

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	No. 423, 2013
Appellee,	)	
	)	On Appeal from the
v.	)	Superior Court of the
	)	State of Delaware in and
JERMAINE WRIGHT,	)	for New Castle County
	)	
Defendant Below,	)	
Appellant.	)	

APPELLANT'S OPENING BRIEF

MARGOLIS EDELSTEIN

Herbert W. Mondros
Delaware Bar No. 3308
300 Delaware Ave.
Suite 800
Wilmington, DE 19801
(302) 888-1112

Attorneys for Appellant

**FEDERAL COMMUNITY
DEFENDER OFFICE**

**For the Eastern District of
Pennsylvania**

Billy Nolas, *pro hac vice*

Claudia Van Wyk

James Moreno

Tracy Ulstad

Suite 545 West - The Curtis Center

Independence Square West

Philadelphia, PA 19106

(215) 928-0520

Attorneys for Appellant

November 12, 2013

PRELIMINARY STATEMENT REGARDING CITATIONS

All emphasis herein is added unless otherwise indicated. Internal quotation marks and footnotes may be omitted when to do so does not affect the meaning of the quotation.

The Appendix to this brief is cited as “A____.” The Superior Court’s *Corrected Sentence Order* (July 26, 2013) is attached to this brief as Exhibit A. The Superior Court’s Order on Petitioner’s Motion to Address and Clarify Status of Claims (July 18, 2013) is attached as Exhibit B.

This case was the subject of a previous appeal under Docket No. 10, 2012. The Superior Court’s opinion of January 3, 2012, in that matter, granting relief on some claims and denying relief on others, is cited to the Appendix and as “Op.” The State’s Initial Brief, on appeal from the grant of relief, is cited as “PSB”; its Appendix and Supplemental Appendix are cited as “PA” and “PSA”; the Appellee’s Answering Brief and Appendix filed in that matter by Wright are cited as “PAB” and “PB,” respectively.

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NATURE OF PROCEEDINGS

Appellant Jermaine Wright was convicted and sentenced to death before the Hon. Susan C. Del Pesco in New Castle County Superior Court on October 22, 1992 (D.I. 82). After this Court affirmed his conviction on direct appeal, 633 A.2d 329 (Del. 1993), the Superior Court granted post-conviction sentencing relief because of ineffective assistance of trial counsel. *State v. Wright*, 653 A.2d 288 (Del. Super. 1994). Wright was retried and resentenced to death (D.I. 230). His resentencing and post-conviction appeals were unsuccessful. *Wright v. State*, 671 A.2d 1353 (Del. 1996); *Wright v. State*, 746 A.2d 277 (Del. 2000).

Wright filed a petition for writ of habeas corpus in the United States District Court for the District of Delaware on May 10, 2000 (*Wright v. Snyder*, No. 00-474-GMS, Doc. 3). On October 2, 2008, Hon. Gregory M. Sleet, Chief United States District Judge, stayed further proceedings on the federal habeas petition for exhaustion of state remedies, and directed the parties to notify him within 30 days of the completion of litigation in the Delaware courts. Doc. 104. At the time, Wright had a second Rule 61 petition, filed in 2003, pending in the Delaware Superior Court. It was amended with new evidence developed in the federal habeas litigation. D.I. 332, 335, 345, 348. The Honorable John A. Parkins held a seven-day evidentiary hearing on Wright's innocence, the admissibility of his custodial statement, and the prosecution's suppression of exculpatory evidence. On January 3, 2012, the Superior Court ruled that Wright's showing of innocence and colorable constitutional claims excused any non-compliance with procedural bars, that his statement was

inadmissible, and that the State had failed to disclose exculpatory evidence that the police had eliminated Wright as a suspect in another liquor store robbery near the time and place of the robbery-murder underlying his death sentence. A171, 185, 189 (Op. 83, 97, 101). The court rejected Wright's other claims, including his challenges to the state's failure to disclose additional exculpatory evidence and trial counsel's failure to conduct a constitutionally adequate penalty phase investigation. A150, 159, 165 (Op. 62, 71, 77).

The State appealed the Superior Court's order granting relief, and this Court reversed on May 28, 2013. The Court ruled that the challenges to the admissibility of Wright's statement were procedurally barred as repetitive (A196-97, citing Rule 61(i)(4)), and that the State's failure to disclose the evidence about the similar robbery was not prejudicial. A200-01. The Court remanded the case to the Superior Court for reinstatement of the convictions. A201.

On remand, Wright moved to clarify the status of claims that the Superior Court had rejected in its 2012 opinion granting relief. D.I. 473. The court denied that motion on July 18, 2013. Exhibit B, attached (D.I. 481), A218, A300. It reimposed the convictions and sentences on July 12 (Exhibit A, attached) and, on August 12, 2013, entered an unopposed order granting a stay of execution of Wright's death sentence. D.I. 480, 483, A214, A222. Wright filed a timely notice of appeal on August 8, 2013. D.I. 484, A221.

SUMMARY OF ARGUMENT

1. In Wright's prior appeal, this Court rejected a *Brady* claim, asserting that the withheld evidence was not material. This appeal challenges the denial of relief for the State's failure to disclose additional evidence, and argues that all the State's *Brady* violations cumulatively require relief.

First, the Court must address additional *Brady* claims that Wright could not challenge on the prior appeal, because the State was the appellant and cross-appeal was unauthorized. The Superior Court recognized that the State improperly withheld evidence concerning cooperating witness Gerald Samuels. It nevertheless found that the absence of this evidence did not undermine the fairness of the trial. In the prior appeal, Wright argued that these additional violations were an alternate basis to affirm the Superior Court's grant of *Brady* relief on other grounds. The status of the Samuels claims remains unclear. The Court should now address them and grant relief.

Second, the Superior Court never ruled on Wright's claim that the prosecutor failed to correct the untruthful testimony of Kevin Jamison, who, as the defense sought to prove at trial, committed the murder with his cousin Norman Custis.

Third, the Court should address the cumulative effects of all the *Brady* violations. There is a reasonable probability that, if the jury had known about all the withheld evidence, the outcome would have been different.

2. In its original Rule 61 opinion, the Superior Court rejected Wright's claim that his trial counsel's mitigation investigation was constitutionally inadequate. Post-

conviction counsel proffered records, witness statements, and trial counsel's testimony, and sought an evidentiary hearing, but the Superior Court mistakenly ruled the claim "abandoned." Before the 2013 resentencing, the Superior Court rejected the claim on the merits, finding Wright's renewed proffer "insufficient to require an evidentiary hearing." This Court should reverse and remand for a hearing.

3. Wright's post-conviction counsel conducted no extra-record investigation, were unprepared, and labored under conflicts of interest because of their loyalty to trial counsel, who was a colleague in the conflict counsel program. Their conflicting interests affected their performance, which was deficient and prejudicial. Because, under Delaware law, post-conviction proceedings provided Wright's only opportunity to present his extra-record claims, post-conviction counsel's deficient representation excuses any defaults in not challenging trial counsel's ineffective representation and other constitutional violations. *See Martinez v. Ryan*, ___ U.S. ___, 132 S.Ct. 1309(2012); *Zebroski v. State*, 12 A.3d 1115, 1120-21 (Del. 2010); Rule 61(i)(5).

4. Wright's death sentence is unconstitutional under *Ring v. Arizona*, 536 U.S. 584 (2002), because the statute does not require, and his jury and sentencing judge did not undertake, to find that the aggravating factors outweighed the mitigating factors beyond a reasonable doubt.

STATEMENT OF FACTS

This Court is already familiar with the facts recited in the briefs on the previous appeal (PSB 8-17, PAB 4-33) and in its own opinion. A190. The facts necessary for the Court's consideration of this appeal follow.

The Court previously determined that the prosecutor's failure to disclose that the police excluded Wright as a perpetrator of a robbery at the nearby Brandywine Village Liquor Store ("BVLS") was not prejudicial. A200-01. The prosecution also withheld other exculpatory evidence. At trial, it presented the surprise rebuttal testimony of Gerald Samuels, one of Wright's fellow prisoners. "Without prior notice to Defendant, Samuels . . . testified that Wright admitted to him in jail that he (Wright) murdered Mr. Seifert," A162 (Op. 74), supposedly saying, "I shot the mother fucker." PB1009, 989, 999, 2497.

"The State did not provide Wright with Samuels' criminal record." A164 (Op. 76 n.108). Instead, the prosecutor elicited from Samuels that he had four felony convictions, PB999, and told counsel that all four were guilty pleas. PB1013. When counsel tried to cross-examine Samuels about the resolution of the prior offenses, the prosecutor successfully objected. PB1011-14.

At the Rule 61 hearing, Wright demonstrated that Samuels obtained one of his previous plea deals in return for testifying against a co-defendant, and that he hoped for leniency in his current legal matters in return for his testimony in this case. "In March 2009, Wright's counsel obtained an affidavit from Samuels in which he

recanted in part his [trial] testimony that he had not been promised anything [by the State] before he testified.” A163-64(Op. 75-76). The affidavit states:

Before trial, I had discussions with my attorney[,] Mr. Favata, regarding what I could get in exchange for my testimony against [Wright]. It was my understanding, after talking with my attorney and [trial prosecutor] Ferris Wharton, that I would be getting a sentence reduction or be sent to work release in exchange for my testimony.

While there were no concrete, written promises it was clearly implied I would be getting these benefits. [Mr. Wharton] and Mr. Favata kept telling me that there were no guarantees, but the[y] were clearly making an unspoken promise. ... My attorney ... specifically and repeatedly advised me not to make reference to any deals while on the stand. That is why I repeatedly denied that I had been offered anything[.]

PB1062-63.

Wright introduced documents supporting Samuels’s disclosure that he had an “unspoken promise” from the State. These included (1) a letter written on November 24, 1992, one month after Wright’s death sentence, by Samuels’s counsel to the Wright trial prosecutor, inquiring “when you plan to honor your agreement to recommend ‘substantial assistance’” (PB2297); (2) a May 1993 letter from Samuels himself to Wright’s capital trial judge stating that before trial his lawyer had “come to a verbal agreement” with the prosecutor and state trooper (PB2298), and (3) Samuels’s September 1993 *pro se* “Motion for Reduction of Sentence,” which again asserted that his attorney had made an agreement with the prosecutor (PB2299).

In this Rule 61 action, the State for the first time provided Samuels’s documented criminal history, which it had failed to provide to the defense when it

called him as a surprise witness at trial. PB2302-23. The new evidence shows that, on February 13, 1992, Samuels entered a negotiated plea agreement in which the State dropped several charges and recommended a favorable sentence in exchange for his agreement to testify against his co-defendant and plead guilty. PB2302.

The prosecution also withheld exculpatory evidence concerning Kevin Jamison. At trial, Wright presented evidence and argument that Jamison and his cousin, Norman Custis, committed the murder. PB1179-88, PB1858-71; PB2189. The defense called Jamison himself as a witness, along with multiple alibi witnesses and other witnesses who implicated Jamison. Jamison admitted that Norman Custis was his cousin but insisted that he did not “run around with” Custis and that they saw each other infrequently. He also insisted that he was working on the night of the Hi-Way Inn robbery. PB1778, PB1784.

The prosecutor knew that Jamison committed perjury but never corrected it. On the same day he testified – and denied “running around with” Custis – he was arrested for a robbery committed the previous month in New Castle County. Custis was his co-defendant. PB 793 (Warrant in matter of *State v. Kevin Jamison and Norman Custis*, IN 92-09-0734; IN 92-08-1227).

In its 2012 opinion, the Superior Court considered and rejected the *Brady* claim relating to Samuels, and did not mention the *Brady* claim relating to Jamison. A162-

64 (Op. 74-78). It granted relief only on the BVLS *Brady* claim. A166-71 (Op. 78-83).

This Court reversed the grant of relief on the basis of its belief that the non-disclosure of the BVLS evidence was not material – because the police had concluded there was no connection between the two offenses, because Wright’s ultimate statement included information about the incident, and because the jury rejected Wright’s alibi. A200-01. It therefore declined to apply the exception set forth in Rule 61(i)(5) to the *Brady* error. A197-98.

ARGUMENT

I. THE STATE FAILED TO DISCLOSE EXCULPATORY INFORMATION RELATING TO WITNESSES GERALD SAMUELS AND KEVIN JAMISON, AND THOSE NON-DISCLOSURES, CUMULATIVELY WITH THE NON-DISCLOSURE OF EVIDENCE PERTAINING TO THE BRANDYWINE VILLAGE LIQUOR STORE ROBBERY, WERE MATERIAL.

Questions Presented: (1) Whether the state's non-disclosure of the prior cooperation, prior record, and hope for leniency of its cooperating witness, Gerald Samuels, violated due process (preserved at A1307-11); (2) whether the state's failure to correct the untruthful testimony of Kevin Jamison violated due process (preserved at A1312-13); and (3) whether all the State's *Brady* violations are cumulatively material (preserved at A1306).

Scope of Review: This Court reviews questions of law *de novo*, *Outten v. State*, 720 A.2d 547, 551 (Del. 1998), findings of fact for clear error, *Burrell v. State*, 953 A.2d 957, 961 (Del. 2008), and the decision to deny post-conviction relief for abuse of discretion. *Zebroski v. State*, 12 A.3d 1115, 1119 (Del. 2010).

Merits: Wright established three *Brady* violations at the evidentiary hearing. *See Brady v. Maryland*, 373 U.S. 83 (1963). This Court's prior opinion discussed only one of them. On this appeal, the Court should consider their cumulative impact.

To establish a *Brady* violation, a petitioner must show that the government suppressed favorable and material evidence. U.S. Const. amend. XIV; *Simmons v.*

Beard, 581 F.3d 158, 167 (3d Cir. 2009); *Slutzker v. Johnson*, 393 F.3d 373, 386 (3d Cir. 2004). Favorable evidence includes not only directly exculpatory, but also impeaching, evidence. *United States v. Bagley*, 473 U.S. 667, 676 (1985). A due process violation also occurs “when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.” *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

A. The Non-Disclosure of Evidence That Impeached State’s Witness Gerald Samuels Prejudiced the Defense.

1. The Status of the Samuels Claims

When the State appealed the Superior Court’s ruling granting *Brady* relief because of the prosecution’s failure to disclose information respecting the BVLS robbery, Wright had no right to cross-appeal. Because the Superior Court had granted a new trial, there was no final judgment, and the statute governing the State’s appeal, 10 Del. Code Ann. § 9902(d), does not allow for cross-appeals.¹

On appeal, Wright urged the Samuels *Brady* claims (properly pled in his petition) as alternative grounds to uphold the ruling of *Brady* error. *See* A1307-11; *State v. Wright*, Del. S.Ct. No. 10, 2012, *Appellee’s Answering Brief*, at 3, 54-58.

¹ *See State v. Brower*, 971 A.2d 102, 110 (Del. 2009) (Supreme Court had no jurisdiction over defendant’s cross-appeal during State’s appeal pursuant to § 9902(d) of order granting new trial); *State v. Maxwell*, 620 A.2d 859 (table), 1992 WL 401575, at *1 (Del. Dec. 7, 1992) (Supreme Court had no jurisdiction over cross-appeal by defendant during State’s § 9902(d) appeal of order suppressing evidence); *State v. Cooley*, 457 A.2d 352, 356-57 (Del. 1983) (Delaware law does not provide for cross-appeals in cases governed by §§ 9901-04).

This Court's decision reversing the BVLS *Brady* claim does not mention the Samuels *Brady* claims. It is therefore unclear whether the latter received a final ruling.

In an abundance of caution, Wright moved before his resentencing to clarify the status of the Samuels claims. D.I. 473. He asked the Superior Court to rule on the issue, *nunc pro tunc*, before reimposing conviction and sentence, or to consider a renewed Rule 61 motion on the claims, in the interest of justice, overcoming any procedural bar erected by Rule 61(i)(4). In opposition, the State argued that this Court had already rejected the claims on appeal (D.I. 474), and the Superior Court declined to address them anew. Exhibit B, attached (*see* A300, A218).

Exercising the same caution as he did in the Superior Court, Wright asks this Court to rule on the Samuels *Brady* claims.

2. Samuels's Prior Cooperation Agreement

As the Superior Court found, A164 (Op. 76 n. 108), the State failed to disclose crucial information that jailhouse informant Gerald Samuels, a surprise State's witness at trial, had previously worked as an informant, agreeing to testify against a co-defendant in a drug case about six months before Wright's trial. PSA 791 (plea agreement). The Superior Court properly recognized the State's misconduct: "The State's failure to provide this information in a timely fashion to Wright is regrettable, if not an outright *Brady* violation." A164 (Op. 76 n. 108). But it rejected the claim

as procedurally barred because, while trial counsel could not have obtained the information independently during trial, he could have done so after trial.

Misapprehending the nature of the claim, the court declined to apply an exception to the procedural bars. It ruled the miscarriage of justice exception inapplicable because the “absence of information about Samuels’s conviction” did not undermine the fairness of the trial. A164 (Op. 76 n.108). The court failed to consider that the State had withheld, not only complete information about each prior conviction, but also the crucial information that Samuels had previously cooperated by testifying against a co-defendant. Thus the court understated the weight of the withheld evidence. And it never explained why Wright’s innocence did not provide an independent basis to overcome procedural bars. Rule 61(i)(5).

The Superior Court should have found that the *Brady* claim was colorable, and it should have found that Wright’s innocence overcame the procedural bars. On the merits, it should have found a due process violation. The United States Supreme Court addressed a similar claim in *Banks v. Dretke*, 540 U.S. 668 (2004), where the prosecution withheld a key witness’s status as a paid informant. 540 U.S. at 698. Courts have often granted relief for *Brady* violations involving non-disclosure that informants had worked with law enforcement or the prosecution in other cases.²

² See *Williams v. State*, 831 A.2d 501 (Md. App. 2003) (jailhouse witness was paid police informant for a drug unit); see also *Monroe v. Angelone*, 323 F.3d 286 (4th Cir. 2003) (non-disclosures included fact that key witness previously supplied information to police); *Benn v.*

The suppressed information would have been extremely useful to Wright's defense. Wright's trial counsel, Jack Willard, explained that the evidence "would have been critically important to me and I had no idea." PSB176, 180.

Both the information that Samuels had previously testified against a co-defendant to advance his own legal interests, and his criminal record, were unquestionably exculpatory. The State's non-disclosures required relief because the information was material, both alone and in combination with other undisclosed *Brady* information. That is, there is a reasonable probability that a jury informed of Samuels's prior cooperation would have discounted his testimony and acquitted Wright of the murder. And, at the very least, there is a reasonable probability that a jury informed of all the *Brady* violations would have done so.

3. The Expectation of Leniency in This Case

The Superior Court found that Samuels "very likely had a unilateral expectation of receiving some benefit from his testimony [in Wright's case]," as demonstrated by his affidavit and post-trial correspondence and pleadings. A164-65

Lambert, 283 F.3d 1040 (9th Cir. 2002) (witness had history of misconduct while acting as an informant); *United States v. Stanford*, No. 07-40055-06, 2008 WL 4790782 (D.S.D. Oct. 31, 2008) (key witness involved in controlled buys to "work off" potential charges stemming from inaccurate information provided in another case); *Benn v. Wood*, No. C98-5131RD8, 2000 WL 1031361 (W.D. Wash. June 30, 2000), *aff'd* 283 F.3d 1040 (9th Cir. 2002) (confidential informant had prior dealing with law enforcement); *Reasonover v. Washington*, 60 F. Supp. 2d 937 (E.D. Mo. 1999) (non-disclosures included one informant's previous deal with state in another matter); *Sarber v. State*, No. A08-1336, 2009 WL 2366097 (Minn. App. Aug. 4, 2009) (witness had met with detectives many times to discuss working as an informant).

(Op. 76-77). The court found, however, that the prosecution made neither an express nor a “wink and a nod” agreement with him. It concluded that there was no *Brady* violation without an agreement. A165 (Op. 77).

That conclusion was error. It was not dispositive that Gerald Samuels had no explicit or implied deal with the State. His correspondence demonstrates, and the Superior Court found it “likely,” that his motivation for offering to testify against Jermaine Wright was his hope that he would receive leniency in return. In a similar case, *Breakiron v. Horn*, the petitioner received habeas relief for the non-disclosure of similarly exculpatory impeaching information. The district court held:

The Commonwealth contends that the prosecution had no duty to disclose the letters under *Brady* because there ended up being no deal between the prosecution and [the cooperating witness]. Under the unusual circumstances of this case, I cannot agree that the letters did not constitute *Brady* material. Here, a jailhouse informant sent letters to the District Attorney in which he offered information about a fellow inmate’s alleged confession while at the same time requesting relief from non-final convictions . . . The letters show that [the witness’s] initial motive to come forward with information against Breakiron was inextricably tied to his hope that he would receive benefits from the government. That information could have been used by competent defense counsel to establish motive to fabricate Breakiron's confession, regardless of whether there was any deal.

Breakiron v. Horn, No. 00-300 2008 WL 4412057, at *27-28 (W.D. Pa. Sept. 24, 2008). The Court of Appeals affirmed in relevant part. *Breakiron v. Horn*, 642 F.3d 126, 133 n.8 (3d Cir. 2011) (“[T]he prosecutor has much to answer for. . . . It was so

well-established before Breakiron's trial as to have been axiomatic that prosecutors must disclose impeachment evidence like that at issue here.”).

As in *Breakiron*, Gerald Samuels had a motive “inextricably tied to the hope that he would receive benefits from the government.” Counsel could and would have used it as powerful impeachment evidence if the state had disclosed it. The Superior Court’s finding that no *Brady* violation occurred was error.

B. The Evidence Concerning Kevin Jamison and Norman Custis

At trial, the prosecutor allowed Kevin Jamison - who, the defense argued, committed the crime with his cousin Norman Custis – to testify that he only saw Custis “now and then . . . not often.” PB1779-83. The prosecutor knew that only one month earlier Jamison and Custis had been charged as co-defendants with a robbery, and that Jamison was arrested for that robbery on the very day he testified against Wright. The prosecution had a duty to disclose this information and a duty to correct Jamison’s testimony. *See Romeo v. State*, 21 A.3d 597 (Table), 2011 WL 1877845, at *3 n.7 (Del. 2011) (citing *Napue*).

If the prosecutor had disclosed this information, Wright’s lawyer could have used it to help demonstrate that Jamison and Custis were the real perpetrators, undermining Jamison’s denials and bolstering his other evidence implicating Jamison.

The prosecutor’s knowing failure to correct Jamison’s untruthful testimony requires a new trial “if there is any reasonable likelihood that the false testimony

could have affected the judgment of the jury.” *See Romeo*, 2011 WL 1877845, at *3. Moreover, the information about Jamison’s commission of a robbery with Custis was exculpatory because it would have impeached him. *See Capano v. State*, 781 A.2d 556, 649 n.370 (Del. 2001) (citing *Giglio v. United States*, 405 U.S. 150 (1972)). Accordingly, the non-disclosure of that information requires a new trial if there is a reasonable probability that the outcome would have been different.

Wright presented detailed alibis for himself and his co-defendant, Dixon. Wright’s custodial statement contradicted the known facts at numerous points, and the jury knew that he was high on heroin when he made it. Multiple witnesses incriminated Jamison and Custis in the killing. If the jurors had known that only a month before trial, Jamison had committed an armed robbery with Custis and then had lied about it to their faces, there is a reasonable probability that they would have voted to acquit, and certainly “any reasonable likelihood” that the information would have affected their deliberations. Thus the prosecution’s non-disclosure of the Jamison information, alone, is grounds for habeas relief.

The Superior Court never ruled on the Jamison *Brady* claim presented in Wright’s petition (A1312-13). For the reasons above, its failure to grant relief was an abuse of discretion.

C. Materiality

As Wright argued in the Superior Court (A1306), the materiality of suppressed evidence must be “considered collectively, not item-by-item.” *Kyles v. Whitley*, 519 U.S. 419, 436 (1995). There is a reasonable probability that, if the jury had heard, not only the BVLS evidence, but also (1) evidence, with cross-examination and argument, about Samuels’s prior and current cooperation, and (2) evidence that Jamison committed perjury about his prior association with Custis, they would have had a reasonable doubt about Wright’s guilt. Therefore, the prosecution’s failure to disclose the Samuels evidence, and its failure to correct Jamison’s untruthful testimony, when added to the non-disclosure of the BVLS evidence as the Constitution requires, renders Mr. Wright’s conviction fatally unreliable. *See Simmons v. Beard*, 581 F.3d 158, 167 (3d Cir. 2009)(granting relief on cumulative impact of several *Brady* violations). The non-disclosures deprived Wright of due process of law, and the Superior Court abused its discretion in denying relief. This Court accordingly should reverse the order denying relief for the Samuels and Jamison *Brady* violations, vacate the convictions and sentences, and order a new trial.

II. TRIAL COUNSEL’S FAILURE TO CONDUCT A CONSTITUTIONALLY ADEQUATE MITIGATION INVESTIGATION DEPRIVED PETITIONER OF THE EFFECTIVE ASSISTANCE OF COUNSEL AT THE PENALTY PHASE.

Question Presented: Whether trial counsel’s constitutionally inadequate background investigation deprived Wright of the effective assistance of counsel at the penalty phase (preserved at A307-17).

Scope of Review: This Court reviews questions of law *de novo*, *Outten v. State*, 720 A.2d 547, 551 (Del. 1998), findings of fact for clear error, *Burrell v. State*, 953 A.2d 957, 961 (Del. 2008), and the decision to deny post-conviction relief for abuse of discretion. *Zebroski*, 12 A.3d at 1119.

Merits: As Wright argued in the Rule 61 proceedings, his trial attorney conducted a constitutionally inadequate background investigation and never uncovered persuasive evidence that he could have presented in mitigation of punishment. In its original ruling granting Rule 61 relief, the Superior Court mistakenly dismissed the claim as abandoned. At the 2013 resentencing, counsel having directed the Superior Court to pertinent parts of the record demonstrating otherwise, the court ruled on the merits. It determined that Wright’s proffered evidence did not warrant an evidentiary hearing. For the reasons below, that ruling was error.

A. Petitioner Proffered the Evidence to Be Presented in Support of This Claim Before the 2009 Evidentiary Hearing, But the Superior Court Did Not Grant a Hearing on the Claim.

After Chief Judge Sleet ordered Wright to present his newly supplemented constitutional claims in state court, his attorneys filed a *Consolidated Successor Petition* on May 1, 2009. Claim III maintained that trial counsel failed to conduct a constitutionally adequate penalty phase investigation and presentation. A307 (Excerpt, *Consolidated Successor Petition*, at 36). Counsel had failed to collect records, and had limited their background interviews to Mr. Wright's mother and one sister. A314 (*id.* at 43). The petition outlined evidence that an adequate investigation would have disclosed: that petitioner's father was a drug addict who provided no support to the family, was incarcerated most of his adult life, and died in an abandoned house; that his mother and the children lived in extreme poverty; and that the mother severely beat petitioner and his siblings. The petition referred to witness declarations supporting the allegations. It alleged that trial counsel failed to prepare a social history or provide adequate background information to their expert. A315 (*Id.* at 44). It argued that counsel's deficiencies prejudiced the defense individually and cumulatively. A317 (*Id.* at 46). An appendix that accompanied the petition included the cited declarations and others that further supported the allegations.

On June 12, 2009, the Superior Court heard oral argument to determine which post-conviction claims required an evidentiary hearing. It questioned counsel about

the evidence proffered in support of Claim III. A319 (Excerpt, Transcript of June 12, 2009). Counsel explained that the claim relied on records that trial counsel had not obtained (family court records, school records, medical records), and the declarations of the witnesses named in the claim, along with those of other witnesses. A325-28. Post-conviction counsel argued that trial counsel were deficient in not investigating the evidence of petitioner's innocence. A329. Trial counsel had failed to conduct more than one or two interviews with only two family members, and had never attempted to obtain an investigator to collect background information. A327, 332-33. Further, trial counsel, not having compiled the background information, was unable to provide it to his mental health expert. A337. Post-conviction counsel had held discussions with Wright's penalty retrial counsel, Joseph Bernstein, and represented that Mr. Bernstein had offered no strategic reason for failing to investigate the records. A340, 342-43.³

The Superior Court never resolved whether Claim III would require a hearing.

It inquired:

The Court: Would you agree with me . . . that if I were to conclude that there was a Brady violation –

Mr. Moreno: Yes.

The Court: – I don't need to reach this issue?

Mr. Moreno: That's correct. I think if you conclude there's a Brady violation, you might have to reach – you know depending on what he –

³ Post-conviction counsel also proffered a declaration from trial counsel supporting these representations. A1296.

who knows what happens when the case goes up. But the bottom line is, yes, . . . you can look at an issue and say, I rule on this, I am not going to reach the other issues.

A343. While the court entertained argument from the State on whether it should hold a hearing on Claim III (A347), it never ruled, but considered other issues, and then announced that it would hold a hearing on the *Brady* claim, the innocence claim, and the “issue of intoxication.” A383-88. The court indicated that it would send a letter or memorandum to the parties within a week, setting forth the issues to be covered at the hearing. A388.

The docket does not reflect that the letter or memorandum was issued. The court held two telephone conferences in preparation for the upcoming evidentiary hearing, but did not direct the parties to address any additional claims. A223, A258. The testimonial hearing addressed the circumstances surrounding Mr. Wright’s custodial statement, evidence of Mr. Wright’s innocence, and the *Brady* claims. A107-21 (Op. 19-33), A137-41 (Op. 49-53), A162-71 (Op. 74-83). The court did not request or hear testimony about the penalty phase preparation or presentation.

The Superior Court ordered a new trial, granting relief on the basis of the claims on which it had held the evidentiary hearing. A171, 185, 189 (Op. 83, 97, 101). It briefly ruled on the penalty ineffective assistance claim, mis-characterizing the claim as “abandoned.” A159 (Op. 71). The State appealed the grant of a new

trial. Wright had no opportunity during the appeal to pursue a hearing on the penalty phase ineffective assistance claim. *See* Point I.A.1, *supra*.

Before the resentencing, petitioner moved to clarify the claim's status, arguing that he had not abandoned it and proffering the evidence that he sought to present at a hearing. D.I. 473. The Superior Court, having considered the proffer, denied the claim on the merits, issuing an order stating that "petitioner's proffer is insufficient to require an evidentiary hearing and his request for penalty phase relief is DENIED." Exhibit B, attached (D.I. 481, A218-19).

B. The Proffered Evidence Demonstrates That a Hearing and Relief are Appropriate.

Rule 61(h)(1) requires a court reviewing a post-conviction motion to determine whether a requested evidentiary hearing is "desirable," that is, whether it is "necessary to a thorough resolution of the issues[.]" *State v. Jackson*, No. 92003717DI, 2008 WL 5048424, *33 (Del. Super. 2008). The court must permit the fact development required for fair resolution of the claims. *See Horne v. State*, 887 A.2d 973, 974-75 (Del. 2005).

In Wright's case the record is "incomplete and inadequate" without an evidentiary hearing. The proffered records and statements from friends, family members, and social and mental health professionals (*see* A391-1287) demonstrate that trial counsel severely limited their investigation. As post-conviction counsel

represented to the Superior Court, counsel had not offered any strategic reason for doing so. Indeed, trial counsel could have had no valid strategic reason for not conducting a reasonable background investigation. The Supreme Court has repeatedly recognized the “well-defined” norms that require capital counsel to investigate all reasonably available mitigating evidence, and it has found counsel ineffective when they acquired only “rudimentary knowledge” of a client’s history from “a narrow set of sources.” *See Wiggins v. Smith*, 539 U.S. 510, 524-25 (2003); *see also Sears v. Upton*, U.S., 130 S.Ct. 3259, 3264 (2010) (affirming, as “unsurprising[],” state court’s conclusion that penalty phase investigation, limited to “talking to witnesses selected by Sears’s mother,” was “facially inadequate”); *Porter v. McCollum*, 558 U.S. 30, 38-42 (2009) (per curiam) (under prevailing professional norms in 1988, counsel obliged “to conduct a thorough investigation of psychiatric evaluation); *Rompilla v. Beard*, 545 U.S. 374 (2004); *Williams v. Taylor*, 529 U.S. 362 (2000); *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

As to prejudice, this Court has described the controlling principles:

In *Williams v. Taylor*, the United States Supreme Court held that the Virginia Supreme Court's prejudice analysis in a penalty-phase ineffectiveness claim was unreasonable because “it failed to evaluate the totality of the available mitigation evidence – both that adduced at trial, and the evidence adduced in the habeas proceeding – in reweighing it against the evidence in aggravation.”

Ploof v. State, ___ A.3d ___, 2013 WL 2422870, at * 15 (Del. June 4, 2013) (citing *Williams v. Taylor*, 529 U.S. at 397-98).

The evidence tendered with this brief demonstrates that, following a hearing and the required re-weighing, Wright would be entitled to penalty phase relief. The supporting information includes declarations from lay witnesses (A1246-87) and documents from judicial, juvenile justice, and other sources. A391-1221. Further, as part of the June 2009 proffer, post-conviction counsel argued that trial counsel failed to investigate and compile a social history and make it available to their expert. The appendix includes the social history report of a social worker (Ms. Johnson) and the report of a mental health professional (Dr. Toomer). A1222-45.

For the reasons above, the Superior Court's denial of a hearing and relief on this ground was an abuse of discretion. This Court should reverse the Superior Court's denial of this claim and remand for an evidentiary hearing.

III. POST-CONVICTION COUNSEL, WHO PERFORMED NO EXTRA-RECORD INVESTIGATION, FAILED TO PURSUE MERITORIOUS CLAIMS, AND LABORED UNDER CONFLICTS OF INTEREST, PROVIDED INEFFECTIVE ASSISTANCE UNDER THE STATE AND FEDERAL CONSTITUTIONS.

Question Presented: Whether post-conviction counsel provided ineffective assistance (preserved at A1316-43).

Scope of Review: This Court reviews questions of law *de novo*, *Outten v. State*, 720 A.2d 547, 551 (Del. 1998), findings of fact for clear error, *Burrell v. State*, 953 A.2d 957, 961 (Del. 2008), and the decision to deny post-conviction relief for abuse of discretion. *Zebroski*, 12 A.3d at 1119.

Merits: After Wright’s 1995 resentencing and 1996 direct appeal of his death sentence, the Superior Court appointed two attorneys to represent him in Rule 61 proceedings. They have admitted that they performed no extra-record investigation, were unprepared, and had conflicts of interest because of their close professional ties to Wright’s retrial and direct appeal counsel. Their deficient stewardship deprived Wright of the effective assistance of counsel. U.S. Const. amend. VI, VIII, XIV; Delaware Const. art. 1, §§ 7, 9, 11.

Both post-conviction counsel signed declarations proffered to the Superior Court. D.I. 367, A1289, A1294. Both counsel worked for the New Castle County conflict program and had heavy caseloads that left them “overwhelmed” and with “insufficient resources.” They acknowledged that their representation of Jermaine

Wright was “inadequate” (A1294-95), and that they “could not properly or effectively investigate and present issues in post-conviction.” A1292.

Both counsel were also burdened by their loyalty to Wright’s resentencing and direct appeal counsel, who was a colleague in the conflict unit. A1291-92 (“Mr. Bernstein was a well respected senior colleague in the conflict program, and the attorney from whom we often sought legal advice in appeals and post-conviction proceedings. Because of Mr. Bernstein’s reputation, we assumed that he would provide adequate representation.”); A1295 (“All the lawyers in the conflict program relied on one another for assistance. This fostered an atmosphere where we were hesitant to challenge the effectiveness of our colleagues. . . . In this case in particular, I did not research or investigate any claims with regard to Mr. Bernstein’s handling of the case because I looked to him regularly for advice. I was uncomfortable second guessing his performance in this case.”).

Post-conviction counsel admitted that they provided inadequate representation:

- The court denied counsels’ request for an investigator. As a result, they conducted the entire Rule 61 proceeding without any investigative assistance.
- Counsel failed to conduct any extra-record factual investigation.
- Counsel failed to make any effort to interview prosecution witnesses. As a “matter of course” counsel never spoke with State witnesses in Rule 61 proceedings.
- Counsel failed to conduct any extra-record investigation into Petitioner’s claim of innocence.

- Counsel failed to review the court file for Kevin Jamison and Norman Custis and did not even think to do so. They did not learn that Jamison and Custis had been charged with an armed robbery together, contradicting Jamison's testimony.
- Counsel raised a claim that a key state's witness, Gerald Samuels, was a state agent without first conducting research and investigation into whether the allegation had support in the evidence.
- Counsel failed to interview Samuels before calling him as a witness. They did not learn key facts about Samuels, including his past testimony against a co-defendant in exchange for leniency.
- Counsel failed to raise a *Brady* claim, although they possessed documents demonstrating Samuels's expectation of leniency in return for his testimony in this case.
- Counsel did not substantively interview resentencing counsel, who was their colleague in the conflict unit, respecting a possible claim of ineffective assistance of counsel at the penalty phase. They assumed he would have provided adequate representation.
- Counsel conducted no other extra-record investigation into the merits of a penalty phase ineffective assistance claim.

A1289-93, A1294-95.

As Wright argued in the Superior Court (A1316-43), post-conviction counsels' conflict of interest and deficient performance deprived Wright of effective assistance.

Conflict of Interest. Post-conviction counsels' personal and professional ties undermined their loyalty to their client and affected their representation. A criminal defendant has the right to assistance by an attorney unimpaired by conflicts of interest or divided loyalties. *See Cuyler v. Sullivan*, 446 U.S. 335, 345-47 (1980) (attorney

representing conflicting interests “cannot provide the adequate legal assistance required by the Sixth Amendment”); *Holloway v. Arkansas*, 435 U.S. 475 (1978) (same); *see also Swan v. State*, 820 A.2d 342, 350 (Del. 2003) (citing *Lewis v. State*, 757 A.2d 109, 714 (Del. 2000)); *State v. Ward*, 1991 WL 302635 *4 (Del. Super.); *cf. Bailey v. State*, 518 A.2d 91,(Table),1986 WL 17995 (Del. Oct. 29, 1986) (appointment of public defender as “consultant” to appellate counsel in case where public defender who served as trial counsel allegedly provided ineffective assistance would “reintroduce” the conflict of interest and would be improper). Other jurisdictions have recognized that circumstances like those in Wright’s case created conflicts of interest.⁴ Wright, like these other litigants, did not have a fair chance to demonstrate his entitlement to post-conviction relief because his post-conviction attorneys could not bring themselves to make trouble for their professional colleague, or for the conflict counsel program, by conducting a reasonable investigation.

⁴ *See Hill v. State*, 566 S.W.2d 127 (Ark. 1978) (reversible conflict of interest in representation of defendant by post-conviction attorney affiliated with same public defender office as trial counsel); *People v. Thompson*, 477 N.E.2d 532 (Ill. App. 3d Dist. 1985) (petitioner denied effective assistance of counsel when second public defender had to argue incompetency of first public defender who represented him at time of guilty plea); *Commonwealth v. Mosher*, 920 N.E.2d 285 (Mass. 2010) (“We have typically found that an actual conflict exists . . . ‘where an attorney or an associate maintains an attorney-client or direct and close personal relationship with a material prosecution witness[.]’”); *Commonwealth v. Willis*, 424 A.2d 876, 877 (Pa. 1981) (“(b)ecause of the inherent conflict of loyalties to one's client, on the one hand, and to one's associates on the other, we cannot assume that PCHA counsel will fully explore the potential inadequacies of (prior counsel's) representation” where both counsel were associated with same public defender’s office) (citation omitted).

Ineffective Assistance. Under Delaware law, post-conviction review was the equivalent of first-tier appellate review for several of Wright’s claims, including his ineffective assistance claims, because they rested on factual allegations from outside the record and he had no opportunity to raise them earlier:

This Court consistently has held that it will not consider a claim of ineffective assistance of counsel in a direct criminal appeal if the issue has not been decided on the merits in the trial court. The rationale for this rule arises from “the reviewing Court’s need to have before it a complete record on the question of counsel’s alleged incompetency. . . . As a practical matter, therefore, a defendant’s first and best opportunity to raise an ineffective assistance of counsel claim is in a timely motion for postconviction relief filed pursuant to Superior Court Criminal Rule 61.

Horne v. State, 887 A.2d 973, 974 (Del. 2005) (citations omitted) (quoting *Duross v. State*, 494 A.2d 1265, 1267 (Del. 1985)); *see also Watson v. State*, No. 620, 2010, 2011 WL 2438769, at *2 (Del. June 17, 2011) (“This Court will not consider a claim of ineffective assistance of counsel for the first time on direct appeal.”). Because, under Delaware law, a Rule 61 motion provided the only appropriate forum for Wright to raise his extra-record claims, he was entitled to effective assistance from conflict-free counsel to litigate the claims, in order to have meaningful access to the courts and counsel, as guaranteed by the Sixth Amendment and the Equal Protection and Due Process clauses of the Fourteenth Amendment, and in order to insure the reliability of his sentence as required by the Cruel and Unusual Punishment Clause

of the Eighth Amendment. The corresponding provisions of the Delaware Constitution provide the same guarantees. Del. Const. Art. 1, §§ 7, 9, 11.⁵

Post-conviction counsels' conflicting loyalties, and their squandering of their client's "first and best opportunity" to investigate and present the claims, were blatantly unreasonable, and prejudiced Wright's defense by depriving him of claims that would have required relief in his first round of post-conviction proceedings. Post-conviction counsel's ineffective assistance therefore created a miscarriage of justice under Delaware law and constituted cause for any procedural default of his constitutional claims. *See Martinez v. Ryan*, ___ U.S. ___, 132 S.Ct. 1309, 1320 (2012); *Zebroski*, 12 A.3d at 1120-21; Rule 61(i)(5).⁶ This Court should accordingly grant relief by ordering a new Rule 61 proceeding or, alternatively, relieving Wright of any procedural defaults and remanding for merits review of any procedurally defaulted claims.

⁵ This Court has not yet squarely addressed the scope of any right to effective assistance of post-conviction counsel under the Delaware Constitution. *See Zebroski*, 12 A.3d at 1120-21 (any case in which post-conviction counsel provided constitutionally ineffective assistance would, of necessity, satisfy the interest of justice and miscarriage of justice exceptions to Rule 61).

⁶ The Superior Court rejected this claim on the ground that there is no constitutional right to counsel in post-conviction proceedings (A156, Op. 68), but its opinion pre-dated *Martinez* and did not consider its implications for this case.

IV. THE DEATH SENTENCE IS UNCONSTITUTIONAL BECAUSE IT WAS NOT UNANIMOUSLY SELECTED BY THE JURY, AND BECAUSE THE JUDGE AND JURY DID NOT FIND THAT THE AGGRAVATING FACTORS OUTWEIGHED THE MITIGATING FACTORS BY BEYOND A REASONABLE DOUBT.

Question Presented: Whether *Ring v. Arizona* requires reversal of Wright's death sentence where the jury did not unanimously find that the aggravating circumstances outweighed the mitigating, and where neither the jury nor the trial court found that they did so beyond a reasonable doubt (preserved at A1314-15).

Standard Of Review: This claim presents questions of constitutional law, which this Court reviews *de novo*. *Zebroski v. State*, 12 A.2d 1115, 1118 (Del. 2010).

Merits: *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000), held that under the Fifth and Sixth Amendments, "any fact that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." *Ring v. Arizona*, 536 U.S. 584 (2002), extended *Apprendi* to the penalty phase of a capital trial. Thus, "[i]f a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact - no matter how the State labels it - must be found by a jury beyond a reasonable doubt." *Ring*, 536 U.S. at 602.

As Wright argued in the Superior Court (A1314-15), *Ring* renders Wright's death sentence unconstitutional because Delaware's statute does not require, and neither the judge nor the jury found, that the aggravating circumstances outweighed

the mitigating circumstances beyond a reasonable doubt. *See* 11 Del. C. § 4209(c)(3); A2702. The statute also does not require that the jury make its weighing finding unanimously, and in fact three jurors voted for a life sentence.

The Superior Court held that *Ring* does not apply to the weighing process. A159-60 (Op. 71). Although this Court previously ruled “that *Ring* does not extend to the weighing phase” of a capital trial, *Brice v. State*, 815 A.2d 314, 322 (Del. 2003), it should reconsider the ruling. The Court wrote in *Brice*:

Although a judge cannot sentence a defendant to death without finding that the aggravating factors outweigh the mitigating factors, it is not that determination that increases the maximum punishment. Rather, the maximum punishment is increased by the [jury's unanimous] finding [beyond a reasonable doubt] of the statutory aggravator. At that point a judge can sentence a defendant to death, but only if the judge finds that the aggravating factors outweigh the mitigator [sic] factors. Therefore, the weighing of aggravating circumstances against mitigating circumstances does not increase the punishment. Rather, it ensures that the punishment imposed is appropriate and proportional.

Starling v. State, 882 A.2d 747, 757 (Del. 2005) (quoting *Ortiz v. State*, 869 A.2d 285, 305 (Del. 2005)). Several aspects of the Court’s reasoning weigh in favor of reconsidering this ruling.

First, the Court correctly asserted that, after a statutory aggravating factor is found, a death sentence “can” be imposed “only if” an additional finding is made. *Starling*, 882 A.2d at 757. But that observation is equally true at numerous other points in a capital prosecution. A death sentence “can” be imposed, for example,

after a verdict of first degree murder “only if” additional findings are made regarding statutory aggravating factors and the weighing process. A death sentence “can” be imposed after an indictment for capital murder “only if” the defendant is convicted. In other words, the Court failed to identify a principled reason for choosing the weighing process as the point at which a capital defendant’s jury trial rights – including the beyond a reasonable doubt standard – are suddenly extinguished.

Second, the Court did not recognize that the weighing determination is a finding of fact. Determining whether specific aggravating or mitigating factors exist is an initial finding of fact.⁷ Determining whether one set of facts outweighs another is likewise a finding of fact, governed by *Ring*. As Justice Scalia explained, “the fundamental meaning of the jury-trial guarantee of the Sixth Amendment is that all facts essential to imposition of the level of punishment that the defendant receives – whether the statute calls them elements of the offense, sentencing factors, or Mary Jane – must be found by the jury beyond a reasonable doubt.” *Ring*, 536 U.S. at 610 (Scalia, J., concurring).

⁷ Further, one result of Delaware’s division of responsibility between the judge and the jury in this case was that the sentencing judge imposed death, in part, on the basis of its findings and weighing of non-statutory aggravating factors that the jury had not specifically found. (D.I. 198-99, 214, Tr. 2/8/95, at 2-3). This further aggravated the *Ring* violation.

Third, the Court did not take into account the numerous other state courts that have considered and found that the weighing stage is a fact-finding that implicates a defendant's jury trial rights.⁸

Finally, the Superior Court rejected the claim on the additional ground that “*Ring* is not retroactive.” A160 (citing *Schriro v. Summerlin*, 542 U.S. 348 (2004)). This ruling confused federal and state standards of review. While *Summerlin* held that *Ring* stated a new rule that is unavailable to federal habeas petitioners whose convictions became final before *Ring* was decided, the Superior Court was free to apply it retroactively under both federal habeas jurisprudence and state practice and procedure. See *Danforth v. Minnesota*, 552 U.S. 264 (2008); *Rule* 61(i)(5). Because Wright set forth a colorable constitutional claim that met the criteria of the section (i)(5) exception, the Superior Court, and now this Court, could and should have addressed the merits of the claim. The Court should accordingly grant Wright relief on this ground.

⁸ See *State v. Ring*, 65 P.3d 915, 942-43 (Ariz. 2003) (en banc) (indicating, on remand from the U.S. Supreme Court, that weighing is fact-finding); *State v. Rizzo*, 833 A.2d 363, 407 (Conn. 2003) (requiring capital jury to determine the weighing process beyond a reasonable doubt); *Johnson v. State*, 59 P.3d 450 (Nev. 2002) (“This second finding regarding [the weighing of] mitigating circumstances is necessary to authorize the death penalty in Nevada, and we conclude that it is in part a factual determination, not merely discretionary.”); *State v. Whitfield*, 107 S.W.3d 253, 259 (Mo. 2003) (en banc) (finding that weighing is a fact-finding process); *Woldt v. People*, 64 P.3d 256, 266 (Colo. 2003) (same).

CONCLUSION

WHEREFORE, the Superior Court's order denying Rule 61 relief should be reversed, and a new trial of guilt-innocence and/or penalty, or further post-conviction proceedings, should be ordered.

Respectfully submitted,

MARGOLIS EDELSTEIN

/s/ Herbert W. Mondros
Herbert W. Mondros, Esq.
Delaware Bar No. 3308
750 Shipyard Drive
Suite 102
Wilmington, DE 19801
(302) 888-1112

and

Federal Community Defender Office for
the Eastern District of Pennsylvania
Billy Nolas, Esq., *pro hac vice*
Claudia Van Wyk
James Moreno
Tracy Ulstad
Suite 545 West – The Curtis Center
601 Walnut Street
Philadelphia, PA 19106
(215) 928-0520

Attorneys for Appellant

Dated: November 12, 2013

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	No. 423, 2013
Appellee,	)	
	)	On Appeal from the
v.	)	Superior Court of the
	)	State of Delaware in and
JERMAINE WRIGHT,	)	for New Castle County
	)	
Defendant Below,	)	
Appellant.	)	

I HEREBY CERTIFY that on this 12th day of November, 2013, I caused one copy of appellant's initial brief to be served electronically upon the following

attorney:

Gregory Smith, Esq.
Deputy Attorney General
820 North French Street, 7th Floor
Carvel State Building
Wilmington, DE 19801

Respectfully submitted,

MARGOLIS EDELSTEIN

/s Herbert W. Mondros
Herbert W. Mondros, Esq.
Delaware Bar No. 3308
750 Shipyard Drive
Suite 102
Wilmington, DE 19801
(302) 888-1112
Attorneys for Appellant

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EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

483

STATE OF DELAWARE

VS.

JERMAINE WRIGHT

Alias: No Aliases

DOB: 10/11/1972

SBI: 00257041

CASE NUMBER:
91004136DI

CRIMINAL ACTION NUMBER:

IN91-04-1950R5

ROBBERY 1ST(F)

IN91-04-1948R5

PDWDCF(F)

IN91-04-1951R5

PDWDCF(F)

IN91-04-1953R5

PDWDCF(F)

IN91-04-1947R5

MURDER 1ST(F)

IN91-04-1952R5

MURDER 1ST(F)

COMMITMENT
DEATH SENTENCE
RESENTENCE

CORRECTED SENTENCE ORDER

FILED
PROTHONOTARY
2013 AUG -6 AM 11:02

NOW THIS 26TH DAY OF JULY, 2013, IT IS THE ORDER OF THE
COURT THAT: THE ORDER DATED July 12, 2013 IS HEREBY
CORRECTED AS FOLLOWS:

The defendant is adjudged guilty of the offense(s) charged.
The defendant is to pay the costs of prosecution and all
statutory surcharges.

AS TO IN91-04-1950-R5 : TIS
ROBBERY 1ST

Effective January 31, 1991 the defendant is sentenced
as follows:

- The defendant is placed in the custody of the Department
of Correction for 20 year(s) at supervision level 5

AS TO IN91-04-1948-R5 : TIS
APPROVED ORDER 1 August 5, 2013 08:08

STATE OF DELAWARE
VS.
JERMAINE WRIGHT
DOB: 10/11/1972
SBI: 00257041

PDWDCE

- The defendant is placed in the custody of the Department of Correction for 10 year(s) at supervision level 5

AS TO IN91-04-1951-R5 : TIS
PDWDCE

- The defendant is placed in the custody of the Department of Correction for 10 year(s) at supervision level 5

AS TO IN91-04-1953-R5 : TIS
PDWDCE

- The defendant is placed in the custody of the Department of Correction for 10 year(s) at supervision level 5

AS TO IN91-04-1947-R5 : TIS
MURDER 1ST

- The defendant is placed in the custody of the Department of Correction at Supervision level 5 until such time that the defendant is put to Death pursuant to 11 DEL.C. 4209

AS TO IN91-04-1952-R5 : TIS
MURDER 1ST

- The defendant is placed in the custody of the Department of Correction at Supervision level 5 until such time that the defendant is put to Death pursuant to 11 DEL.C. 4209

SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE
VS.
JERMAINE WRIGHT
DOB: 10/11/1972
SBI: 00257041

CASE NUMBER:
91004136DI

NO SPECIAL CONDITIONS AT ORDER LEVEL

NOTES

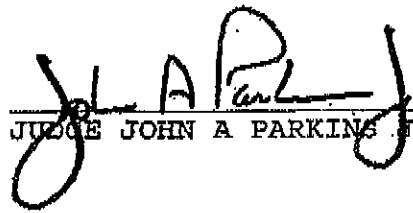
The charge of Robbery 1st (IN91-04-1950R5) was not included in the order due to the completion of the sentence.

The Court has given November 1, 2013 as the Execution Date.

=====

SENTENCE CORRECTION

Now this 26th day of July, 2013, it is the order of the court that the Resentence order dated 07/12/13 is hereby corrected to reflect that cr.a.# IN91-04-1950 has been added, due to the fact that defendant needed to be re-sentenced to all of the consecutive sentences as of the original effective date. All other previous terms remained the same.


JUDGE JOHN A. PARKINS JR.

FILED
PROTHONOTARY

2013 AUG -6 AM 11:02

APPROVED ORDER

3

August 5, 2013 08:08

FINANCIAL SUMMARY

STATE OF DELAWARE
VS.
JERMAINE WRIGHT
DOB: 10/11/1972
SBI: 00257041

CASE NUMBER:
91004136DI

SENTENCE CONTINUED:

TOTAL DRUG DIVERSION FEE ORDERED	
TOTAL CIVIL PENALTY ORDERED	
TOTAL DRUG REHAB. TREAT. ED. ORDERED	
TOTAL EXTRADITION ORDERED	
TOTAL FINE AMOUNT ORDERED	
FORENSIC FINE ORDERED	
RESTITUTION ORDERED	
SHERIFF, NCCO ORDERED	366.20
SHERIFF, KENT ORDERED	
SHERIFF, SUSSEX ORDERED	
PUBLIC DEF, FEE ORDERED	100.00
PROSECUTION FEE ORDERED	100.00
VICTIM'S COM ORDERED	
VIDEOPHONE FEE ORDERED	6.00
DELJIS FEE ORDERED	6.00
SECURITY FEE ORDERED	60.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	
SENIOR TRUST FUND FEE	
TOTAL	638.20

APPROVED ORDER

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August 5, 2013 08:08

EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	NOS. ID #91004136d1
	)	
Plaintiff,	)	
	)	
V.	)	
	)	
JERMAINE WRIGHT,	)	MURDER FIRST DEGREE
	)	
Defendant.	)	

**ORDER ON PETITIONER'S MOTION TO ADDRESS
AND CLARIFY STATUS OF CLAIMS**

AND NOW, this 18TH day of JULY, 2013, upon consideration of *Petitioner's Motion to Address and Clarify Status of Claims*, the State's response, and the arguments of the parties on JULY 12, 2013, it is here by ORDERED that:

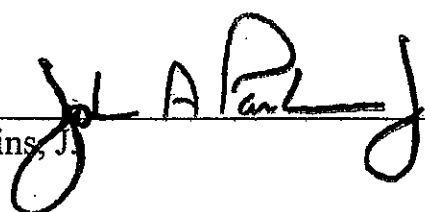
1. Having considered petitioner's motion for a ruling *nunc pro tunc* on the interest of justice on the Samuels Brady claims, and the State's response that the Delaware Supreme Court has already ruled on these claims, it is ORDERED that petitioner's motion is DENIED.

2. Having considered petitioner's factual proffer in support of his motion for an evidentiary hearing and relief on his claim of ineffective assistance of counsel in the investigation, preparation, and presentation of the penalty phase of trial, and having considered the State's opposition thereto, it is ORDERED that petitioner's

2013 JUL 12 AM 10:33
CLERK OF COURT

proffer is insufficient to require an evidentiary hearing and his request for penalty phase relief is DENIED.

SO ORDERED:


Parkins, J.

2013 JUL 22 AM 10:39