Circuit Court for Baltimore City
Case No. 197198010

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1155

September Term, 2023

TERRANCE MILLER

v.

STATE OF MARYLAND

Reed,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: January 16, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In this appeal, we review the circuit court's denial of petitioner's second Petition for Writ of Actual Innocence. Petitioner, Terrance Miller, was convicted in the Circuit Court for Baltimore City of first-degree felony murder following a jury trial on October 7, 1998. Petitioner presents the following question for our review:

> "Did the Circuit Court err in denying the Appellant's Petition for Writ of Actual Innocence?"

We shall hold that the circuit court did not err in denying petitioner's Petition for Writ of Actual Innocence and affirm the court's decision.

I.

Petitioner was indicted by the Grand Jury for Baltimore City for first-degree felony murder, use of a handgun in a felony or crime of violence, robbery with a deadly weapon, and armed carjacking. Petitioner was convicted of felony-murder and the court imposed a term of incarceration of life imprisonment.

We set out briefly the underlying facts of the crimes. The State alleged that after midnight on the night of May 24, 1997, Issaiah Benton and petitioner murdered William Foote, a "hack" cab driver. Mr. Benton and petitioner entered Mr. Foote's van, intending to rob the driver. According to Mr. Benton, who testified on behalf of the State, and pursuant to a plea agreement, Mr. Benton gave a gun to petitioner prior to entering the van. After petitioner and Mr. Benton asked Mr. Foote to stop the van, Mr. Benton got out and

then he heard a gunshot. Petitioner exited the van, put the gun in his pocket, pulled Mr. Foote out of the van, and Mr. Benton got back in the van and the two of them drove away.

The centerpiece of petitioner's petition for writ of actual innocence revolves around the written plea agreement the State entered into with Mr. Benton. In this Petition for Writ of Actual Innocence, petitioner alleged that the State did not provide the written plea agreement prior to trial. Petitioner argues he could not have discovered this written plea agreement with due diligence prior to trial or in time to move for a new trial because the State did not reveal it when petitioner submitted timely discovery requests. Petitioner argues this written plea agreement amounts to exculpatory evidence and not disclosing it constitutes a *Brady* violation. He maintained that because the State did not provide to him the written plea agreement before trial, during discovery, he was deprived of due process of law and that the court should grant his petition and provide him with a new trial.

At the time of the events, petitioner was seventeen years-old and Mr. Benton was fourteen years-old. On April 29, 1998, Mr. Benton executed a written plea agreement that permitted him to plead guilty to robbery as an adult in exchange for his truthful testimony about the robbery and murder, and particularly his involvement and petitioner's involvement in the crime. The plea agreement was in writing, but it was never provided to petitioner's defense counsel in discovery before trial, although he was informed of the terms of the agreement. In exchange, Mr. Benton would receive a fifteen-year suspended sentence in addition to five years' probation. Petitioner's plea agreement with the State had been reduced to writing, but that written document, the plea agreement, as alluded to by

both sides in opening statements, was never provided to petitioner's defense counsel during discovery.

At trial, the State discussed the plea agreement in its opening statement, stating as follows:

> "We made a deal with [Benton] and I'll tell you what the deal is. He pled guilty. He pled guilty to being involved in the robbery of Mr. Foote on that evening. He hasn't been sentenced yet, but at the completion of this case it's a deal that's written out. It's an agreed upon disposition. It can't and won't be changed. He will receive a fifteen year jail sentence. Number one, let me say he's being tried—he pled guilty as an adult, even though in Maryland, you can't be tried as an adult normally until you're eighteen, A fourteen year old, he pled guilty as an adult to this charge. He gets a fifteen year sentence which was suspended and he's on five years probation. That means from the date that he's sentenced in November of this year for five years if he breaks any laws, he can get fifteen years in jail."

Defense counsel stated in his opening remarks regarding the plea agreement:

> "[a]nd for that, what does Mr. Benton get? Five years probation. Oh, my, heaven forbid, if it had been six years probation. He has gotten away with murder . . . .And they say, well, we had to cut a deal with Mr. Benton."

When called by the State as a witness, Mr. Benton testified on direct examination about the plea agreement as follows:

> "[STATE]: Okay. Did you go to court for this case where Mr. Foote got killed?
>
> [MR. BENTON]: Yes.
>
> [STATE]: And did you go to juvenile court or adult court?
>
> [MR. BENTON]: Adult court.
>
> [STATE]: And what did you do when you went to court?
>
> [MR. BENTON]: I pleaded guilty.

[STATE]: And what did you plead guilty to?

[MR. BENTON]: Robbing the man.

[STATE]: Robbing him of what?

[MR. BENTON]: For his van.

[STATE] And what sentence did you receive?

[MR. BENTON]: Five years probation, fifteen years, stet.

[STATE]: Fifteen years suspended, five years probation as an adult, correct?

[MR. BENTON]: Yes.

[STATE]: And what were you told would happen to you if during the five years' probation you screw up?

[DEFENSE COUNSEL]: Objection.

[MR. BENTON]: Get fifteen years.

[DEFENSE COUNSEL]: Objection

[COURT]: On what basis?

[DEFENSE COUNSEL]: Well, I'm trying to determine the relevancy of what will happen to him after today.

[COURT]: Overruled

[STATE]: What were you told would happen to you if you didn't tell the truth in court?

[MR. BENTON]: I get the charge.

[STATE]: You take the charge, right?

[MR. BENTON]: Yes."

On cross-examination, petitioner inquired as follows:

> "[DEFENSE COUNSEL]: I'm going to tell the truth, that's what you told them, right?
>
> [MR. BENTON]: Yes, sir.
>
> [DEFENSE COUNSEL]: You told the prosecutor, isn't that right?
>
> [MR. BENTON]: Yes, sir.
>
> [DEFENSE COUNSEL]: I'm going to tell the truth, right?
>
> [MR. BENTON]: Yes, sir.
>
> [DEFENSE COUNSEL]: So that I can get this deal, isn't that right?
>
> [MR. BENTON]: Yes, sir.
>
> [DEFENSE COUNSEL]: Because that was part of the agreement, you tell us the truth, son, and you won't have to go to prison for the rest of your life? Wasn't that the deal?
>
> [MR. BENTON]: Yes.
>
> [DEFENSE COUNSEL]: So you say, okay, I'll tell the truth, isn't that right?
>
> [MR. BENTON] Yes.
>
> [DEFENSE COUNSEL]: And that deal was made before you talked to the state police, isn't that right?
>
> [MR. BENTON]: Yes…
>
> [DEFENSE COUNSEL]: And based on that, they tell you, son, you could go to prison and spend the rest of your life there but you don't have to worry about that we're going to give you some probation for murdering this man, for being involved with the murder of this man, you just have to tell us the truth, right?

[MR. BENTON]: Yes."

As stated above, petitioner was convicted of first-degree felony murder and sentenced to life in prison. In 2015, petitioner filed his first petition for writ of actual innocence, raising the plea agreement. The court denied that petition, Subsequently, petitioner located Mr. Benton's written plea agreement in the State archives.

Petitioner filed a second petition for writ of actual innocence, the subject of this appeal. Following a hearing in the circuit court, the court denied the petition. The court accepted the parties' agreement and State's concession that the plea agreement satisfied the required prong that the evidence was newly discovered. The court denied the petition, holding that the State's failure to disclose timely the written plea agreement did not create a significant possibility of a different result at petitioner's trial.

The court filed an extensive written opinion, setting out the court's reasoning for denying the petition. Based on the State's concession, the court found that the evidence was newly discovered. After reviewing the transcript of Mr. Benton's cross-examination at trial, and reviewing the written plea agreement, the court concluded that "the introduction of Benton's plea agreement at petitioner's trial would not have created any possibility, much less substantial possibility, that the result in petitioner's trial would have been different." The court explained as follows:

> ". . . Upon review [of the written plea agreement], the Court finds that the written agreement would not have provided any further impeachment information to Petitioner's trial counsel. Under the written agreement, Benton had to 'testify truthfully at any trial or litigation concerning the involvement of Terrance Miller and in any aspect of the murder of William

> Foote.' In return for Benton's truthful testimony, the State agreed to 'accept a plea from [Benton] of guilty to Conspiracy to commit Armed Robbery (Indictment No. 198072060) and the State further agrees to recommend Nolle Prosequi for the charge of first-degree murder and that sentence of fifteen years (15) suspended with five (5) years' probation be imposed upon him for his participation in this crime.' Further, if Benton did not testify truthfully or fully cooperate with the State, the State 'could void this plea agreement in its entirety, try Benton for any crimes growing out of the incidents herein referred, and seek any penalty prescribed by law . . . [Benton] retains the right, at his discretion, to have his case tried by court or jury.'
>
> Despite the Petitioner's claims, all of the relevant terms of the plea agreement were covered repeatedly by petitioner's counsel during the cross-examination of Benton. Arguably, counsel's cross-examination may have created an impression that Benton faced an even more severe penalty for lack of cooperation than set out in the actual agreement, namely that Benton would automatically be guilty of murder and receive a life sentence---"[Y]ou tell us the truth, son, and you won't have to go to prison for the rest of your life? Wasn't that the deal? {Benton}: Yes.' However, under the written agreement, if Benton failed to cooperate truthfully or testify truthfully, he would merely face trial on those charges. Consequently, the introduction of the written plea agreement may have lessened, rather than enhanced, the ability of Petitioner's trial counsel to effectively cross-examine Benton.[1] Accordingly, the Court finds that the introduction of Benton's plea agreement at Petitioner's trial would not have created any possibility, much less a substantial possibility, that the result in Petitioner's trial would have been different."

The hearing court addressed petitioner's argument about the discrepancy between Mr. Benton's trial testimony that he had already pled guilty and the written agreement that he was to plead guilty after the trial, and did plead guilty on November 5, 1998, approximately one month after petitioner's trial. The court rejected petitioner's argument that any misstatements were material, noting that Mr. Benton received a sentence

[1] At the hearing, petitioner's counsel argued that the written plea agreement required that Mr. Benton testify to a specific set of facts. The Court finds no such requirement in the agreement.

consistent with his trial testimony, and moreover, defense counsel, exercising due diligence "could have easily verified this information at the time of trial."

Petitioner noted this timely appeal.

II.

Petitioner argues that he met all the requirements of a petition for writ of actual innocence and thus, the court erred in denying his petition. Petitioner argues that the State committed a *Brady* violation when it failed to disclose Mr. Benton's written plea agreement, which he characterizes as exculpatory evidence. This concealment, petitioner argues, resulted in his conviction and was not discoverable by due diligence. Finally, petitioner asserts that if petitioner could have adequately cross-examined Mr. Benton's motive for testifying by using the written plea agreement, it was likely that the jury would not have convicted petitioner. Petitioner appears to be focusing on the portion of the written plea agreement that "goes into substantial detail as to the nature of what Mr. Benton's testimony should be, and that the consequences for not testifying in this manner would include the agreement being voided and Mr. Benton being tried for first degree murder, which carries a life sentence."

The State's position is that the circuit court properly denied the petition for writ of actual innocence. The State argues that petitioner's position fails to meet the requirements for a petition for writ of actual innocence: (1) that the evidence was newly discovered, (2) that petitioner must show a substantial possibility that the evidence would have changed

the outcome of the trial, and (3) that the evidence must help to establish that petitioner is actually innocent.

Notwithstanding the stipulation in the circuit court entered into by the State that the evidence was "newly discovered," the State argues here that the evidence could have been discovered with due diligence. Even if this court determines that the evidence meets the requirements for "newly discovered," the State contends that the court did not abuse its discretion in concluding that having the written plea agreement at the trial would not have created a substantial possibility of a different outcome at trial. Finally, the State argues that "[n]othing about the existence of Benton's written plea agreement suggests that Miller is actually innocent." As to petitioner's *Brady* claim, the State points out that the burden of proof for writ of actual innocence and a new trial for a *Brady* violation are the same, and petitioner fails under both.

III.

A petition for writ of actual innocence is a civil proceeding enabling certain convicted defendants in a prior criminal proceeding, at any time, to challenge the conviction or sentences. *Seward v. State*, 446 Md. 171, 173 (2016). Certain convicted persons may file a petition for a writ of actual innocence based on newly discovered evidence. Md. Code (2009, 2018 Repl. Vol.), § 8-301 of the Criminal Procedure Article ("Crim. Proc.");[2] Md. Rule 4-332(d)(6). "Actual innocence" means that "the defendant did

[2] All subsequent statutory references herein shall be to Md. Code, Criminal Procedure Article.

not commit the crime or offense for which he or she was convicted," *Smallwood v. State*, 451 Md. 290, 313 (2017), or in other words, "speaks to his or her actual innocence." *Carver v. State,* 482 Md. 469, 489 (2022) (internal quotation removed).

In pertinent part, the statute provides as follows:

> "(a) A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that:
>
> > (1) (i) if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; [and]
> >
> > (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.
> >
> > . . .
>
> (g) A petitioner in a proceeding under this section has the burden of proof."

Crim. Proc. § 8-301 (a) and (g).

To prevail on a petition for writ of innocence, the petitioner must produce evidence that is newly discovered, *i.e*., evidence that was not known to petitioner at trial. *Smith v. State,* 233 Md. App. 372, 410 (2017). To be considered as "newly discovered" the evidence must not have been discovered, or been discoverable by the exercise of due diligence, in time to move for a new trial. *Argyrou v. State*, 349 Md. 587, 600-01 (1998); Md. Rule 4-332(d)(6).

The requirement that newly discovered evidence "speaks to" the petitioner's actual innocence ensures that the statutory relief is limited to a petitioner who makes a threshold

showing that he or she may be actually innocent, *i.e.*, that he or she did not commit the crime. *Faulkner v. State*, 468 Md. 418, 459-60 (2020). The petitioner must identify newly discovered evidence that "could not have been discovered in time to move for a new trial under Maryland Rule 4–331" and that creates "a substantial or significant possibility that the result may have been different." *Smith*, 233 Md. App. at 410. Critically, the new evidence must be directed to actual innocence. *Id.*; *Faulkner*, 468 Md. at 459; *Yonga v. State*, 221 Md. App. 45, 57-58 (2015), *aff'd* 446 Md. 183 (2016) ("[A]ctual innocence means factual innocence, not mere legal insufficiency . . . and the Writ of Actual Innocence requires that the newly discovered evidence point toward actual innocence.").

In *Hunt v. State*, Justice Glenn Harrell, writing for the Supreme Court, discussed the history of Crim. Proc., § 8-301, the Actual Innocence statute. He explained as follows:

> "The actual innocence statute was enacted to alleviate a perceived problem faced by convicted persons seeking to challenge their convictions on the ground of newly discovered evidence, namely, that, under some circumstances, a claim of newly discovered evidence was time-barred despite the due diligence of the claimant in raising it as soon as feasible. Taking a broader view of the historical context, we note that, as recently as the early 1960s, although a postconviction petition could be filed then "at any time," Md. Code (1957, 1959 Cum. Supp.), Art. 27, § 645A(b), a claim of newly discovered evidence (which is not cognizable in a postconviction proceeding, could not be raised more than three days after a verdict had been rendered. Md. Rule 567 (a) (1962). During the intervening decades, that time limit was liberalized in stages. Nonetheless, as of 2009, except in capital cases, or unless the newly discovered evidence was DNA evidence (or possibly evidence disclosed by means of any other new, widely recognized, scientific technique that would demonstrate actual innocence), a claim of newly discovered evidence in a criminal case could not be raised generally more than one year after the final mandate had issued upon the exhaustion of all direct appeals. Md. Rule 4-331(c) (2009).
>
> In that context, the General Assembly enacted CP § 8-301 to remedy the problem. 2009 Md. Laws, ch. 744. Section 8-301 has been a bit of an

enigma. Although it lacks an express provision governing appeals, we have interpreted it as permitting a direct appeal if a petition is denied, but not if it is granted. In so interpreting the statute, we have determined that it is, in essence, akin to a motion for new trial on the ground of newly discovered evidence, albeit unencumbered by the time limits of Rule 4-331(c). Thus, unlike a proceeding under Title 7 of the Criminal Procedure Article (Uniform Postconviction Procedure Act), a proceeding under section 8-301 is not a separate, collateral proceeding. In other words, 'the remedy afforded under' section 8-301, 'like the similar (albeit more restricted) remedy provided by a motion for new trial, is necessarily part of the usual procedures of trial and review available to a criminal defendant that were not intended to fall within the scope of postconviction relief[.]'

Although a petition under section 8-301 may be filed 'at any time,' we have determined further that the scope of a claim that may be brought is narrower than permitted under Rule 4-331(c). Thus, unlike the scope of claim permitted in a motion for new trial under Rule 4-331(c), which is constrained only by the requirement that the proponent demonstrate a 'substantial or significant possibility' that, had the newly discovered evidence been before the fact finder, its verdict would have been different, a claim of newly discovered evidence cognizable under section 8-301 must include a statement 'that the conviction sought to be vacated is based on an offense that the petitioner did not commit[.]' Md. Rule 4-332(d)(9).

Although the actual innocence statute has been amended several times since its original enactment, the statutory language at issue has remained unchanged and reads:

'A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that . . . could not have been discovered in time to move for a new trial under Maryland Rule 4-331.' CP § 8-301(a).

. . .

Because we can envision no instance in which newly discovered evidence satisfies the 'substantial or significant possibility' test, but could be deemed not 'material,' we clarify that it is not necessary to conduct a 'threshold' screening as suggested by Yorke. Weighing the effect of newly discovered evidence in an actual innocence proceeding involves substantially the same inquiry as determining prejudice in the context of an ineffective assistance claim or assessing whether Brady evidence is material."

Hunt v. State, 474 Md. 89, 105-14 (2021) (internal citations omitted).

The concept of "newly discovered evidence" is addressed in Rule 4-331(c). A motion for new trial under Rule 4-331(c) requires that the newly discovered evidence "could not have been discovered by due diligence in time to move for a new trial." Due diligence "has both a time component and a good faith component," which requires that "the movant for new trial must not only act in a timely fashion in gathering evidence in support of the motion, but he or she must act reasonably and in good faith as well." *Argyrou*, 349 Md. at 604-05.

We review the circuit court's denial of a petition for writ of actual innocence for an abuse of discretion. *Smith*, 233 Md. App. at 411. This Court does not "disturb the circuit court's ruling unless it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *Id.* (quoting *Patterson v. State*, 229 Md. App. 630, 639 (2016)). Finally, we accept the factual findings of the circuit court unless they are clearly erroneous. *Id.* at 412.

We address briefly whether the written plea agreement is newly discovered evidence which could not have been discovered in time to file a motion for a new trial. At the hearing below, the parties entered into three stipulations: (1) that the terms of the plea agreement were reduced to writing; (2) that (at the hearing on petitioner's first petition for writ of actual innocence), the State affirmatively denied the existence of the written plea agreement, did not disclose the agreement prior to trial, and that petitioner obtained the written agreement after his writ of actual innocence hearing in 2016. Following the court's discussion about the discoverability of the written agreement before trial, the State

conceded that the written agreement *was* newly discovered evidence. Because the State agreed and stipulated to that conclusion, we will assume, as did the hearing judge, that the agreement is newly discovered evidence that satisfies the statute, notwithstanding the State's argument to the contrary in its brief.

Next, we consider whether the written plea agreement speaks to petitioner's actual innocence. This first prong "limits relief to a petitioner who makes a threshold showing that he or she may have been actually innocent, meaning he or she did not commit the crime." *Carver*, 482 Md. at 480. That evidence need not rise to the level of exonerating petitioner, but rather sets-up the question that if the factfinder had the benefit of the evidence, it may have reached a different result. *Smith*, 233 Md. App. at 414.

We agree with the hearing judge that the written plea agreement would not have possibly resulted in a different outcome. The "newly discovered" evidence simply reinforced that which the jury heard—that Mr. Benton was not an unbiased witness, and a person with a motive not to tell the truth. Despite hearing cross-examination on the plea deal, the jury chose to believe Mr. Benton. We acknowledge, as did the hearing judge, that the written plea agreement added some assertions that were unknown to petitioner at trial. The hearing judge compared the written agreement and the trial testimony, and concluded the differences were not material. We agree. As has been iterated often by reviewing courts, it is not the place for this Court to revisit the judgment of the jury as to Mr. Benton's credibility, especially since the jury heard evidence as to the plea deal.

Most significantly, petitioner was convicted of first-degree felony murder. In Maryland, first-degree felony murder is defined in § 2-201 of the Criminal Law Code as a

murder "committed in the perpetration of or an attempt to perpetrate . . . robbery." Md. Code (2002, 2020 Repl. Vol.) § 2-201(a)(4)(ix), Criminal Law Article ("Crim. Law"). The newly discovered evidence offered by petitioner, the written plea agreement, does nothing to suggest that petitioner was not present at the time of the murder, or that he was not an accomplice or participant in the robbery or murder. The enabling rule for a writ of actual innocence petition, Md. Rule 4-332, requires that petitioner include in writing that "the conviction sought to be vacated is based on an offense that the petitioner did not commit." Md. Rule 4-332 (d)(9). The plea agreement, most of which was available to petitioner at trial, adds to defense counsel's impeachment of Mr. Benton, particularly as to who was the shooter. The plea agreement does not suggest that petitioner was not a participant in the robbery or that anyone else was present at the scene, beside Mr. Benton and petitioner, who may have committed the murder or conducted the robbery. *See, e.g.*, *Faulkner*, 468 Md. at 467 (holding that newly discovered evidence is material if it serves to suggest an alternate suspect even if it does not prove this beyond a reasonable doubt). Nor is the written plea agreement a recantation of Mr. Benton's testimony that indicates he lied in court about his or petitioner's involvement in the crimes. *See, e.g.*, *State v. Ebb*, 452 Md. 634, 657 (2017) (finding that a witness who later recants his testimony may speak to defendant's actual innocence and the recantation could create a substantial possibility of a different result). The written plea agreement, as opposed to the information known to petitioner at trial, does not speak to "actual innocence," or create a colorable claim of actual innocence.[3]

[3] Petitioner's statement that he "had no way of knowing that a material witness was given a plea agreement in exchange for his testimony against Petitioner" is not accurate. As the

The written plea agreement states that for Mr. Benton to receive the benefit of the plea agreement, he must "testify truthfully at any trial or litigation concerning the involvement of [petitioner] and in any aspect of the murder of William Foote." The agreement states the facts that Mr. Benton agreed to, including that "Benton did not actually shoot William Foote" and that "Benton did not fire a handgun on May 24, 1997, at William Foote." The agreement states that if evidence comes to light that Mr. Benton was "the shooter in the murder of William Foote or is not truthful at any point in the investigation or prosecution of others for crimes charged . . . the State may void this Plea Agreement in its entirety." The wording of the agreement sets out the State's understanding and expectation of Mr. Benton's testimony, the substance surely no surprise to petitioner.

Petitioner's assertions that "the jury likely would not have believed [Mr. Benton's] story" had the plea agreement been disclosed timely are not sufficient. Petitioner's defense counsel covered all the material terms of the written plea agreement during his cross-examination of Mr. Benton, none of which contain any evidence of actual innocence of the robbery or murder of Mr. Foote and would not have added to the impeachment of Mr. Benton so that the result of the trial could possibly have been different.

IV.

hearing court found, and the record reflects, defense counsel knew Mr. Benton had a plea agreement with the State, and he cross-examined Mr. Benton extensively about the plea agreement.

Petitioner raises a *Brady* claim. Under *Brady*, the State must disclose to the accused evidence favorable to the accused and material to guilt or innocence. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This obligation includes impeachment evidence. *United States v. Bagley*, 473 U.S. 667, 676 (1985). A *Brady* claim requires a showing that the undisclosed evidence is favorable to the accused, that the evidence was suppressed by the State, and that the accused was prejudiced because the evidence was material to guilt or punishment. *Brady,* 373 U.S. at 87; *Faulkner*, 468 Md. at 460. Evidence is material if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed. *Bagley*, 473 U.S. at 682; *Faulkner*, 468 Md. at 460. As stated in *Faulkner*, a cumulative materiality analysis is required in actual innocence cases, treating the analysis as identical to other materiality analysis required for violations under *Brady. Faulkner*, 468 Md. at 463; *Carver*, 482 Md. at 490.

As his claim for actual innocence based on the untimely disclosure of the written plea agreement fails, so too does petitioner's *Brady* claim fail. His *Brady* claim, essentially the same claim as his "actual innocence claim," alleges that he was not provided with the written plea agreement which he was entitled to under the discovery rules and *Brady*. Again, this argument relates to credibility of the witness, Mr. Benton. As explained above, petitioner explored fully before the jury Mr. Benton's credibility and motive to fabricate, which was resolved by the jury. The written plea agreement would have added little, if anything, to the jury's determination and to actual innocence. Petitioner has not shown any real basis sufficient to have changed the result. For the same reasons that petitioner's initial argument fails, his *Brady* claim fails. *Cf. Fuqua v. Titus*, No. 22-CV-6490, 2023 WL

6847337, at *3 (W.D. N.Y. Oct. 17, 2023) (Although federal habeas law differs from Maryland law of actual innocence, the reasoning is persuasive.).

In sum, petitioner questioned Mr. Benton about the material terms of the plea agreement before the jury. The hearing court found that petitioner elicited the terms of the agreement and attempted to impeach Mr. Benton on cross-examination. There is no indication that the hearing court abused its discretion in making its finding or in denying the Petition for Writ of Actual Innocence.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY PETITIONER.