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**IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

STEVEN M. RAVI
CLERK OF COURT

PEOPLE OF THE STATE OF
ILLINOIS,

Respondent-Appellee,

v.

ADAM GRAY,

Petitioner-Appellant.

) Appeal from the Circuit Court of Cook
) County, Criminal Division
)
) Circuit Court No. 94-CR-2793
)
) Honorable Angela M. Petrone, Presiding
)
)
)

**JOINT MOTION TO VACATE CONVICTIONS
AND ENTER AN ORDER OF *NOLLE PROSEQUI***

Pursuant to Illinois Supreme Court Rules 23(c) and 361, Petitioner Adam Gray and the State of Illinois jointly request that this Court (1) vacate Mr. Gray's convictions for murder and aggravated arson, (2) enter an order of *nolle prosequi*, and (3) enter an order directing the Illinois Department of Corrections ("IDOC") to release Mr. Gray forthwith.

Following a thorough, independent investigation, the Cook County State's Attorney has concluded that Mr. Gray's 1996 convictions were based on flawed trial testimony from purported experts in the field of fire investigation and are no longer valid. Scientific advances since the time of trial have proven that the fire investigators' testimony—while based on beliefs that were widely held in 1996—was erroneous under current scientific knowledge. Furthermore, considering the totality of the circumstances today, the State's Attorney believes the interests of justice would not be served by continuing proceedings against Mr. Gray. Accordingly, the State's Attorney requests

that this Court vacate Mr. Gray's convictions, enter an order of *nolle prosequi* dismissing the underlying indictment, and enter an order directing that Mr. Gray be released forthwith.

In support of this joint motion, the parties state as follows:

1. In 1996, Mr. Gray was convicted of first-degree murder and aggravated arson in connection with a fire at a two-flat apartment building in Chicago. At Mr. Gray's trial, two purported experts in the field of fire investigation opined that the fire was started intentionally using a liquid accelerant. (Supporting Record at 117, 146.)¹ The fire investigators' testimony was based primarily on their visual inspection of the burned building. (*Id.* at 110-117, 145-146.) The State also introduced evidence of an uncounseled confession elicited from Mr. Gray when he was fourteen years old, in which Mr. Gray stated that he had set the fire using gasoline that he purchased at a neighborhood gas station in a plastic milk jug. (*Id.* at 25-31.) The State further introduced evidence that chemical analysis showed that both a sample of wood debris from the burned building and a milk jug found near the building contained chemicals called "petroleum distillates." (*Id.* at 19, 40-43.)

2. The testimony of the purported fire investigation experts at Mr. Gray's trial was that certain visual characteristics of the charred wood on the back porch of the building indicated that the fire was started there using a liquid accelerant. (*Id.* at 110-117, 145-148.) That testimony reflected beliefs that were widely accepted at the time of Mr. Gray's trial. But subsequent years have seen a sea change in the field of fire investigation, in which new scientific studies and technologies have caused fire investigators to realize that many of their old beliefs were incorrect. *Lee v. Tennis*, No. 4:08-CV-1972, 2014 WL 3894306, at *3 (M.D. Pa. June 13, 2014), *adopted by*

¹ The record in this case has not yet been completed. The report of proceedings is due to be filed on May 15, 2017. Thus, pursuant to Supreme Court Rule 361(a), the parties have filed a supporting record to accompany this motion.

2014 WL 3900230 (M.D. Pa. Aug. 8, 2014), *aff'd sub nom. Lee v. Houtzdale SCI*, 798 F.3d 159 (3d Cir. 2015). Of particular importance here, advances in fire science have conclusively disproven the notion that the appearance of charred wood has any correlation with the use of an accelerant. *See Tennis*, 2014 WL 3894306, at *2-*3, *11; *Souliotes v. Hedgpeth*, No. 1:06-cv-00667, 2012 WL 1458087, at *20 (E.D. Cal. Apr. 26, 2012), *adopted by* 2012 WL 2684972 (E.D. Cal. July 6, 2012).

3. In addition, all of the experts in this case now agree that chemical analysis has conclusively established that neither the debris samples from the burned building nor the milk jug contain any trace of gasoline. (Supporting Record at 48, 50, 56, 195.) Furthermore, using a technique first developed in 2005, scientists have determined that the chemicals that *were* present in the debris on the one hand and the milk jug on the other—the “petroleum distillates”—are different from each other and could not have come from the same source. (*Id.* at 49-50, 195, 228.) Thus, contrary to the evidence presented at trial, there is no scientific connection between the milk jug and the fire. These scientific developments show that the physical evidence in this case is inconsistent with Mr. Gray’s confession, in which he said that he started the fire with gasoline from the milk jug.

4. In 2016, after conducting her own investigation, then-Cook County State’s Attorney Anita Alvarez filed an amended answer to Mr. Gray’s postconviction petition agreeing that newly discovered scientific evidence showed that the testimony of the purported fire investigation experts presented at Mr. Gray’s trial is now known to be incorrect. (*Id.* at 93-100.) The State’s Attorney agreed that the new scientific evidence was of such significance, and the now-debunked expert testimony so prejudicial, that Mr. Gray deserved a new trial. (*Id.* at 99-100.)

5. In proceedings before the Circuit Court, Mr. Gray and the State of Illinois requested that Mr. Gray’s convictions be vacated and that a new trial be ordered. (*See id.* at 99-100, 186, 265.)

In an extraordinary and unprecedented ruling, the Circuit Court denied that motion. The Circuit Court's opinion, which is included in the Supporting Record accompanying this Motion starting at page 264, made numerous objective errors of both law and fact. Most significantly, instead of crediting the uncontested new evidence in this case, the Circuit Court instead continued to rely on the now-debunked expert testimony from trial suggesting that the appearance of the charred wood was "indicative of an accelerant being used." (*Id.* at 287-88; *see id.* at 283.) That is simply wrong. As the State's Attorney stated in the proceedings below: "[T]he scientific community of forensic arson investigators no longer relies on the appearance of wooden debris as indicative of accelerant use." (*Id.* at 96.) The reports of Mr. Gray's experts Dr. Gerald Hurst and Dennis Smith, and the transcript of Dr. Hurst's evidence deposition, are included in the Supporting Record starting at pages 193, 206, and 222, respectively. Dr. Hurst and Mr. Smith explained that drawing conclusions from the appearance of char was one of the most prevalent "old wives' tales" in the field at the time of Mr. Gray's trial, and today it is considered a textbook error. (*Id.* at 229; *see id.* at 197-199, 213-215.)

6. Following the Circuit Court's decision denying the parties' joint motion, newly-elected Cook County State's Attorney Kim Foxx conducted her own review of this case. State's Attorney Foxx agrees with former State's Attorney Alvarez that Mr. Gray's convictions should be vacated, and has further decided that in the interests of justice Mr. Gray should not be retried and that the indictment against him should be dismissed.

7. The State's Attorney enjoys "nearly unfettered discretion" to *nolle prosequi* an indictment. *People v. Williams*, 315 Ill. App. 3d 22, 30 (1st Dist. 2000); *see People v. Baes*, 94 Ill. App. 3d 741, 746 (1st Dist. 1981) (noting that a court is required to grant the State's request to nol-pros absent a "clear abuse of discretion"); *In re United States of America, Petitioner*, 345 F.3d

450 (7th Cir. 2003). An order of *nolle prosequi* may be entered on appeal. *See People v. Artis*, 232 Ill. 2d 156, 169-170 (2009); S. Ct. R. 366(a)(5).

8. Mr. Gray is currently incarcerated. He has been incarcerated for more than 24 years.

9. Mr. Gray's postconviction petition brought multiple claims for relief, including a claim of actual innocence and a claim seeking resentencing under *Miller v. Alabama*, 132 S. Ct. 2455 (2012). On November 9, 2015, the Circuit Court held that Mr. Gray was entitled to an evidentiary hearing on his actual innocence claim and entitled to resentencing under *Miller*, but dismissed the remainder of his claims. (*See* Supporting Record at 265.) On November 7, 2016, the Circuit Court denied Mr. Gray's actual innocence claim. (*Id.* at 264-91.) The Circuit Court's order denying Mr. Gray's actual innocence claim was a final judgment concluding proceedings on Mr. Gray's postconviction petition and this Court has jurisdiction pursuant to 725 ILCS 5/122-7. *See People v. Scott*, 194 Ill. 2d 268, 278-79 (2000); *People v. Fikara*, 345 Ill. App. 3d 144, 151-152 (2d Dist. 2003).

10. Mr. Gray timely filed a notice of appeal on December 1, 2016. (Supporting Record at 291-95.)

11. Granting the present Joint Motion would constitute a final and complete disposition of this appeal.²


12. Because the State's Attorney presently does not intend to retry Mr. Gray or pursue any further charges against him, he should be released from IDOC custody immediately. S. Ct. R. 613(b).

² If this Court grants the present Joint Motion, all other issues on appeal would become moot. If this Court denies this Motion, Mr. Gray would seek full review of all of his denied claims.

WHEREFORE, the State and Mr. Gray respectfully request that this Court vacate Mr. Gray's convictions, enter an order of *nolle prosequi* dismissing the underlying indictment, and enter an order directing that Mr. Gray be released from IDOC custody forthwith.

Dated: May 2, 2017

By:


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) Post-conviction
) Honorable Angela M. Petrone, Presiding
)
) Date of Notice of Appeal: December 1,
) 2016
)
) Felony, In Custody
)
)

NOTICE OF FILING

To: See Certificate of Service

PLEASE TAKE NOTICE that on May 2, 2017, an original and three copies of the parties' **Joint Motion to Vacate Convictions and Enter an Order of Nolle Prosequi** was filed in the above-captioned case with the Clerk of the Illinois Appellate Court, First Judicial District, 160 N. LaSalle Street, Chicago, Illinois

Dated: May 2, 2017

Adam Gray

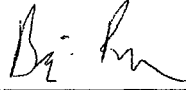
By: 

One of His Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on May 2, 2017, he caused a true and correct copy of the foregoing **Notice of Filing and Joint Motion to Vacate Convictions and Enter an Order of *Nolle Prosequi*** to be served upon the counsel listed below via First Class Mail, postage prepaid, and electronic mail:



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