapy or suggestive questioning techniques, that defendant claimed altered the memories unbeknownst to the witnesses and thus made their testimony unreliable. The Superior Court recounted that it had already found the record supported the PCRA court's determination that the victims did not undergo repressed memory therapy prior to trial. Defendant did not seek allowance of appeal.

H. Defendant's Current, Third Untimely Petition

On September 26, 2025, defendant, while represented by current counsel, filed his third petition under the PCRA. Continuing his quest to challenge the credibility of the victims in this case and more specifically to further his tale of suggestive interviewing and coaching by law enforcement, defendant -- yet again -- says he has "new" evidence. This time, he proffers: (1) a 2025 affidavit from victim R.R., in which he alleges *13 years after trial* that he was induced to make false allegations against defendant even though he did not have a clear memory of this; and (2) a 2024 affidavit from the mother of victim S.P. (Marie), alleging that, *inter alia*, prosecutors

had a financial incentive to induce S.P.'s allegations and opining that aspects of his 2012 trial testimony were false.[17]

Defendant further asserts claims of ineffective assistance of prior counsel based on his exhaustively/previously litigated and debunked "repressed memory" theory. He faults prior counsel for failing to present civil questionnaires obtained as part of the subsequent civil discovery process supposedly reflecting that "other accusers" did undergo therapy intended to aid them reconstruct memories of abuse, and that civil attorneys recruited accusers and then altered their stories to take advantage of the possibility of great financial gain for themselves and the accusers. He raises other ineffectiveness claims as well.[18]

While defendant says his current petition is timely, he simultaneously asserts the newly-discovered facts and governmental interference exceptions to the PCRA time-bar (PCRA Petition, p.4). Defendant seeks an evidentiary hearing and new trial. No relief is due.

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[17] Defendant also attaches an affidavit from Frank Parlato (Defendant's Exhibit O), an investigative journalist working with the defense team, in which he gives his opinions on the evidence in the case, and presents various hearsay accounts of what others supposedly told him about the case. Parlato's affidavit is replete with inadmissible hearsay. As such, it cannot constitute after-discovered evidence. After-discovered evidence must be "producible and admissible" at the new trial. *Commonwealth v. Brosnick*, 607 A.2d 725, 727 (Pa. 1992); *Commonwealth v. Smith*, 540 A.2d 246, 263 (Pa. 1988); *Commonwealth v. Scott*, 470 A.2d 91 (Pa. 1983) (in cases involving after-discovered evidence, in addition to meeting the general requirements for after-discovered evidence, the proposed evidence must also be both producible and admissible). *See Commonwealth v. Abu-Jamal*, 941 A.2d 1263, 1269-70 (Pa. 2008) (witness' testimony regarding other witness' alleged perjury does not meet § 9545(b)(1)(ii)'s exception because a claim based on inadmissible hearsay does not implicate this exception).

[18] In a further attempt to challenge the credibility of the victims, defendant mentions that none of the victims described his atrophied testicles when recounting their sexual abuse (PCRA Petition, 39). Defendant's suggestion that the victims -- who were young boys at the time of their victimization in the shower and/or basement -- should not be credited because they neglected to describe his adult testicular shrinkage consistent with his medical condition is outrageous. That defendant is now using this as a basis to try to undermine the victims' credibility demonstrates his sheer desperation during these third PCRA proceedings.

III. ARGUMENT

A. Defendant's Third Petition is Untimely.

Defendant's third petition is patently untimely. All PCRA petitions must be filed within one year of the date on which the judgment became final, unless one of the three statutory exceptions set forth in 42 Pa.C.S. § 9545(b)(1) applies. Section 9545(b)(1) provides:

> (1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petition proves that:
>
> (i) The failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States:
>
> (ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or
>
> . . .
>
> (2) Any petition invoking an exception provided in paragraph (1) shall be filed within one year of the date the claim could have been presented.
>
> (3) For purposes of this subchapter, 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 the review.
>
> . . .

42 Pa.C.S.A. § 9545(b). It is the petitioner's "burden to allege and prove that one of the timeliness exceptions applies." *Commonwealth v. Abu-Jamal*, 941 A.2d 1263, 1268 (Pa. 2008).

These PCRA timeliness requirements are strictly jurisdictional in nature and, therefore, courts cannot hear untimely PCRA petitions. *Commonwealth v. Robinson*, 837 A.2d 1157, 1161 (Pa. 2003). *See Commonwealth v. Murray*, 753 A.2d 201, 203 (Pa. 2000) (courts cannot ignore the mandatory and jurisdictional nature of the PCRA's timeliness requirements, which apply to all

PCRA petitions, regardless of the nature of the claims raised in the petition). "If the petition is determined to be untimely, and no exception has been pled and proven, the petition must be dismissed without a hearing because Pennsylvania courts are without jurisdiction to consider the merits of the petition." *Commonwealth v. Perrin*, 947 A.2d 1284, 1285 (Pa. Super. 2008). *See Commonwealth v. Carr*, 768 A.2d 1164 (Pa. Super. 2001) (no court may properly disregard or alter the PCRA's timeliness requirements in order to reach the merits of the claims raised in a petition that is filed in an untimely manner).

In this case, defendant's judgment of sentence became final on July 1, 2014, upon the expiration of the ninety-day period for filing a writ of certiorari in the United States Supreme Court after the Pennsylvania Supreme Court denied his petition for allowance of appeal. *See Commonwealth v. Palmer*, 814 A.2d 700, 705 (Pa. Super. 2002) (judgment of sentence became final 90 days after Pennsylvania Supreme Court denied allowance of appeal and appellant did not seek writ of certiorari in the United States Supreme Court); 42 Pa.C.S.A. § 9545(b)(3); United States Supreme Court Rule 13. As such, defendant had until July 1, 2015, to file a timely PCRA petition. Undoubtedly, his current petition -- *his third* -- filed on September 26, 2025 is *more than ten years untimely*. Consequently, defendant's third petition is time-barred under § 9545(b)(1), and he is entitled to no relief unless he has established one of the enumerated exceptions.

Defendant mistakenly believes his petition filed on September 26, 2025 is timely. He says his judgment of sentence became final on October 19, 2024, at the expiration of the thirty-day period for seeking allowance of appeal after the Superior Court affirmed the denial of PCRA relief on his second petition on September 19, 2024 and that, accordingly, his petition filed on September 26, 2025 is timely (PCRA Petition, pp. 3, 16). Defendant's timeliness analysis is completely inaccurate. The date on which the Superior Court affirmed the denial of relief on his second

petition is irrelevant to the time-bar calculation. *See Commonwealth v. Brown*, 141 A.3d 491, 499-500 (Pa. Super. 2016) ("[A] judgment [of sentence] 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 the review.") (quoting 42 Pa.C.S.A. § 9545(b)(3)) (emphasis added).

Nor does a successful PCRA petition "'reset the clock' for the calculation of the finality of the judgment of sentence for purposes of the PCRA where the relief granted in the first petition neither restored a petitioner's direct appeal rights nor disturbed his conviction, but, rather, affected his sentence only." *Commonwealth v. Watley*, 326 A.3d 461 (Pa. Super. 2024), *reargument denied* (Nov. 7, 2024) (citing *Commonwealth v. McKeever*, 947 A.2d 782, 785 (Pa. Super. 2008)). Our Supreme Court and Superior Court have consistently held that a successful PCRA petition resulting in resentencing only (which was the case here), does not reset the clock for purposes of calculating when a judgment of sentence becomes final for purposes of the PCRA for those issues unrelated to the resentencing. *See Commonwealth v. Lesko*, 15 A.3d 345, 366 (Pa. 2011) (explaining that when a defendant is granted new sentencing hearing, the defendant's original judgment of sentence is final for PCRA timeliness purposes except for matters relating to resentencing; Lesko's claims challenging his convictions were time barred, reasoning that a petitioner who received federal habeas relief on sentencing was not permitted to "revive the claims that expired once the 1981 verdict of guilt became final[,]" because their " 'right' to first petition PCRA review [was] necessarily confined to that part of the final Pennsylvania judgment that was disturbed by the federal *habeas* proceedings."); *Commonwealth v. McAllister*, 311 A.3d 591 (Pa. Super. 2023) (where Superior Court affirmed McAllister's convictions on January 11, 2022, but remanded for resentencing of an illegal sentence, *i.e.*, McAllister was granted relief only on his

original sentence, not the determination of his guilt, and McAllister was then resentenced on March 31, 2022, for PCRA purposes, his judgment of sentence became final on February 10, 2022, when the 30-day period for seeking allowance of appeal with the Pennsylvania Supreme Court expired; "*in this PCRA challenge to the guilt phase of proceedings, we look to the date of this Court's affirmance of the judgment, not his resentencing*") (emphasis in original), *appeal denied*, 322 A.3d 1287 (Pa. 2024); *Watley*, 326 A.3d 461 (where Watley's new judgment of sentence resulted from a successful PCRA petition regarding only the legality of his sentence for which he was awarded resentencing, his new judgment of sentence became final for purposes of the PCRA on or around December 31, 2018 **only** for matters relating to his resentencing; Regarding claims raised unrelated to his resentencing proceeding, however, his judgment of sentence became final on or around October 6, 2014, 90 days after the Supreme Court denied his petition for allowance of appeal from this Court's decision affirming his original judgment of sentence) (emphasis in original); *Commonwealth v. Walker*, 289 A.3d 93 (Pa. Super. Nov. 29, 2022) (unpublished memorandum) (explaining that current PCRA petition was timely only with respect to issues related to resentencing hearing; Walker's original judgment of sentence became final on May 30, 2012, when the time for filing a petition for allowance of appeal with our Supreme Court expired; on appeal from the denial of Walker's first PCRA petition, Supreme Court held that he was only entitled to relief in the form of resentencing; Therefore, Walker's PCRA petition, insofar as it raises trial issues unrelated to his February 9, 2018 resentencing, is patently untimely), *appeal denied*, 300 A.3d 320 (Pa. 2023).[19]

[19] *See* Pa.R.A.P. 126(b) (providing unpublished decisions of the Superior Court filed after May 1, 2019 can be relied on for their persuasive value).

Here, the Superior Court's February 5, 2019 remand was for resentencing only and, accordingly, did not "reset" the clock for purposes of calculating when defendant's judgement of sentence became final for his current claims challenging his conviction.

Defendant's judgment of sentence became final on July 1, 2014, upon the expiration of the ninety-day period for filing a writ of certiorari in the United States Supreme Court, after the Pennsylvania Supreme Court denied his petition for allowance of appeal. The claims set forth in his September 26, 2025 petition are time-barred. Defendant therefore is not entitled to relief unless he has validly pleaded and proved an exception to the PCRA time-bar. This defendant has failed to do.[20]

B. <u>Defendant Has Failed to Plead and Prove an Exception to the Time-Bar.</u>

Defendant has failed to establish any exception to the PCRA time-bar.

As an initial jurisdictional threshold, to establish the newly-discovered facts exception, the petitioner must allege and prove that: (1) the facts upon which the claim was predicated were *unknown*; and (2) could not have been ascertained earlier *by the exercise of due diligence*. *Commonwealth v. Brensinger*, 218 A.3d 440, 448-49 (Pa. Super. 2019); *See* 42 Pa.C.S.A. § 9545(b)(1)(ii).

Due diligence under the timeliness exceptions requires the petitioner "take reasonable steps to protect his own interests." *Commonwealth v. Monac*o, 996 A.2d 1076, 1080 (Pa. Super. 2010), *appeal denied*, 20 A.3d 1210 (Pa. 2011). While it does not require "perfect vigilance nor

[20] Additionally, a defendant litigating a serial PCRA petition is also required to make a "strong *prima facie* showing . . . that a miscarriage of justice may have occurred." *Commonwealth v. Lawson*, 549 A.2d 107, 112 (Pa. 1988). That is, a defendant is required to demonstrate either that his conviction resulted from proceedings "so unfair that a miscarriage of justice occurred which no civilized society could tolerate," or that he is innocent of the crimes for which he was charged. *Commonwealth v. Nedab*, 195 A.3d 957, 959 (Pa. Super. 2018). Defendant has not made this showing.

punctilious care," it requires "reasonable efforts by a petitioner, based on the particular circumstances to uncover facts that may support a claim for collateral relief." *Id*. (quoting *Commonwealth v. Shiloh*, 170 A.3d 553, 558 (Pa. Super. 2017)). As such, "the due diligence inquiry is fact-sensitive and dependent upon the circumstances presented." *Id*. "A petitioner must explain why he could not have obtained the new fact(s) earlier with the exercise of due diligence." *Monaco*, 996 A.2d at 1080.

The mere assertion that a petitioner only recently learned of the existence of newly discovered evidence does not satisfy the Section 9545(b)(1)(ii) timeliness exception. *See generally Commonwealth v. Burton*, 158 A.3d 618, 629 (Pa. 2017) (comparing Section 9545(b)(1)(ii)'s newly discovered fact exception to Section 9543(a)(2)(vi) which pertains to claims of newly discovered exculpatory evidence raised in a *timely* PCRA petition). Rather, the timeliness exception requires a petitioner "to demonstrate [that] he did not know the facts upon which he based his petition and could not have learned those facts earlier by the exercise of due diligence." *Commonwealth v. Brown,* 111 A.3d 171, 176 (Pa. Super. 2015). Thus, a petitioner "*must explain* why he could not have learned the new fact(s) earlier with the exercise of due diligence. This rule is strictly enforced." *Id*. (internal citation omitted; emphasis added).

Additionally, the focus of this exception is on newly discovered facts, not on a newly discovered or newly willing source for previously known facts. *See Commonwealth v. Rivera*, 324 A.3d 452, 468 (Pa. 2024) ("The plain language of Section 9545(b)(1)(ii) … makes clear that a petitioner must plead and prove that the facts upon which the claim is predicated were unknown … the newly discovered facts exception ultimately turns on the petitioner's knowledge of previously unknown facts, not new evidence of a known fact") (citations, internal quotation marks and footnotes omitted); *Commonwealth v. Lopez*, 249 A.3d 993, 999-1000 (Pa. 2021) ("the focus

of this exception is on the newly discovered facts, not on a newly discovered or newly willing source for previously known facts. … Lopez has known about these facts since at least 2005 ... The only material difference for the claim in his Fifth PCRA Petition from the substantially identical claims in his 2005 petitions is that he now cites to a new source as support for them") (citations, internal quotation marks and footnote omitted); *Commonwealth v. Small*, 238 A.3d 1267, 1286 (Pa. 2020) ("Bell's 1993 PCRA testimony was materially similar to his trial presentation, and thus did not reveal any previously unknown facts. … the statutory language commands that the operative facts be unknown to the petitioner") (internal quotation marks omitted); *Commonwealth v. Reid*, 235 A.3d 1124, 1153 (Pa. 2020) ("the focus of the newly discovered fact exception is on newly discovered facts, not on a newly discovered or newly willing source for previously known facts") (citation and internal quotation marks omitted); *Commonwealth v. Edmiston*, 65 A.3d 339, 352 (Pa. 2013) ("to constitute facts which were unknown to a petitioner … the information … must not be facts that were previously known but are now presented through a newly discovered source").

If the jurisdictional threshold pursuant to 42 Pa.C.S.A. § 9545(b)(1)(ii) set forth above is established, a defendant must satisfy the after-discovered evidence test on the merits. Under Section 9543(a)(2)(vi) of the PCRA, relief may be due where the defendant demonstrates "the unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced." 42 Pa.C.S.A. § 9543(a)(2)(vi). Thus, as the statute explicitly states, the after-discovered evidence must be "exculpatory." *Commonwealth v. Bonaccurso*, 625 A.2d 1197, 1199 (Pa. Super. 1993) ("To properly sustain a collateral petition for a new trial on the basis of after-discovered evidence, the

evidence must have been unavailable at the time of trial, it must be exculpatory, and it must be of such a quality that it would change the outcome of the trial.").

To obtain relief based on newly-discovered facts pursuant to a merits analysis, a defendant must demonstrate that the evidence: (1) 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 to impeach the credibility of a witness; and (4) would likely result in a different verdict if a new trial were granted. *Commonwealth v. Pagan*, 950 A.2d 270, 292 (Pa. 2008). "The test is conjunctive; the [defendant] must show by a preponderance of the evidence that each of these factors has been met in order for a new trial to be warranted." *Commonwealth v. Foreman*, 55 A.3d 532, 537 (Pa. Super. 2012) (quoting *Commonwealth v. Padillas,* 997 A.2d 356, 363 (Pa. Super. 2010) (citation omitted)).

In assessing the fourth prong of the test, whether after-discovered evidence would result in a different verdict, a court is to "consider the integrity of the alleged after-discovered evidence, the motive of those offering the evidence, and the overall strength of the evidence supporting the conviction." *Padillas*, 997 A.2d at 365 (citing *Commonwealth v. Parker*, 431 A.2d 216, 218 (Pa. 1981)). When the strength of the evidence supporting the conviction is "overwhelming," after-discovered evidence is unlikely to alter the verdict. *Commonwealth v. Buehl,* 658 A.2d 771, 777 (Pa. 1995). A new trial is not warranted where after-discovered evidence is of questionable utility and the evidence presented in support of the verdict at trial was substantial. *See Padillas*, 997 A.2d at 365 (citing *Hopkins v. Commonwealth,* 456 S.E.2d 147, 151 (Va. App. 1995) (after-discovered evidence was insufficient to support the grant of a new trial where the verdict was "based on uncontradicted, corroborated, and reaffirmed eyewitness testimony" and after-discovered evidence is "plainly untrustworthy of belief")). "[C]ases that have addressed [after-discovered evidence]

have focused not simply on the credibility of the person offering the exculpatory evidence, but on the credibility or trustworthiness of the evidence itself, as well as the motive, or other impeaching characteristics, of those offering it." *Padillas*, 997 A.2d at 365 (quoting *Argyrou v. State*, 709 A.2d 1194, 1204 (Md. 1998)).

Applying the preceding principles to the present case, defendant has failed to plead and prove the newly-discovered facts exception sufficient to give this Court jurisdiction to address his claims. In any event, defendant's claims fail on the merits.

1. Claim Based on Affidavit of Victim R.R. – Defendant Has Failed to Establish the Newly-Discovered Facts Exception & In Any Case, His Claim Fails on the Merits

Defendant attaches an affidavit, dated June 30, 2025, that defense investigative reporter Perlato secured from victim R.R. *13 years after trial*. In the affidavit, victim R.R. states: he was approached by state investigators who encouraged him to believe defendant had molested him despite his lack of a clear memory of any such conduct; that over time his testimony evolved as a result of emotional strain, repeated exposure to leading questions, investigative pressure and psychological manipulation; that he supposedly was coached during pretrial meetings; and that he supposedly was asked to reframe his account and would not be released until his answers were consistent with the case narrative (Defendant's Exhibit J).

a. No Due Diligence for Newly-Discovered Facts Exception

Under the facts and circumstances in this case, defendant has failed to make the requisite showing of due diligence to establish this Court's jurisdiction over this claim.

Defendant has failed to demonstrate that he could not have obtained this information earlier through the exercise of due diligence. The PCRA's timeliness exception requires defendant to plead why he could not have obtained that statement prior to the passage of the 12 years following

his conviction. Defendant did not do this. Without an explanation as to how the statement from R.R. could not have been ascertained sooner by the exercise of due diligence, defendant's PCRA petition contains only a bald statement that he learned of the existence of the statement. This does not satisfy the requirements necessary to establish the applicability of the Section 9545(b)(ii) exception. *Commonwealth v. Sanchez*, 204 A.3d 524, 526-27 (Pa. Super. 2019). *See Commonwealth v. Burton*, 936 A.2d 521, 525-26 (Pa. Super. 2007) (Burton not entitled to the benefit of the newly discovered evidence exception where he failed to provide a valid explanation as to why this evidence could not have been obtained earlier with "due diligence" as required by 42 Pa. C.S.A. § 9545(b)(1)(ii)).

Nor could defendant make this showing, as R.R. was not a victim who disappeared over the last 13 years. As R.R. himself states in his affidavit, he was involved in subsequent civil litigation arising out of defendant's sexual abuse of him, resulting in him obtaining a $5.5 million settlement. Thus, defendant clearly could have "discovered" the information from R.R. much sooner than he did. *See Padillas*, 997 A.2d at 364 ("A defendant cannot claim he has discovered new evidence simply because he had not been expressly told of that evidence. Likewise, a defendant who fails to question or investigate an obvious, available source of information cannot later claim that evidence from that source constitutes newly discovered evidence."). Defendant has failed to establish this Court's jurisdiction over his claim.

Even if defendant had satisfied the threshold jurisdictional due diligence requirement (and he has not), his claim fails on the merits.

b. In Any Case, Defendant's Claim Fails on the Merits

Defendant's recantation claim fails on the merits. Given the substance of R.R.'s recantation on its face and given there was testimony regarding *nine other victims* presented at

trial, along with extensive evidence corroborating that victim testimony, defendant has failed to show that the new evidence would likely result in a different verdict if a new trial were granted. Defendant is not even entitled to an evidentiary hearing on this claim.

As to the "integrity" of the alleged after-discovered evidence, it is well-established that "recantation testimony is inherently and notoriously unreliable evidence upon which to predicate the granting of a new trial." *Commonwealth v. McNeil*, 487 A.2d 802, 807 n.4 (Pa. 1985). *See Commonwealth v. Small*, 189 A.3d 961, 977 (Pa. 2018) ("this Court has repeatedly acknowledged the limitations inherent in recantation testimony, which has been characterized as 'extremely unreliable'"). Indeed, as our Supreme Court has observed, there is no less reliable form of proof, especially where, as here, the recantation involves an admission of perjury. *Id. See also Commonwealth v. Johnson*, 966 A.2d 523, 541 (Pa. 2009) (recantation testimony "is notoriously unreliable, particularly where the witness claims to have committed perjury"); *Commonwealth v. Washington*, 927 A.2d 597, 586 (Pa. 2007) (same); *Commonwealth v. Johnson*, 841 A.2d 136, 140 (Pa. Super. 2003) ("recantation testimony is extremely unreliable"); *Commonwealth v. Detman*, 770 A.2d 359, 360 (Pa. Super. 2001) (recantation is one of the least reliable forms of after-discovered evidence). This case is no different.

The timing and circumstances of R.R.'s June 30, 2025 recantation affidavit render its contents highly suspect. R.R. gave his "new" version of events to the defense investigator *13 years* after defendant's trial. This timing alone makes his recantation "exceedingly unreliable."

Moreover, the affidavit is facially untrustworthy. While R.R. now says he "was approached by state investigators" who "encouraged [him] to believe that Mr. Sandusky had molested [him] – despite my lack of clear or certain memory of any such conduct" (Defendant's Exhibit J), the record reflects *he was the one who reached out to law enforcement* via the Child Sexual

Exploitation tipline in 2011 to disclose what defendant did to him when he was 10 years old after he met him through The Second Mile (N.T. 6/13/12, 33-34, 54-55, 67-68); law enforcement did not approach him. R.R. thereafter detailed defendant's sexual abuse of him as a child to the Grand Jury in 2011, proceedings that were handled by a different prosecutor (Jonelle Eshbach, Esquire) than the trial prosecutors. In June 2012, R.R. then told the jury at trial about defendant's sexual abuse of him as a child. R.R. also told the jury about how he eventually disclosed the sexual abuse to his foster mom around the time of his Grand Jury testimony, and she reaffirmed this at trial. Thus, while R.R. now says law enforcement came to him and supposedly made him say certain things, the record reflects very differently.

Further, "in light of the evidence as a whole," defendant has failed to show that R.R.'s 2025 recantation affidavit constitutes "new" evidence that would have compelled a different verdict. *Commonwealth v. Palmer*, 814 A.2d 700, 703 n.3 (Pa. Super. 2002) (the defendant must show that the newly-discovered evidence "would have changed the outcome of the trial," not merely "affected" it).

R.R. was one of *ten victims* in this case. As detailed on pages 2 through 31 above, *seven* other victims (besides R.R.) testified at trial regarding defendant's sexual abuse over a prolonged period of time, and their testimony was corroborated by extensive evidence. The jury also heard compelling witness testimony pertaining to the sexual abuse of two other unnamed victims in the locker room shower. After considering the evidence and observing the demeanor of each witness, the jury convicted defendant of 45 counts for his sexual abuse over the course of 13 years.

Given these facts and circumstances, defendant has failed to show that R.R.'s 2025 recantation would have compelled a different verdict at trial. *See Commonwealth v. Douglas*, 737 A.2d 1188, 1198 (Pa. 1999) (rejecting the defendant's after-discovered evidence claim based on

recantation; the "glaring inconsistency" in the witness' affidavit "as well as the other evidence against [the defendant], makes it highly unlikely that the outcome of a new trial would be different"). No evidentiary hearing is warranted on this claim.

2. Claim that Prosecution Supposedly Manipulated Testimony of S.P. and His Mother to Promote Prosecution's Theory – Defendant Has Failed to Establish the Newly-Discovered Facts Exception and In Any Case, His Claim Fails on the Merits

Defendant claims he has newly-discovered facts that the prosecution supposedly manipulated the testimony of victim S.P. and his mother Marie to promote the prosecution's theory. In support of his claim, defendant provides an affidavit, dated October 2, 2024, from Marie, the mother of victim S.P., that was secured and presumably generated by defense investigative journalist Parlato *twelve years* after defendant's trial. Despite her 2012 trial testimony corroborating her son's testimony, and despite her 2012 statement at sentencing expressing her outrage for defendant's sexual abuse of her son and the impact it had on her as a mother, in her 2024 affidavit, Marie contradicts some of the details of S.P.'s testimony, surmises that S.P.'s account changed only after meeting with prosecutors, and therefore opines "questions of fact exist" as to whether trial prosecutors coached S.P. to make claims against defendant (PCRA Petition, 53). Further, Marie alleges that Attorney McGettigan instructed her to testify concerning defendant purchasing S.P. underwear to make it appear that S.P. threw away his underwear because defendant had anally raped S.P.[21]

As an initial matter, it is significant to note that victim S.P. has not come forward to say the prosecution supposedly manipulated his testimony and that what he told the jury at trial in June

[21] As with Parlato's affidavit, any hearsay statements contained in Marie's affidavit would not be admissible at trial and therefore cannot constitute after-discovered evidence. After-discovered evidence must be "producible and admissible" at the new trial. *See* note 17 *supra*.

of 2012 was not true. Rather, defendant's "manipulation of S.P. claim" is based solely on what his mother *thinks* long after the fact in her 2024 affidavit secured and presumably generated by defense investigative journalist Parlato *12 years* after defendant's trial (Defendant's Exhibits K & O).

In any case, as demonstrated below, defendant has failed to make the requisite showing of due diligence to satisfy the newly-discovered facts exception. And even if he did establish the Court's jurisdiction over this claim, the claim fails on the merits because the "new" evidence would be used solely for impeachment and would not have compelled a different verdict.

a. No Due Diligence for Newly-Discovered Facts Exception

Defendant fails to explain why he could not have obtained these new facts from Marie earlier with the exercise of due diligence. *Brensinger*, 218 A.3d at 448-49. The timeliness exception requires defendant "to demonstrate [that] he did not know the facts upon which he based his petition and could not have learned those facts earlier by the exercise of due diligence." *Commonwealth v. Brown,* 111 A.3d 171, 176 (Pa. Super. 2015). Defendant "*must explain* why he could not have learned the new fact(s) earlier with the exercise of due diligence." He has not even attempted to do so. Consequently, defendant has failed to establish this Court's jurisdiction over this claim.

And, even if he did, his claim fails on the merits.

b. In Any Case, Claim Fails on the Merits Because "New" Evidence Used Solely for Impeachment

Defendant's "new" evidence from Marie would be used solely to impeach the testimony of S.P. at trial and fails the after-discovered evidence test for this reason alone.

To reiterate, to obtain relief based on newly-discovered evidence pursuant to a merits analysis, a defendant must demonstrate that the evidence will not be used solely to impeach the

credibility of a witness. *Pagan*, 950 A.2d at 292. "Whenever a party offers a witness to provide evidence that contradicts other evidence previously given by another witness, it constitutes impeachment...." *Padillas*, 997 A.2d at 365 (quoting *Commonwealth v. Weis*, 611 A.2d 1218, 1229 (Pa. Super. 1992)). This is exactly what defendant attempts to do here.

He offers Marie's 2024 beliefs and hypothetical version of events solely to contradict S.P.'s 2012 trial testimony regarding defendant's sexual abuse. *See Commonwealth v. Sandusky*, 324 A.3d 551, 565 (Pa. Super. 2024) (finding this Court properly denied an evidentiary hearing based on "new" evidence that would serve no defense purpose other than to impeach the testimony of the witnesses); *Commonwealth v. Trinidad*, 96 A.3d 1031, 1037 (Pa. Super. 2014) (rejecting Trinidad's newly-discovered evidence claim premised on impeaching eyewitness's identification testimony; where the thrust of his argument was that the new testimony "would likely cast doubt about the credibility of [the eyewitness from trial] in the mind of the jury and give the jury an insight as to the mind of [the eyewitness] and his testimony[.]"); *Commonwealth v. Griffin*, 137 A.3d 605, 610 (Pa. Super. 2016) (rejecting Griffin's after-discovered evidence claim that would be used solely to attack the credibility of another witness who testified at trial); *Commonwealth v. Bormack*, 827 A.2d 503, 505-07 (Pa. Super. 2003) (proposed "new" evidence that "would have allowed the jury to see [an eyewitness] in a different light" was for impeachment alone and did not establish right to a new trial), *appeal denied*, 845 A.2d 816 (Pa. 2004); *Commonwealth v. Detman*, 770 A.2d 359, 361 (Pa. Super. 2001) (rejecting Detman's after-discovered evidence claim where the alleged evidence would, at most, have impeached witness's testimony, and that witness's veracity was fully explored by both sides during direct and cross-examination); *Commonwealth v. Hugney*, 420 A.2d 422, 426 (Pa. 1980) (rejecting Hugney's claim of after-discovered evidence where the new witnesses, each of whom believed that another witness had fabricated his trial

testimony implicating Hugney, would have only, if introduced a trial, impeached the trial witness's credibility).

c. Claim Also Fails on the Merits Because "New" Evidence Would Not Result in a Different Verdict

Defendant's claim also fails on the merits because, for numerous reasons, he cannot show that the "new" evidence would result in a different verdict.

To recap, in determining whether after-discovered evidence would result in a different verdict, a court is to "consider the integrity of the alleged after-discovered evidence, the motive of those offering the evidence, and the overall strength of the evidence supporting the conviction." *Padillas*, 997 A.2d at 365 (citing *Parker*, 431 A.2d at 218).

Regarding the integrity of the alleged after-discovered evidence, Marie's 2024 assertions and hypothetical version of events is highly suspect for various reasons.

First, Marie says that "in the 12 years since the trial, I have carried deep misgivings about the charges and the trial's outcome" and she has "wrestled with these conflicting thoughts for many years" (Defendant's Exhibit K). Yet, at no time over the last 12 years -- including during S.P.'s civil proceedings, during which there was a $20 million settlement and including when a trust was created in 2015 to support her in connection with her son's $20 million settlement -- did she come forward with her purported inner turmoil over the charges and 2012 trial proceedings against defendant. It was only when she was recently approached by the defense investigator that she now makes these suppositions and provides her opinions about S.P.'s 2012 testimony.

Second, Marie expresses her *belief* that S.P. changed his account after meeting with prosecutors because prosecutors supposedly "influenced his testimony" and her son "was a victim of this manipulation and that his [learning and emotional disability] made him especially susceptible to persuasion." Marie, however, provides no evidence to support her *belief* that

prosecutors supposedly "influenced" S.P.'s trial testimony or manipulated him in any way. Again, S.P. has not come forward to say that any of these things happened *to him* or that any of *his* 2012 trial testimony was not true. Rather, Marie's *belief* is based solely on the fact that S.P. -- like many other victims of sexual abuse -- initially refrained from disclosing the abuse to law enforcement.

Tellingly, at trial, S.P. explained to the jury why he did not disclose defendant's sexual abuse of him to police when they first interviewed him, or to the Grand Jury. S.P. testified: "Who would believe you? I mean, he's an important guy. Everybody knows him and he's a football coach. Like, for real, who would believe kids?" S.P. testified that the trial prosecutor (Attorney McGettigan) was the first person he told about defendant's sexual abuse (N.T. 6/14/12, 208-09, 223-25). Moreover, S.P. testified that no one ever told him to say anything other than the truth. The trial prosecutor (Attorney McGettigan) never told him what to say other than the truth (N.T. 6/14/12, 225-26). S.P. told the jury he was there to "[s]peak the truth" (N.T. 6/14/12, 204). The jury clearly believed his testimony.

Third, Marie's 2024 affidavit is riddled with factual inaccuracies. While in her 2024 affidavit Marie contradicts aspects of S.P.'s 2012 trial testimony, the record reflects she testified *consistently* with these aspects of her son's testimony at trial, or that her 2024 account of what S.P. testified to at trial is belied by the record. For example, in her 2024 affidavit, Marie says S.P. did not testify accurately about the number of times he stayed overnight at defendant's home, claiming S.P.'s number was too high. Yet, at trial Marie testified that S.P. spent many weekends ("a lot of occasions") overnight at defendant's home. She testified that over the course of years, S.P. went to defendant's home a couple weekends a month, just about every month (N.T. 6/18/12, 36-38, 43-45, 48, 52-53). Marie does not deny that over the course of years her son spent a significant amount of time with defendant, staying overnight at his home on weekends.

Likewise, in her 2024 affidavit, Marie says that S.P. testified that "other boys were almost always present" at defendant's house so he was not alone during his visits with defendant "which [in her 2024 opinion] would make the alleged circumstances of repeated abuse less plausible." This assertion by Marie regarding S.P.'s trial testimony is completely inaccurate. S.P. testified that he *sometimes* saw other kids at defendant's home and they were there *just once in a while*. S.P. testified he was *usually by himself* during the weekends he was at defendant's home and when he slept downstairs in the basement *he was alone* (N.T. 6/14/12, 231-32, 235). Furthermore, it goes without saying that Marie was not with her son at defendant's home during the numerous weekend overnights that occurred over the course of years (as she herself admitted at trial, she was rarely around given she worked two jobs) so she has zero personal knowledge of who, if anyone else, was present when her son was there.

Marie also challenges S.P.'s trial testimony that it would have been difficult to hear him scream for help from the Sandusky basement because he thought it could have been soundproof (N.T. 6/14/12, 234). She now says "there is no evidence to support" that the basement was soundproof, as if whether the basement was soundproof was consequential to the charges against defendant for his sexual abuse of S.P. or somehow made it less probable that defendant sexually abused S.P. there.

Further, in her affidavit, Marie expresses confusion about her son continuing to go to defendant's house on the weekends after the sexual abuse started ("Yet he continued to go to Jerry's every weekend for years?"), opining "this does not align with his behavior." This assertion is especially perplexing given Marie's own 2012 trial testimony that, at one point, S.P. complained to her that *he did not want to go to defendant's house anymore but she made him go anyways on more than one occasion* and felt guilty about that (N.T. 6/18/12, 38-40, 45). This is consistent

with S.P.'s trial testimony that he told his mom he did not want to go to defendant's house anymore but she made him go anyways (N.T. 6/14/12, 213-14).

Marie's motive for now (12 years after trial) offering her unsupported beliefs and accusations is readily apparent from the face of her affidavit (seemingly generated by the defense investigator). She clearly blames prosecutors for whatever relationship, or lack thereof, she currently has with her son (*see* Defendant's Exhibit K, p. 10 – Marie claiming: she was unable to see her son without prior approval, her efforts to encourage her son to start a business with her were met with resistance from others involved in his care, and the prosecution team alienated her son from her). Courts addressing after-discovered evidence have also focused on ***the motive of those offering the evidence***. *Padillas*, 997 A.2d at 365 (quoting *Argyrou v. State*, 709 A.2d at 1204) (emphasis added).

In any case, given the compelling evidence of defendant's guilt presented at trial, Marie's 2024 unsupported beliefs and "new" version of events regarding S.P.'s 2012 testimony would not have changed the verdict.

S.P. detailed for the jury how, over the course of years, defendant forced his penis in his mouth and anus on numerous occasions when he stayed overnight in his basement. S.P. has not disavowed his trial testimony. Moreover, at trial, his mother, Marie, corroborated his testimony and expressed her outrage for what defendant did to her son and her as a mother during her lengthy remarks at sentencing.

In addition to S.P.'s highly detailed testimony of sexual abuse, the jury heard testimony from *seven other victims* regarding defendant's sexual abuse of them as young boys, and their testimony was corroborated by extensive evidence. On top of that, the jury observed witness testimony regarding the sexual abuse of two other victims in the shower. The jury heard

compelling evidence demonstrating that over a 13-year period, 1995 to 2008, defendant was a serial pedophile who used his non-profit organization, The Second Mile, to prey on the most vulnerable and weakest victims in need of a father figure and mentor.

Under these circumstances, Marie's 2024 unsupported beliefs and accusations surely would not have changed the verdict in this case. *See Commonwealth v. Chamberlain*, 30 A.3d 381, 416 (Pa. 2011) (considering the "new" evidence in the context of the Commonwealth's evidence against Chamberlain and the evidence Chamberlain presented in defense, introduction of the new evidence would not likely result in a different verdict if a new trial were granted and hence Chamberlain was not entitled to relief); *Commonwealth v. Montalvo*, 986 A.2d 84, 109 (Pa. 2009) (where overwhelming evidence of Montalvo's guilt was adduced at trial, introduction of the new evidence would not likely result in a different verdict if a new trial were granted and hence Montalvo was not entitled to relief); *Commonwealth v. Soto*, 983 A.2d 212, 215 (Pa. Super. 2009) ("To succeed in obtaining a new trial based on after-discovered evidence, the petitioner must prove, among other things, that the new evidence would likely compel a different verdict."). No hearing is warranted on this claim.[22]

[22] Defendant mentions the phrase "governmental interference" in connection with this claim, but he does not sufficiently plead how this exception supposedly applies here. To establish the governmental interference exception, a petitioner must plead and prove (1) the failure to previously raise the claim was the result of interference by government officials and, if so, (2) he could not have obtained the information earlier with the exercise of due diligence. *Commonwealth v. Abu-Jamal*, 941 A.2d 1263, 1268 (Pa. 2008). In other words, a defendant must show that but for the interference of a government actor "he could not have filed his claim earlier." *Commonwealth v. Stokes*, 959 A.2d 306, 310 (Pa. 2008). "Although a *Brady* violation may fall within the governmental interference exception, the petitioner must still plead and prove that the failure to previously raise these claims was the result of interference by government officials, and that the information could not have been obtained earlier with the exercise of due diligence." *Commonwealth v. Smith*, 194 A.3d 126, 133 (Pa. Super. 2018). Defendant has failed to demonstrate how the government supposedly *interfered* with his ability to raise this claim earlier and that he could not have obtained the information earlier with due diligence.

3. Claim that After Defendant's Trial Proceedings Concluded, Prosecutors Profited from Victim S.P.'s Abuse Allegations – Defendant Has Failed to Establish the Newly-Discovered Facts Exception and In Any Case, Claim is Unsupported

Defendant alleges that, after his trial ended, Attorneys McGettigan and Fina went into private practice and supposedly profited from victim S.P.'s abuse allegations. In support of his claim, defendant again relies on the affidavit of S.P.'s mother, Marie, that investigative journalist Parlato obtained in October 2024, in which she says: that Attorney McGettigan introduced her and S.P. to civil attorney Dennis McAndrews, Esquire, of McAndrews Law Office regarding potential civil claims against PSU; that Attorney McAndrews in turn referred her and S.P. to a different attorney with a different law firm, Stephen Raynes, Esquire, with Raynes McCarty, who then initiated a claim against PSU on S.P.'s behalf;[23] that *nearly a year after defendant's trial* concluded, Attorney McGettigan left the Office of Attorney General and joined the McAndrews Law Office; that in 2015, *three years after defendant's trial had ended*, Attorney McAndrews set up a trust for S.P. (then only 22 years old) to manage and protect his 20 million dollar civil settlement and a support trust for her (Defendant's Exhibits L & M); that *three years after defendant's trial ended*, Attorney Fina was appointed as one of three members of the Trust Protective Committee with authority over S.P.'s trust (Defendant's Exhibit M); that the 2015 trust

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(continued . . .)

Further, even if defendant made the requisite jurisdictional showing for this time-bar exception (and he has not), the claim fails on the merits. *Brady* involves the government's failure to disclose material evidence, which requires an assessment of whether there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *Commonwealth v. Abdul-Salaam*, 42 A.3d 983, 987 (Pa. 2012). Defendant has failed to show that the Commonwealth withheld any evidence at the time of trial, let alone that it was material to the verdict.

[23] *See* Defendant's Exhibit N, reflecting that as of July 27, 2012 (after defendant's conviction), Attorney Raynes was his attorney for purposes of a civil claim.

agreement for S.P. contained a provision that yearly compensation would be provided to Trust Protective Committee members; and that Attorneys McAndrews and McGettigan, *years after trial concluded*, recruited Licensed Professional Counselor Chris Malanga to serve as power of attorney for S.P.

a. No Due Diligence for Newly-Discovered Facts Exception

As with the preceding claims, defendant fails to explain why he could not have obtained this information from Marie earlier with the exercise of due diligence. *Brensinger*, 218 A.3d at 448-49. He has failed to meet the requisite jurisdictional requirement for this Court to even consider his claim.

b. In Any Case, Defendant's Claim is Unsupported

In any case, defendant's claim is fatally unsupported.

None of what Marie says in her 2024 affidavit shows that Attorneys McGettigan and Fina had a financial interest in S.P.'s trial testimony when prosecuting defendant twelve years earlier in 2012. Nor do the copies of the Trust Agreements pertaining to S.P. and his mother (Defendant's Exhibits L & M) executed in 2015 reflect that the trial prosecutors had a financial interest in S.P.'s testimony when prosecuting defendant in 2012. Defendant just imagines there was some sort of "premediated financial scheme" in play by the prosecutors at the time of his trial. There is no evidence to support this.

The only thing shown from Marie's 2024 affidavit and the trust documents is: (1) that *three years after defendant's trial concluded*, Attorney McAndrews set up a trust to help S.P., then 22 years old, protect his 20 million dollar settlement; (2) that Frank Fina -- an attorney knowledgeable in the law who S.P. apparently believed would act in accordance with his best interests and

intentions -- was one of three individuals on the Trust Protective Committee;[24] and (3) that, as reflected by his signature and initials in the trust agreement, S.P. consented to the legal arrangements delineated in the trust agreement to help manage and protect his $20 million assets. All of this occurred *years after defendant's trial proceedings had concluded* and far from represent "new" evidence that the prosecutors had a financial incentive in connection with S.P.'s pretrial allegations and 2012 trial testimony.

Defendant is grasping at straws in an effort to create some sort of "premediated financial scheme" on the part of the trial prosecutors pertaining to S.P. that simply did not exist in 2012. Defendant is not entitled to an evidentiary hearing on this claim. Unsupported and conclusory accusations are insufficient to warrant an evidentiary hearing on an after-discovered evidence claim. *Commonwealth v. Castro,* 93 A.3d 818, 827-28 (Pa. 2014) ("Absent identification of … actual testimony, physical evidence, documentation, or other type of evidence … we cannot conclude appellee had evidence to offer; to conclude otherwise would be speculation") (footnote omitted). The purpose of an evidentiary hearing is not a fishing expedition in the hopes of discovering some evidence that may help the defense. *Id.* at 827-28.

Lastly, at the end of the day, defendant fails to demonstrate how this post-trial sequence of events regarding S.P.'s civil settlement and the trusts created to help him manage and protect that settlement in any way undermine S.P.'s 2012 trial testimony, which S.P. has never disavowed. At trial, S.P. testified that no one ever told him to say anything other than the truth, that Attorney McGettigan never told him what to say other than the truth, and no one forced him to come to court (N.T. 6/14/12, 225-26). S.P. has never stated his testimony at trial was false or that the

[24] Another member of the Trust Protective Committee was S.P.'s therapist, Lauren Cliggitt, LCSW, who had been assisting with his treatment at the Penn Center for Youth and Family Trauma Response and Recovery since July 2012.

prosecutors motivated him to testify a certain way or to say certain things in the hopes they could all profit down the road from the allegations.

Defendant has failed to show that his new information would likely compel a different verdict.

C. Defendant's Claims of Ineffective Assistance of Prior Counsel are Time-Barred.

Defendant raises numerous claims of ineffective assistance of prior counsel (trial counsel, prior PCRA counsel, resentencing counsel) (PCRA Petition, 56-77). Specifically, defendant asserts that: (1) resentencing counsel was ineffective in failing to timely present evidence of the photocopy of a diary maintained by Kathleen McChesney in her capacity as a member of the Freeh Team, summaries of emails to and from various members of the Freeh team, and evidence concerning the Freeh team's interview of an individual who became a juror (PCRA Petition, 56-63); (2) resentencing/remand counsel was ineffective in failing to timely present after-discovered evidence related to civil questionnaire documents of accusers that he says -- once again -- shows their allegations were based on recovered memories and were influenced by civil attorneys and therapists (PCRA Petition, 39-42, 63-65);[25] (3) prior PCRA counsel was ineffective in failing to

[25] As discussed, defendant's ineffectiveness claims are time-barred and as such, the merits of them will not be addressed herein. However, given the volume of civil questionnaires defendant attaches to his current petition, it is necessary to point out their complete lack of evidentiary value for purposes of the current PCRA proceedings.

Defendant attaches civil questionnaire documents (Defendant's Exhibits A-I) that he obtained after his first PCRA proceedings concluded (*i.e.*, around 2017) (PCRA Petition, 40). These civil questionnaire documents pertain to the following individuals: Matt Sandusky, who did not even testify at trial; victim A.M., who did not even testify at trial; victim D.S., who explicitly testified at the prior PCRA hearing that he did not undergo any type of repressed memory therapy prior to trial and his testimony was credited by the PCRA court and that finding affirmed on appeal; victims J.S., S.P., M.K. and B.S.H, yet there is no mention in the questionnaires of any of them having undergone repressed memory therapy prior to or at the time of trial; and victim A.F., who Dr. Gillum explicitly testified at the prior PCRA hearing that he did not perform repressed memory

raise a *Brady* claim related to the Commonwealth's failure to disclose the role that therapist Michael Gillum (who already testified at an evidentiary hearing during the first PCRA proceedings) supposedly played as a de facto member of the prosecution team (Petition, 65-90); (4) trial counsel was ineffective for failing to challenge the two-year statute of limitations period for each unlawful contact of minor count (PCRA Petition, 70-73); and (5) trial counsel and prior PCRA counsel were ineffective in failing to raise a statute of limitations defense to the indecent assault, corruption of minors, and endangering the welfare of children charges (PCRA Petition, 73-77).[26] Each of these ineffectiveness claims is time-barred.

It is well settled that a claim for ineffective assistance of counsel does not save an otherwise untimely petition for review on the merits. *Commonwealth v. Gamboa-Taylor*, 753 A.2d 780, 785 (Pa. 2000). *See Commonwealth v. Wharton*, 886 A.2d 1120, 1126-27 (Pa. 2005) (rejecting the claim that the time-bar should not apply to a second petition because the underlying claim involved a constitutional right, holding that "this is nothing more than a convoluted way of attempting to carve out an exception to the jurisdictional timeliness requirements of the PCRA for ineffective assistance of counsel claims"); *Commonwealth v. Breakiron*, 781 A.2d 94, 100 (Pa. 2001) ("our Court has expressly rejected attempts to utilize ineffective assistance of counsel claims as a means of escaping the jurisdictional time requirements for filing a PCRA petition"); *Commonwealth v.*

(continued . . .)
therapy on, testimony credited by the PCRA court and that finding affirmed on appeal. Moreover, the questionnaires were used for purposes of the subsequent civil proceedings, were not signed or adopted by anyone, were not dated, and it is entirely unclear who generated each of them. It is also baffling how defendant could possibly think these documents are in any way helpful to him given the horrific details contained in them painstakingly documenting his prolonged sexual abuse of these victims as young boys.

[26] Current counsel, Attorney Salemme, was counsel during defendant's first PCRA proceedings (PCRA Petition, 6) and, thus, it is unclear whether he is alleging his own ineffectiveness in connection with those proceedings.

Lark, 746 A.2d 585, 589-90 (Pa. 2000) (couching argument in terms of ineffectiveness cannot save a petition that does not fall into exception to jurisdictional time bar); *Commonwealth v. Fahy*, 737 A.2d 214, 223 (Pa. 1999) ("reiterat[ing] that a claim for ineffectiveness of counsel does not save an otherwise untimely petition for review on the merits").

Likewise, our appellate courts have made it clear that counsel's ineffectiveness may not be invoked as a newly-discovered "fact" for purposes of invoking the subsection 9545(b)(1)(ii) exception. *See Commonwealth v. Bradley*, 261 A.3d 381, 404 n.18 (Pa. 2021) (rejecting the claim that the defendant's "discovery" of prior counsel's ineffectiveness constitutes a "new fact" that was unknown to him, allowing him to overcome the PCRA time-bar provision under the "new fact" exception);[27] *Gamboa-Taylor*, 753 A.2d at 785 ("subsequent counsel's review of previous

[27] Defendant cites *Bradley* in his petition (PCRA Petition, 70), but *Bradley* is not applicable to his allegations of prior PCRA counsel's ineffectiveness. Since the Supreme Court's holding in *Bradley*, our appellate courts have reaffirmed that *Bradley* does not provide an avenue for defendants to circumvent the PCRA time-bar when a claim of PCRA counsel's ineffectiveness is raised in a facially untimely petition. *See Commonwealth v. Laird*, 331 A.3d 579, 583 (Pa. 2025) (declining to create an equitable exception to that time-bar by applying *Bradley* to petitioners who raise claims concerning the ineffective assistance of PCRA counsel for the first time in an untimely PCRA petition, if and when the untimely petition presents the first opportunity for the petitioner to do so; "We hold today that *Bradley* did not establish an equitable exception to the PCRA's time-bar and that its rationale cannot be extended to create one"); *Commonwealth v. Stahl*, 292 A.3d 1130, 1136 (Pa. Super. 2023), *reargument denied* (May 16, 2023) ("Nothing in *Bradley* creates a right to file a second PCRA petition outside the PCRA's one-year time limit as a method of raising ineffectiveness of PCRA counsel or permits recognition of such a right. To the contrary, our Supreme Court in *Bradley* unambiguously **rejected** the filing of a successive untimely PCRA petition as a permissible method of vindicating the right to effective representation by PCRA counsel.") (emphasis in original); *Commonwealth v. Pridgen*, 305 A.3d 97, 102 (Pa. Super. 2023) ("This Court has continually declined to extend the holding of *Bradley* to cases involving untimely petitions."), *appeal denied*, 318 A.3d 97 (Pa. 2024); *Commonwealth v. Dennis*, No. 1926 EDA 2021, 2022 WL 3714286, at *4 (Pa. Super. filed Aug. 29, 2022) (unpublished memorandum) (noting that *Bradley* involved a timely filed first PCRA petition, not an untimely subsequent petition and, as such, the defendant's claim is "not the type of layered ineffectiveness claim contemplated in *Bradley* and cannot now be raised absent proper invocation of an exception to the PCRA's jurisdictional time-bar").

counsel's representation and a conclusion that previous counsel was ineffective is not a newly discovered 'fact' entitling Appellant to the benefit of the exception for after-discovered evidence"; "a conclusion that previous counsel was ineffective is not the type of after-discovered evidence encompassed by the exception [at Section 9545(b)(1)(ii)]"); *Commonwealth v. Pursell*, 749 A.2d 911, 915 (Pa. 2000) (claims of counsel's ineffectiveness do not escape the PCRA one-year time limitation merely because they are presented in terms of current counsel's discovery of the "fact" that a previous attorney was ineffective). The same holds true here.

Defendant's claims of prior counsels' ineffectiveness do not satisfy any exception to the time-bar and should be summarily dismissed.[28]

IV. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING.

Defendant is not entitled to an evidentiary hearing. His third PCRA petition is untimely and he has failed to plead and prove an exception to the PCRA's time-bar. Therefore, this Court lacks jurisdiction to consider defendant's substantive claims on the pleadings, let alone have an evidentiary hearing on them. *See Commonwealth v. Marshall*, 947 A.2d 714, 723 (Pa. 2008) (where Marshall's petition was untimely, the PCRA court properly determined that it had no jurisdiction to entertain it and, as such, dismissed the petition without a hearing); *Commonwealth v. Chester*, 895 A.2d 520, 524 (Pa. 2006) (affirming the PCRA's court's dismissal of Chester's second petition when he failed to plead and prove an exception to the time-bar and the PCRA court lacked jurisdiction to consider his substantive claims); *Commonwealth v. Jackson*, 30 A.3d 516, 519 (Pa. Super. 2011) (reiterating that "[i]f the petition is determined to be untimely, and no exception has been pled and proven, the petition must be dismissed without a hearing because

[28] In the event this Court finds defendant's ineffectiveness claims are timely (despite the above precedent), the Commonwealth would request an opportunity to submit a written response to those claims on the merits.

Pennsylvania courts are without jurisdiction to consider the merits of the petition.") (citation omitted); *Commonwealth v. Garcia*, 23 A.3d 1059, 1066 n.9 (Pa. Super. 2011), *appeal denied*, 38 A.3d 823 (Pa. 2012) (noting that right to evidentiary hearing on PCRA petition is not absolute; PCRA court did not abuse its discretion where it declined to hold evidentiary hearing after determining Garcia's PCRA petition was facially untimely and he failed to meet his burden of proof with regard to any of enumerated time-bar exceptions); *Commonwealth v. Johnson*, 945 A.2d 185, 188 (Pa. Super. 2008) (PCRA court may decline hearing if there is no genuine issue concerning a material fact, petitioner is not entitled to PCRA relief, and no purpose would be served by conducting further proceedings).

V. CONCLUSION

For the reasons stated above, the Commonwealth respectfully requests that the Court deny defendant's third untimely PCRA petition without an evidentiary hearing.

Respectfully submitted,

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Date: December 18, 2025

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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