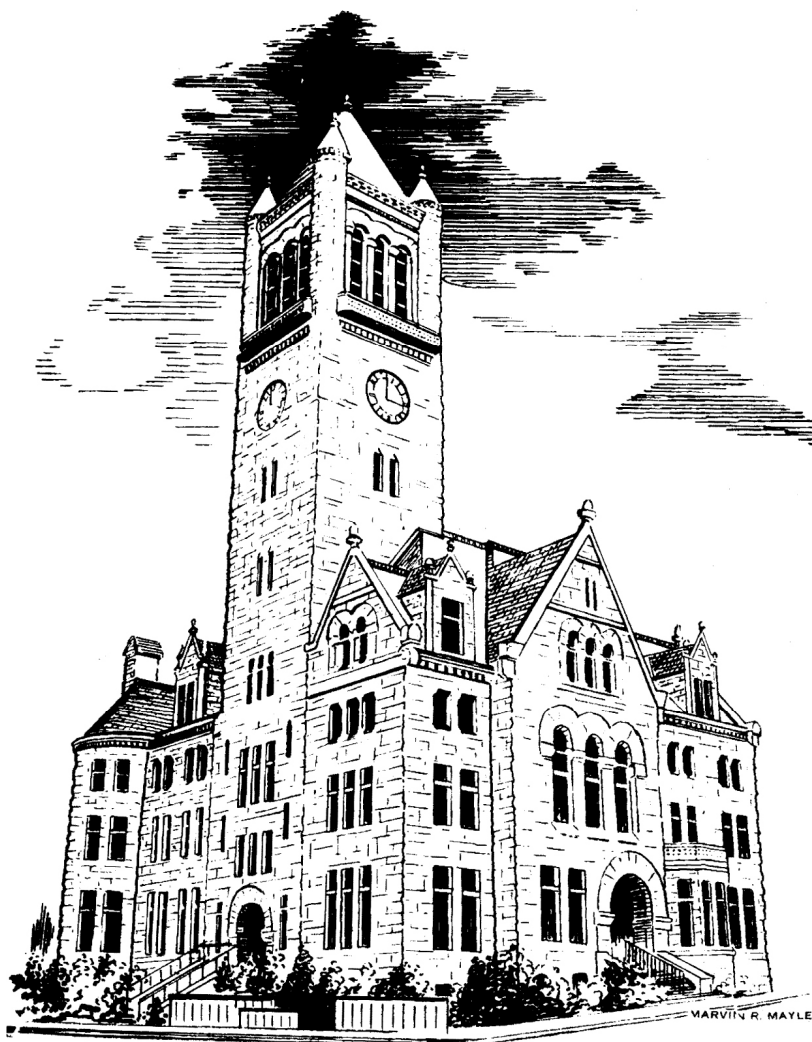


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

ANTHONY REGIS ANDREWS, a/k/a ANTHONY R. ANDREWS, a/k/a SONNY ANDREWS, late of Springfield Township, Fayette County, PA (3)

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Uniontown, PA 15401
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LEGAL NOTICES

NOTICE OF ACTION IN MORTGAGE FORECLOSURE

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW
NO.: 2026-01461

PNC BANK, NATIONAL ASSOCIATION,
Plaintiff,
vs.

Cathrine Fyock, as believed Heir and/or
Administrator to the Estate of Robert Franklin
Hixon; Christina Yatsko, as believed Heir and/or
Administrator to the Estate of Robert Franklin
Hixon; Unknown Heirs, and/or Administrators
to the Estate of Robert Franklin Hixon,
Defendants

TO: Cathrine Fyock, as believed Heir and/or
Administrator to the Estate of Robert Franklin
Hixon; Christina Yatsko, as believed Heir and/or
Administrator to the Estate of Robert Franklin
Hixon; Unknown Heirs, and/or Administrators
to the Estate of Robert Franklin Hixon

You are hereby notified that Plaintiff, PNC
Bank, National Association, filed an Action in
Mortgage Foreclosure endorsed with a Notice to
Defend, in the Court of Common Pleas of
Fayette County, Pennsylvania, docketed to No.
2026-01461, seeking to foreclose the mortgage
secured by the real estate located at 12 Penn
Street, Republic, PA 15475.

A copy of the Action in Mortgage
Foreclosure will be sent to you upon request to
the Attorney for the Plaintiff, MDK Legal, P. O.
Box 165028, Columbus, OH 43216-5028.
Phone 614-220-5611.

You have been sued in court. If you wish to
defend against the claims in this notice, you
must take action within twenty (20) days after
this publication, by entering a written
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in writing with the court your defenses or
objections to the claims set forth against you.
You are warned that if you fail to do so the case
may proceed without you and a judgment may
be entered against you by the court without
further notice for any money claimed in the
complaint or for any other claim or relief
requested by the plaintiff. You may lose money

or property or other rights important to you.

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A DECADE OF EXPERIENCE

E&O INSURED

WILL TRAVEL

ACCEPTING NEW CLIENTS

JUDICIAL OPINION

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

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
vs.	:	
BRODERICK WAYNE HARRIS,	:	No. 1639 of 2014
Defendant.	:	Honorable Nancy D. Vernon

OPINION AND ORDER

VERNON, J.

August 3, 2026

Before the Court is the Amended Petition for Post Conviction Relief filed by Defendant/Petitioner Broderick Wayne Harris in his third PCRA proceedings. Following evidentiary hearing and upon consideration of the record, the Court concludes that Petition must be denied in part and granted in part in accordance with the following Opinion.

Procedural History

The case has a lengthy procedural history. On March 4, 2015, Petitioner was convicted of three counts aggravated assault, three counts unlawful restraint – serious bodily injury, one count unlawful restraint of a minor, three counts false imprisonment, one count false imprisonment of a minor, three counts robbery, two counts burglary, two counts criminal trespass, two counts theft by unlawful taking, one count unauthorized use of motor vehicle, four counts kidnapping to facilitate a felony, four counts terroristic threats, and fifteen counts conspiracy. Thereafter, Appellant was sentenced to a term of twenty-five to fifty years confinement on the three robbery convictions, unlawful restraint of a minor victim, and false imprisonment of a minor.

Petitioner, through his trial counsel, timely filed his first appeal to the Superior Court. With the appeal pending, Appellant filed his first pro se PCRA petition on August 20, 2015, which this Court dismissed without prejudice to refile after the direct appeal was complete. On September 18, 2015, the Superior Court dismissed Petitioner’s direct appeal for counsel’s failure to file a docketing statement.

On May 15, 2017, Petitioner filed a second pro se PCRA Petition alleging ineffective assistance from his trial counsel. After appointing new counsel, this Court granted Petitioner’s request by Order dated March 7, 2019, reinstating Petitioner’s appellate rights. By Memorandum dated April 7, 2020, the Superior Court of Pennsylvania dismissed Petitioner’s second counseled appeal as “nonsensical,” “unsupported by citation to the record,” and as having “significant deficiencies.”

Petitioner timely filed the instant third pro se PCRA Petition on March 18, 2021, but the same was not presented to this Court. A subsequent Motion to Appoint Counsel was filed by Petitioner on May 25, 2022, and this Court appointed Attorney Phyllis Jin to represent Petitioner in these PCRA proceedings. Following several extensions of time, Attorney Jin filed this third Amended Petition on February 12, 2024, and after several continuances, a hearing was held pursuant to the PCRA Petition on September 23, 2024. Petitioner and the Commonwealth were given significant time to file briefs, which have been received and reviewed by this Court.

Factual History

The case arises out of a home invasion in the early morning hours of January 14, 2014. Ronald Packroni was at his residence in Masontown with his brother, Jonathan Packroni, Jonathan's four-year-old son, and family friend Jonathan Byers. At approximately 2:00 a.m., Misty Danko, the mother of Ronald Packroni's children, telephoned requesting to come to the Packroni residence under the guise that she was returning a sexual favor to Ronald. After Ronald Packroni let Danko into the home, she discreetly unlocked the front door, which allowed Petitioner Broderick Harris and two accomplices, Keith Johnson and Bernard Richardson, to enter armed with handguns and wearing masks. The intruders immediately assaulted the Packronis and Byers, forced them to the floor at gunpoint, restrained them, and repeatedly threatened to kill them, including the child.

During the home invasion, the intruders beat Ronald Packroni, Jonathan Packroni, and Jonathan Byers with their firearms while demanding money, drugs, and other valuables. The residence was ransacked, and numerous items were stolen, including cash, firearms, cell phones, watches, and other property. Jonathan Byers was taken at gunpoint to an ATM machine to withdraw money. After continuing threats, Byers provided a key to his parents' residence, where additional cash and property were stolen.

Identification of Petitioner as one of the perpetrators was a principal issue at trial. The intruders wore masks or bandanas covering parts of their faces. The Commonwealth presented eyewitness testimony from victims Ronald Packroni and Jonathan Byers identifying Petitioner, and testimony from co-conspirator Misty Danko which also named Petitioner.

As to Ronald Packroni's identification of Petitioner, Packroni testified that after Danko unlocked the front door, he encountered an armed black male wearing a hooded sweatshirt and a bandana over part of his face. The assailant repeatedly struck him in the head with a handgun, escorted him through the residence, and later brought him into his bedroom to ransack it. Ronald Packroni testified that, while in the bedroom, he was able to observe the man's eyes and a portion of his forehead. Jury Trial N.T., 3/2-3/4/2015, at 46.

Ronald Packroni testified poignantly about Petitioner's eyes, stating, "I recognize him by his eyes. I cannot forget his eyes." *Id.* at 77. Also testifying, "I can look at his eyes right now and I'll never forget those eyes." *Id.* at 78. Under further questioning, when he was asked if there was any doubt as to the Petitioner's identification, Ronald Packroni testified, "No, he was present. I remember his eyes. I'll never forget them." *Id.* at 78. Under still further re-cross examination asking whether he had any doubts as to Petitioner's identity, Packroni stated, "Two of them definitely I will never forget. When you have a gun pointed at you, you do not forget small little things. You know, the most minute things you'd be surprised that you remember." *Id.* at 78. Ronald Packroni underwent extensive cross-examination from Petitioner's trial counsel about his prior inability to identify Petitioner and trial counsel thoroughly attacked Packroni's credibility of his in-court identification.

Victim Jonathan Byers also identified Petitioner as one of the three armed intruders. Byers testified that he awoke on the living room couch to Petitioner pointing a handgun at his face. He identified Petitioner as one of the men who repeatedly assaulted him, demanded money, and threatened to kill him. Byers further testified that Petitioner remained at the Packroni residence with the other victims while Keith Johnson and Bernard Richardson forced Byers to an ATM machine.

As to identifying Petitioner, Byers stated that he was “[p]robably close to like six foot tall, just wearing a lot of dark colors, part of the face covered up.” Id. at 142. Byers identified Petitioner as a black male and that “pretty much everything from, like, the nose area up to the forehead to the hairline” was visible on Petitioner’s face. Id. at 143. Byers testified that he got a good look at Petitioner’s facial area that had been exposed, that he heard Petitioner’s voice, and that he knew the person to be Petitioner Broderick Harris. Id. at 143. Under cross-examination, Byers was impeached with two incidents of prior testimony wherein he only identified Keith Johnson as a perpetrator and did not previously name Broderick Harris. Id. at 174-175. Further, Byers was impeached in that he was only able to identify Keith Johnson, not the other two intruders, in a photo lineup after the invasion. Id. at 182.

As to the inconsistency in his identification of Petitioner, Byers explained, “At the time everything was very -- there was a lot of anxiety and things going on so I could only see certain images flashing through my head, but over the last year I’ve been able to think about what happened and remember that night and I can clearly remember being able to look up and see what people looked like.” Id. at 183. Byers further testified that after the arrests he was “able to link the names to the people.” Id. at 185. Byers testified when asked if he was certain that Broderick Harris was the assailant, “There’s not a doubt in my mind.” Id. at 187.

The Commonwealth also presented testimony from Misty Danko, who admitted her own participation in the crimes. Danko testified that Keith Johnson recruited her to facilitate the robbery, instructing her to unlock the front door to Ronald Packroni’s house after she was invited inside. Danko testified that Johnson, Bernard Richardson, and Petitioner planned the robbery beforehand and that she personally accompanied the three men to Masontown with Petitioner riding in the backseat of her car. On the ride, Petitioner questioned Danko whether she would “say anything” to which she replied she would not. According to Danko, Petitioner actively participated throughout the home invasion by holding the victims at gunpoint, repeatedly threatening to kill them unless they produced money, ransacked the residence, stealing firearms, and held the Packroni brothers hostage while Johnson and Richardson took Jonathan Byers to an ATM. Danko further testified that Petitioner shared equally in the stolen money and later threatened her not to cooperate with police, telling her that she “better not open [her] mouth and if so that he would take care of [her].” Id. at 260.

Discussion

Petitioner lodges four allegations of ineffective assistance of counsel. As to his trial counsel, Petitioner alleges he failed to file pre-trial and post-trial motions challenging the witnesses’ identification of him, failed to request a Kloiber instruction, and failed to challenge the Commonwealth’s failure to disclose favorable treatment to a Commonwealth witness. As to his appellate counsel, Petitioner alleges ineffective assistance in perfecting his second direct appeal.

The Sixth Amendment to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution entitle a criminal defendant to the representation of counsel. U.S. Const. amend. VI; Pa. Const. art. I, § 9. Both [the Pennsylvania Supreme] Court and the high Court have interpreted the right to counsel as encompassing the right to the effective assistance of counsel. *Garza v. Idaho*, 139 S. Ct. 738, 743, 203 L.Ed.2d 77 (2019); *Commonwealth v. Rosado*, 637 Pa. 424, 150 A.3d 425, 432 (2016). As we have held, this is not a “hollow formality” fulfilled by

the presence at trial of “a person who happens to be a lawyer”; counsel must provide effective assistance to satisfy this constitutional guarantee. *Rosado*, 150 A.3d at 432.

When reviewing claims of ineffective assistance of counsel, courts must presume that counsel provided effective assistance. *Commonwealth v. Brown*, 649 Pa. 293, 196 A.3d 130, 150 (2018). To overcome this presumption, the vast majority of cases, decided under *Strickland*, require the defendant to plead and prove that (1) the claim has arguable merit; (2) counsel lacked any reasonable basis for the action or inaction; and (3) the petitioner suffered prejudice as a result. *Id.* Prejudice, in this context, has been repeatedly stated as requiring proof that but for counsel’s action or inaction, there was a reasonable probability that the proceeding would have had a different outcome. *Id.* at 150-51 (citing *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052). The *Strickland* Court cautioned, however, that it did not intend these principles to be viewed as “mechanical rules”:

Although those principles should guide the process of decision, the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results. *Strickland*, 466 U.S. at 696, 104 S.Ct. 2052.

Commonwealth v. Diaz, 657 Pa. 618, 639, 226 A.3d 995, 1007–08 (2020).

1. Failure to Challenge Identification of Petitioner

Petitioner first contends that trial counsel rendered ineffective assistance by failing to file pretrial or post-trial motions challenging his identification. To the extent that Petitioner seeks to challenge the believability or credibility of Ronald Packroni, Jonathan Packroni, and Misty Danko’s testimony identifying him as the perpetrator, such argument is properly addressed to the weight of the evidence. The testimony of a single eyewitness is sufficient to support a conviction. *Commonwealth v. Duncan*, 373 A.2d 1051, 1053-54 (Pa. 1977). A victim’s in-court testimony, identifying the defendant as the perpetrator of a crime, is by itself sufficient to establish the identity element of that crime. *Commonwealth v. Johnson*, 180 A.3d 474, 478 (Pa. Super. 2018). Evidence of identification need not be positive and certain to sustain a conviction and any indefiniteness and uncertainty in the identification testimony goes to its weight. *Commonwealth v. Strafford*, 194 A.3d 168, 175 (Pa. Super. 2018).

The reliability of eyewitness identification is generally a matter affecting the weight and credibility of the evidence, which is properly left for determination by the jury as fact-finder. To prevail on a claim of ineffective assistance of counsel, a petitioner must establish that the underlying claim possesses arguable merit, counsel lacked a reasonable basis for the challenged conduct, and counsel’s actions prejudiced his defense. Petitioner fails to prove ineffective assistance on this issue as the record reflects that trial counsel vigorously challenged the Commonwealth’s identification evidence throughout the trial.

Three eyewitnesses identified Petitioner at trial. Counsel extensively cross-examined all Commonwealth witnesses concerning inconsistencies in their descriptions and prior identifications, highlighted when the witnesses failed to identify Petitioner at

earlier court proceedings or when they identified only another individual, and argued that the Commonwealth failed to establish Petitioner's identity beyond a reasonable doubt. Trial counsel even moved for a mistrial following testimony that he believed was inconsistent with prior identification evidence. The credibility and weight of eyewitness evidence were matters for the jury to resolve, which it did by convicting Petitioner. Accordingly, because Petitioner has failed to establish that any pretrial or post-trial motion challenging the identification evidence would have had merit, and trial counsel's performance was effective representation, this claim must be denied.

2. Failure to Request Kloiber Instruction

In his next contention, Petitioner alleges that trial counsel rendered ineffective assistance by failing to request a Kloiber jury instruction which originates from *Commonwealth v. Kloiber*, 106 A.2d 820 (Pa. 1954). The Supreme Court held in *Kloiber* that a cautionary charge is appropriate when the accuracy of eyewitness identification testimony is so doubtful that the court should warn the jury that the testimony as to identity must be received with caution. Pennsylvania courts have articulated three circumstances that require a Kloiber instruction. A trial judge must provide the instruction where the eyewitness: (1) did not have an opportunity to clearly view the defendant; (2) equivocated on the identification of the defendant; or (3) had a problem making an identification in the past. *Commonwealth v. Brown*, 196 A.3d 130 (Pa. 2018). The need for a Kloiber charge focuses on the ability of a witness to identify the defendant. *Commonwealth v. Reid*, 627 Pa. 78, 99 A.3d 427, 449 (2014). A Kloiber charge is not required where inconsistencies in testimony go to witness credibility rather than actual physical ability to observe the incident. *Commonwealth v. Paoello*, 665 A.2d 439, 455 (Pa. 1995).

Here, the two victims who identified Petitioner were face-to-face with their robber, and both testified as to Petitioner's physical features which they opined were unforgettable. The witnesses' inability to identify Petitioner at prior court proceedings goes to the weight of the evidence and credibility a jury should afford the testimony. Both witnesses explained the discrepancy in prior testimony, which the jury resolved by weighing the evidence and convicting Petitioner.

As a result, Petitioner cannot establish prejudice as the reliability of the Commonwealth's eyewitness identification evidence was thoroughly questioned before the jury. Trial counsel extensively cross-examined the identifying witnesses concerning inconsistencies in their descriptions, prior identification procedures, and their inability to identify Petitioner on earlier occasions, even while previously under oath. Counsel rendered effective assistance by arguing that the Commonwealth had failed to establish Petitioner's identity beyond a reasonable doubt.

Importantly, the case did not rest upon the testimony of a single eyewitness. Ronald Packroni and Jonathan Byers identified Petitioner in court as one of the perpetrators while Jonathan Packroni was unable to identify Petitioner at trial. Additionally, Misty Danko testified in detail regarding Petitioner's participation in the planning and commission of the crimes. The jury nevertheless found the Commonwealth's witnesses credible.

Given the physical proximity Ronald Packroni and Jonathan Byers had to Petitioner during the home invasion and given Danko's testimony that she conspired with Petitioner, a Kloiber instruction would not have been warranted, and more importantly, the absence of the instruction did not prejudice the defense. Actual physical ability to observe

the incident was not at issue. Petitioner has failed to demonstrate that he was prejudiced or a reasonable probability that the verdict would have been different had the jury received a Kloiber instruction and this claim must be denied.

3. Alleged Brady Violations

In his third ineffective assistance of counsel claim, Petitioner alleges trial counsel was ineffective for failing to challenge the Commonwealth's failure to disclose favorable treatment of a Commonwealth witness. Although Petitioner frames this issue as one of ineffective assistance of trial counsel, the substance of the claim is an alleged violation of the Commonwealth's disclosure obligations under *Brady v. Maryland*, 373 U.S. 83 (1963). A Brady violation occurs when the prosecution suppresses evidence favorable to the accused, including exculpatory or impeachment evidence, affecting the defendant's right to due process.

Because trial counsel cannot be deemed ineffective for failing to utilize evidence allegedly withheld by the Commonwealth, the Court will address this allegation under 42 Pa.C.S. § 9543(a)(2)(i) of the Post Conviction Relief Act to determine whether "[a] violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place."

"Brady and subsequent precedent flowing therefrom imposes upon a prosecutor the obligation to disclose all favorable evidence that is material to the guilt or punishment of an accused, even in the absence of a specific request by the accused." *Commonwealth v. Bagnall*, 235 A.3d 1075, 1085 (Pa. 2020). The prosecution's duty under Brady is limited as "the Constitution is not violated every time the government fails or chooses not to disclose evidence that might prove helpful to the defense." *Commonwealth v. Conforti*, 303 A.3d 715, 725 (Pa. 2023). "[T]here are three necessary components that demonstrate a violation of the Brady strictures: the evidence was favorable to the accused, either because it is exculpatory or because it impeaches; the evidence was suppressed by the prosecution, either willfully or inadvertently; and prejudice ensued." *Id.* (quoting *Commonwealth v. Burke*, 781 A.2d 1136, 1141 (Pa. 2001)). Evidence is material for Brady purposes only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different, with a reasonable probability being a probability sufficient to undermine confidence in the outcome. *Commonwealth v. Lambert*, 765 A.2d 306 (Pa. Super. 2000).

At the evidentiary hearing, Petitioner presented two possible Brady violations concerning the Commonwealth's alleged failure to disclose impeachment evidence relating to Commonwealth witness, Misty Danko. First, that Danko had two simultaneous prosecutions for the same charges not disclosed to Petitioner, and second, that a "Tentative Plea Agreement" was struck between the District Attorney of Fayette County and Danko prior to Petitioner's trial which also was not disclosed to him, and its existence was denied at trial by Danko and the prosecuting attorney.

First, at the PCRA hearing, the evidence established that Danko had two criminal dockets arising from the same criminal episode pending during Petitioner's trial. At Case Number 618 of 2014, Danko was charged on February 4, 2014, with seventeen counts of conspiracies to commit aggravated assault, kidnapping, unlawful restraint, false imprisonment, robbery, burglary, trespass, theft, unauthorized use of a motor vehi-

cle, terroristic threats, and receiving stolen property. At Case Number 355 of 2015, Danko was charged on October 16, 2014, with thirty-eight counts which, for the most part, replaced the conspiracy charges with the actual underlying crimes.

The record does not explain why the Commonwealth instituted a second criminal prosecution rather than amend the existing charges. Petitioner was admittedly aware of the criminal action at Case Number 618 of 2014. A review of that docket reveals on February 12, 2015, a Motion to Continue a pretrial hearing was filed by Danko's attorney which recited, "Counsel for Defendant believes that the current charges at this case number will be withdrawn, as the same have been re-filed and are currently awaiting preliminary hearing before District Magistrate Randy Abraham."

Although the filing of the second case increased Danko's potential criminal exposure and would have incentivized her even more to cooperate with the Commonwealth, the Court cannot speculate the prosecution's reasons for that charging decision. No testimony was offered on the Commonwealth's rationale for Danko's charges during the PCRA hearing. Instead, the Court must examine whether the filing of the second simultaneous case and failing to disclose that filing to Petitioner resulted in a Brady violation.

The Pennsylvania Supreme Court held that a capital murder defendant failed to establish a Brady violation based on the Commonwealth's alleged failure to disclose that a Commonwealth witness was on parole at the time she testified at trial, where such evidence would have been a matter of public record, "readily obtainable by the defense from non-governmental sources." *Commonwealth v. Tharp*, 101 A.3d 736 (Pa. 2014). Information contained in a witness' criminal record is not within the Commonwealth's exclusive control and, thus, not Brady material. *Commonwealth v. Wilson*, 147 A.3d 7, 14 (Pa. Super. 2016). Where records are public and ascertainable by the defense, and a defendant fails to explain why the records he sought were unobtainable with reasonable diligence, Brady is not violated. *Commonwealth v. Delgros*, 242 A.3d 456 (Pa. Super. 2020). The docket at Case Number 355 of 2015 was publicly available for five months prior to Petitioner's trial, and notably, filings at Case Number 618 of 2014, the case which Petitioner admittedly knew about, directly reference the second criminal case.

Accordingly, Petitioner is not entitled to relief on this alleged Brady violation as the criminal charges were filed at a docket which as publicly available, and the Commonwealth has no obligation to disclose information that is already a matter of public record.

In his second alleged Brady violation, Petitioner relies upon a "Tentative Plea Agreement" dated February 12, 2015, offering Danko a bargained sentence of four to eight years' incarceration concurrent with unrelated drug charges upon the express conditions of her "truthful testimony against all co-defendants" and "cooperation w/ Commonwealth." See, Petitioner's PCRA Exhibit No. 3.

The "Tentative Plea Agreement" presented certain irregularities regarding the date that were not explained at the PCRA hearing. The Agreement is dated February 12, 2015, which was the date of Danko's Omnibus Pretrial Hearing scheduled at Case Number 618 of 2014, but that hearing was not held and had been continued. The Agreement also recites a preliminary hearing date of March 18, 2015, yet the criminal dockets establish that no preliminary hearing was ever scheduled for that date at either case. The Commonwealth argued in its brief that the Agreement was not entered until March 18, 2015, two weeks after Petitioner's trial.

At Case Number 618 of 2014, the preliminary hearing was scheduled for February 11, 2014, then continued twice at defendant's request to February 25, 2014, and March 25, 2014, when the charges were ultimately waived to court. Danko waived arraignment on May 15, 2014, at this case.

At Case Number 355 of 2015, the preliminary hearing was originally scheduled for November 25, 2014, but continued as the prosecuting office was unavailable until December 16, 2024; then continued twice at defendant's request to January 27, 2015, and February 18, 2015; and finally continued a fourth time until March 11, 2015, due to the unavailability of the prosecuting officer, at which time Danko waived the charges to court. Petitioner's trial occurred on March 2, 3, and 4, 2015.

To confirm that the Tentative Plea Agreement was actually entered on February 12, 2015, a date prior to Petitioner's trial, the Court has reviewed the docket at Case Number 618 of 2014. A "Petition for Counsel Fees" was filed by Danko's attorney with a billing invoice that reflects "Meeting with Client, District Attorney and Officer O'Bar-to" occurred on February 12, 2015. The Petition for Counsel Fees independently and contemporaneously established a ninety-minute meeting on February 12, 2015, between the Commonwealth and Danko.

As the meeting occurred between Danko and the Commonwealth on February 12, 2015, the Court finds the date of the "Tentative Plea Agreement" correctly reflects an execution date of February 12, 2015, approximately three weeks before Petitioner's trial. The record at Case Number 618 of 2014 corroborates the date reflected on the Tentative Plea Agreement and confirms that plea negotiations were, in fact, taking place and were entered on February 12, 2015, between the Commonwealth and Danko.

The understanding was memorialized between the Commonwealth and Danko that she would be offered a plea bargain in exchange for her testimony against Petitioner. At the PCRA hearing, Assistant District Attorney Jennifer Casini, who tried Petitioner's case for the Commonwealth, testified that she had no personal knowledge of the tentative plea proposal when she prosecuted Petitioner's trial. PCRA Hearing N.T., 9/23/2024, at 4. The Court notes the Tentative Plea Agreement was executed by an Assistant District Attorney who was not Assistant District Attorney Jennifer Casini. To the extent the testimony conflicted, the Court credits Attorney Casini's testimony that she believed no plea agreement had been executed prior to trial. But this is of no consequence to the Court's inquiry into a Brady violation as knowledge possessed by one prosecutor within the District Attorney's Office is imputed to the Commonwealth for purposes of Brady. *Commonwealth v. Bagnall*, 235 A.3d 1075 (Pa. 2020).

Any implication, promise or understanding that the government would extend leniency in exchange for a witness' testimony is relevant to the witness' credibility. *United States v. Giglio*, 405 U.S. 150, 154 (1972). The Court finds that the Commonwealth failed to satisfy its disclosure obligations under Brady with regard to the "Tentative Plea Agreement" reached with Danko. Even though the plea negotiations for Danko occurred with another assistant district attorney acting on behalf of the same prosecuting office, the Commonwealth had a constitutional obligation to disclose the February 12, 2015, "Tentative Plea Agreement" to Petitioner.

Because the agreement existed between Danko and the Commonwealth, which was sufficient to trigger Brady, "we must next determine if that understanding was material, thus entitling [Petitioner] to relief." *Commonwealth v. Strong*, 761 A.2d 1167, 1174

(Pa. 2000). “As stated previously, impeachment evidence is material, and thus subject to obligatory disclosure, if there is a reasonable probability that had it been disclosed the outcome of the proceedings would have been different.” *Id.*

The Court rejects any contention that no favorable evidence existed because the proposal was merely “tentative.” In a concurring opinion, the Pennsylvania Supreme Court has recognized that promises or understandings as to the potential future prosecution of a co-defendant that fall short of a finalized plea bargain may sufficiently implicate the witness’s credibility such that due process requires disclosure. *Commonwealth v. Strong*, 761 A.2d 1167, 1178 (Pa. 2000). The written proposal expressly offered Danko a sentence of four to eight years’ incarceration in exchange for “truthful testimony against all co-defendants” and “cooperation w/ Commonwealth.” Whether ultimately accepted or not, the proposal was clear impeachment evidence bearing upon Danko’s motive to testify and should have been disclosed to the defense.

The Court does not, however, find that the Commonwealth knowingly presented false testimony. Danko testified that she had not yet had a preliminary hearing at the time of Petitioner’s trial. As to the pending Case Number 355 of 2015, that testimony was accurate. As to the pending Case Number 618 of 2014, the Motion filed by her attorney reflects Danko’s belief that those charges were to be withdrawn.

A Brady violation warrants relief only where the suppressed evidence is material, that is, where there exists a reasonable probability that disclosure would have produced a different result. The Court cannot make that finding on this record. Although the “Tentative Plea Agreement” undoubtedly would have provided additional impeachment material, Danko was already thoroughly impeached before the jury. Danko freely admitted that she repeatedly lied to law enforcement during the investigation, gave multiple inconsistent statements, and initially concealed her own involvement. The jury weighed her testimony, aware that her credibility was suspect. Additionally, the jury knew that criminal charges remained pending against her and that she implicated Petitioner only after her own arrest. Further still, this Court instructed the jury to view Danko’s testimony with caution as she was an accomplice, stating, “Experience shows that an accomplice when caught may often try to place the blame falsely on someone else. He or she may testify falsely in hope of obtaining favorable treatment or for some corrupt or wicked motive.” *Jury Trial N.T.*, 3/2-3/4/2015, at 402.

Importantly, Danko’s testimony was not the only evidence identifying Petitioner. Both Ronald Packroni and Jonathan Byers identified Petitioner in court, and defense counsel vigorously challenged all of those identifications through cross-examination. The Commonwealth’s case did not depend exclusively upon Danko’s credibility. Although the Commonwealth violated Brady by failing to disclose the “Tentative Plea Agreement,” relief is warranted only where the suppressed evidence would have materially altered the trial outcome, being if a reasonable probability exists that its disclosure would have changed the outcome of the proceeding. *Commonwealth v. Bomar*, 104 A.3d 1179 (Pa. 2014).

While disclosure of the February 12, 2015, “Tentative Plea Agreement” would have strengthened the defense’s attack on Danko’s credibility, the Court is not persuaded that there exists a reasonable probability that the verdict would have been different had the jury heard that additional impeachment evidence. Considering the extensive impeachment already presented and the independent identification testimony offered by other witnesses, Petitioner has failed to establish the materiality of the violation in that “the

result of the proceeding would have been different, with a reasonable probability being a probability sufficient to undermine confidence in the outcome.” Petitioner’s relief must be denied.

4. Direct Appeal Deficiencies

In his last issue, Petitioner argues that appellate counsel rendered such ineffective assistance on his second direct appeal to render him deprived of meaningful appellate review. The Memorandum Opinion issued by the Superior Court was highly critical of appellate counsel’s brief and highlighted its deficiencies. The Superior Court dismissed Petitioner’s appeal stating the reason was “[d]ue to the significant deficiencies in Harris’ brief.”

A brief containing such defective argument that appellate review is precluded has the same result as filing no brief at all. *Commonwealth v. Johnson*, 889 A.2d 620, 623 (Pa. Super. 2005). The Supreme Court has reasoned that “an accused has an absolute right to appeal, Pa. Constitution, Article V, s 9, and counsel can be faulted for allowing that right to be waived unless the accused himself effectively waives the right.” *Commonwealth v. Wilkerson*, 416 A.2d 477, 479 (Pa. 1980). Where a counsel’s brief is so procedurally defective that the appellate court cannot reach the merits of appellant’s claims, it “has the same result as filing no brief at all.” *Commonwealth v. Franklin*, 823 A.2d 906, 910 (Pa. Super. 2003). “Further, counsel’s failure [is] not overcome by the lower court’s review of the original appeal. [Petitioner] did not receive the independent legal review of his case that he was entitled to.” *Id.*

Accordingly, the Court concludes that appellate counsel rendered ineffective assistance by filing a brief so procedurally defective that it resulted in the dismissal of Petitioner’s appeal. Under these circumstances, Petitioner’s direct appellate rights are reinstated nunc pro tunc. Petitioner shall file a Notice of Appeal within thirty (30) days of the accompanying Order and Attorney Phyllis Jin is appointed to represent him on that appeal.

WHEREFORE, we will enter the following Order.

ORDER

AND NOW, this 3rd day of August, 2026, upon consideration of the Amended Petition for Post Conviction Relief filed by Defendant/Petitioner Broderick Wayne Harris, and the Record, it is hereby ORDERED and DECREED that Petition must be DENIED as to allegations of ineffective assistance of trial counsel in accordance with the foregoing Opinion.

It is further ORDERED and DECREED that the Petition must be GRANTED as Petitioner was denied effective assistance of counsel on appeal. As such, it is still further ORDERED and DECREED that the Petitioner’s appeal rights are REINSTATED, Attorney Phyllis Jin is appointed to represent him, and Petitioner is GRANTED thirty (30) days to file a Notice of Appeal to the Superior Court of Pennsylvania.

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
CLERK OF COURTS