UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

APPLICATION FOR LEAVE TO FILE A SECOND OR
SUCCESSIVE HABEAS CORPUS PETITION
28 U.S.C. §2244(b)
BY A PRISONER IN STATE CUSTODY

Name: Anthony W. Broom
Institution: Mayo Correctional Institution Annex
Street Address: 8784 W. U.S. Hwy. 27
City: Mayo State: Florida

Prisoner Number: 081443

Zip Code: 32066

Instructions–Read Carefully

(1) This application must be legibly handwritten or typewritten and signed by the applicant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury.

(2) All questions must be answered concisely in the proper space on the form.

(3) The Judicial Conference of the United States has adopted the 8 ½ x 11 inch paper size for use throughout the federal judiciary and direct the elimination of the use of legal size paper. All pleadings must be on 8 ½ x 11 inch paper, otherwise we cannot accept them.

(4) All applicants seeking leave to file a second or successive petition are required to use this form, except in capital cases. In capital cases only, the use of this form is optional.

(5) Additional pages are not permitted except with respect to additional grounds for relief and facts which you rely upon to support those grounds. DO NOT SUBMIT SEPARATE PETITIONS, MOTIONS, BRIEFS, ARGUMENTS, ETC., EXCEPT IN CAPITAL CASES.

(6) In accordance with the "Antiterrorism and Effective Death Penalty Act of 1996," as codified at 28 U.S.C. § 2244(b), effective April 24, 1996, before leave to file a second or successive petition can be granted by the United States Court of Appeals, it is the applicants' burden to make a prima facie showing that he satisfies either of the two conditions stated below and in 28 U.S.C. § 2244(b).

> (b)(1) a claim presented in a second or successive habeas corpus application under [28 U.S.C.] section 2254 that was presented in a prior application shall be dismissed.
>
> (2) a claim presented in a second or successive habeas corpus application under [28 U.S.C.] section 2254 that was not presented in a prior application shall be dismissed unless---
>
> > (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
> > (B)(I) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
> >
> > (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

(7) When this application is fully complete the original and three copies must be mailed to:

Clerk of Court
United States Court of Appeals for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA. 30303

APPLICATION

1. (a) Name and location of court which entered the judgment of conviction under attack: Tenth Judicial Circuit, in and for, Polk County, Florida.

   (b) Case number: CF81-1860A1-XX.

2. Date of judgment of conviction: December 23rd, 1981.

3. Length of sentence: Life Sentencing Judge: Clinton A. Curtis

4. Nature of offense or offenses for which you were convicted: Second-degree Murder

5. Have you ever filed a post-conviction petition, application, or motion for collateral relief in any federal court related to this conviction and sentence?
   Yes (**X**) No ( ) If "yes," how many times? unsure (if more than one, complete 6 and 7 below as necessary)

   The Applicant has raised a single claim with numerous underlying constitutional issues in the federal forum and is unsure as to which court(s) and what case numbers were assigned. However, in each instance, at no time have the merits of his claim been addressed in any federal court. Notwithstanding, a single state-court opinion, where a reversal was issued and later disregarded because of its tendency to expose fraudulent state action, perjury, and the criminal enterprise of sworn officials.

   Further, due to the nature of Fla. DOC and its propensity to restrict a prisoner's possession of his legal work, the Applicant has no ability to delineate the exact claim(s) presented.

   (a) Name of court: U.S. District Court Middle District, Tampa, FL.
   (b) Case number: 8:83-cv-135-T-13TGW
   (c) Nature of proceeding: Federal Habeas Corpus
   (d) Grounds raised (list all grounds; use extra pages if necessary): No Record.
   (e) Did you receive an evidentiary hearing on your petition, application, or motion? Yes ( ) No (**X**)
   (f) Result: Court denied habeas relief.
   (g) Date of result: No record, but appeal Broom v. Fortner, 772 F. 2d. 916 (11th Cir. 1985)(table).

6. As to any second federal petition, application, or motion, give the same information:

(a) Name of court: See Response to #5(a), *supra*.
(b) Case number: 8:01-cv-1457-T-24EAJ.
(c) Nature of proceeding: No Record.
(d) Grounds raised (list all grounds; use extra pages if necessary): No Record.
(e) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes ( ) No (**X**)

(f)Result: All federal results were made without reaching merits.
(g)Date of result: No Record.

7. As to any third federal petition, application, or motion, give the same information:
(a) Name of court: U.S. District Court Middle District, Tampa, FL.
(b) Case number: 8:08-cv-1198-T-26TGW
(c) Nature of proceeding: 28 U.S.C. §2254
(d) Grounds raised (list all grounds; use extra pages if necessary): No record.
(e) Did you receive an evidentiary hearing on your petition, application, or motion? Yes ( ) No (**X**)
(f)Result: Lack of jurisdiction.
(g) Date of result: June 23, 2008.

8. Did you appeal the result of any action taken on your federal petition, application, or motion? (Use extra pages to reflect the additional petitions if necessary)

(1) First petition, etc. No ( ) Yes (**X**) Appeal No. Unknown.
(2) Second petition, etc. No ( ) Yes (**X**) Appeal No. Unknown.
(3) Third petition, etc. No (?) Yes (?) Appeal No. Unknown.

9. If you did not appeal from the adverse action on any petition, application, motion, explain briefly why you did not: No Record.

10. State concisely every ground on which you now claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

GROUND ONE: FRAUDULENT STATE ACTION CREATED NUMEROUS DUE PROCESS VIOLATIONS RESULTING IN CONVICTION OF ACTUALLY INNOCENT MAN IN

VIOLATION OF THE 4TH, 5TH, 6TH, 8TH AND 14TH AMENDMENT TO THE U.S. CONSTITUTION.

GROUND TWO: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

GROUND THREE: DENIAL OF STATE AND FEDERAL DUE PROCESS OF LAW

GROUND FOUR: FRAUD ON THE COURT

FACTS RELIED UPON TO SUPPORT GROUND OF ACTUAL INNOCENCE

(a) _____ Applicant left his motel room early one morning for the vending machine to get a coke to use in mixing his friend and himself a mixed drink. Upon returning from the front of the motel to his room, he found his friend bleeding and with what looked like a gunshot wound to the left side of her head.

(b) _____ Gunshot residue or stippling and/or tattooing was found on the backside of the deceased's index and middle fingers of her left hand, where she had accidentally or intentionally pulled the trigger of the gun which took her life. Exhibit A – Trial Transcripts[1] TT. 154:9-25 and TT. 155:1-25. Officer Thomas, with the Winter Haven Police Department (WHPD), was instructed by Detective Woodard to take a paraffin or neutron test from the deceased. However, he did these tests in reverse order, destroying the gaseous residue and most of the

[1] There are three (3) sets of numbers on these trial transcripts. However, all numbers referred to in this application are the numbers in the upper right hand corner of the transcript page, which will be referred to as TT. followed by the page number, a colon and then the line number(s), *e.g.*, (TT. 154:9-25 and TT. 155:1-25.

stippling/tattooing on the deceased's left hand. Nevertheless, Officer Thomas testified that he noticed particles that looked like residue of a gunshot. *See also* Exhibit B – The State's expert pathologist – Doctor Youngs' Autopsy Report, where on the first page it states:

> "On the dorsal aspect of the left hand, just proximal to the knuckles of the index and middle fingers, there was stippling, suggestive of powder burns resulting from the discharge of a firearm."

(c) _____ Applicant's tests for gaseous residue was negative (TT. 283:5-16) and there was no stippling or tattooing on his hands. However, there was a perfect circle of stippling/tattooing surrounding the entrance wound of the deceased's head and was completely uninterrupted. Exhibit C – Photograph of the entrance wound showing stippling/tattooing surrounding the wound. *See also*, TT. 60:24-25 and 61:1 where the first responder, Officer Quinn, surmised it to be a suicide. However, Exhibit D – Det. Woodard's deposition 30:10-16, stating that she did not think that it was a suicide because she had her mind made up that it was a homicide. Det. Woodard did not see the scene, defendant or the victim until more than 30 minutes after the tragedy had occurred. This was after the first responder's had arrived and everything in that motel room had been moved, destroyed or compromised (including the victim's body and gun) Exhibit D. 4:5-22. The first responders' investigation established some type of a self-inflicted gunshot injury. All three police officer's as the first responders, the 2 EMT's and the Applicant

were desperately trying to save the young woman's life who had apparently shot herself, as the undisturbed evidence showed.

(d) _____ Detective Woodard, who took over as lead detective (even though she did not see the scene before the evidence was destroyed or compromised), disregarded the first responders' investigation findings, as well as the only earwitnesses testimony. *See* Exhibit E – Singh's statements, which states that they heard nothing until being awakened by a loud noise which they thought was a commode lid that had slammed down really hard. However, Det. Woodard fabricated her own series of events in which to incriminate the Applicant to a crime which did not occur. IN fact, Det. Woodard committed Fraud upon the Court when she presented Exhibit F – Probable Cause Affidavit/Arrest Report sworn to by herself which states:

> "THE DEFENDANT AND VICTIM. . . . .BECAME INVOLVED IN AN ARGUMENT. . . .AND A FEW MINUTES LATER A LOUD "BANG" WAS HEARD BY WITNESS BARBARA SINGH AND HER HUSBAND KUMAR SINGH. . . ."

Compare Exhibit E to Exhibit F, which clearly shows that Det. Woodard's probable cause was fabricated.

(e) _____ When cornered, Det. Woodard admitted to her perjury of the only Probable Cause Affidavit/Arrest Report in open court and expressed her apology to the Court. *See* Exhibit G – Motion to Reduce Bond 30:1-17, which states:

A: Like I say, I did not write that affidavit.

Q: Well, ma'am, you interviewed these witnesses personally?
A: Yes, sir.
Q: And you know what they told you?
A: Yes, sir.
Q: And you signed this affidavit under oath, which is different than what they told you?
A: Yes, sir.
Q: Did you think there was something wrong with that?
A: I did not re-read it once it was typed, that was my error.
Q: You never read the affidavit, you just signed it?
A: I did not re-read it.
Q: What do you mean, you didn't re-read it?
The Court: She's already said it was her error.
Please move on Mr. Barest.

There was no other probable cause, and at that time, the Prosecutor shall not institute or cause to be instituted criminal charges when he knows, or it is obvious, that the charge(s) are not supported by probable cause, as in this case. The Prosecutor was at the Bond Reduction Hearing, and he had the Singh's statements as well as Det. Woodard's perjured Probable Cause Affidavit/Arrest Report. He did not file the document with the Clerk of the Court until after the First Appearance Hearing, where it was utilized as probable cause. It should also be noted here that Applicant was not allowed to be at his First appearance, because he was the only one besides Det. Woodard that knew her affidavit was a lie and no probable cause existed until the Prosecutor had seen the file, then he became aware also.

(f) _____ After Applicant's 1st federal habeas corpus had been filed and denied, the Prosecutor then admitted that he knew the Probable Cause

Affidavit/Arrest Report sworn to and supplied by Det. Woodard was fabricated. However, he still proceeded as though a crime had occurred, fraudulently deluding a Grand Jury and trial court. The Prosecution never informed the Court, the Grand Jury and the Defense of the above-mentioned fraud and perjurous action. *See* Exhibit H – Motion to Dismiss Defendant's Motion for Post Conviction Relief mailed January 20, 1986 and stamped filed Feb. 7, 1986, states:

> "First, defendant was not prosecuted based upon Det. Woodard's affidavit. Defendant was prosecuted based upon an indictment returned August 21, 1981 by a Polk County Grand Jury. Once that indictment was returned, Det. Woodard's probable cause affidavit **ceased** to play any part in the case. The return of the indictment conclusively established probable cause to try the defendant **regardless of the truth or falsity of allegations in** Det. Woodard's **affidavit**." (emphasis added).

However, the State Attorney nor his assistants should in any way attempt to influence the finding of the Grand Jury, other than presenting evidence and rendering legal advice. Any indictment returned may be set aside for improper influence. An overstepping of the State Attorney's function could constitute an invasion of the function of the Grand Jury and interfere with their independence as seen in the fraudulent Probable Cause Affidavit/Arrest Report that was presented to the Grand Jury.

This State Action by the Prosecutor caused the Grand Jury to no longer be a Grand Jury and the Indictment to no longer be an Indictment, but a charge by the Prosecutor for 1st degree murder, which by both State and Federal Constitutions

requires a Grand Jury. Due process has been violated and the indictment should be dismissed and the applicant discharged.

The Prosecutor admitted that he used a fraudulent document (the Probable Cause Affidavit/Arrest Report) as stated in Exhibit H, which he admittedly knew to be such, to obtain the Grand Jury's indictment. Applicant did not find out about this action until after his 1st federal habeas corpus had been filed and denied. Had this information been known to Applicant before he filed his 1st federal habeas corpus, he would have filed the claim proving his innocence which would likely have been granted. It is more likely than not that no reasonable juror would have found Applicant guilty beyond a reasonable doubt in light of this new evidence. There would have been no charge as there would have been no valid probable cause, without the Fraud committed by the Prosecuting Attorney.

(g) _____ Documents that were false and/or fraudulently presented to the court have now been exposed and this "Fraud on the Court" has been brought to the light over the years. One of the most grievous state prosecutor documents, *See* Exhibit I – Death Investigator Report was just recently uncovered but only after a personal trip was physically made to WHPD by the Advocates for the Wrongfully Convicted – Mrs. Diane Heisler, P.O. Box 542, Bluffton, S.C. 29910 *See* Exhibit J – Mrs. Diane Heisler's Sworn Affidavit. The Death Investigator Report shows that Det. Woodard falsely stated that the Applicant was in the motel room with the

victim just prior to shooting. This document was not only false but misled the State Expert Pathologists findings' and influenced him into believing that the victim was not alone TT. 32:20-23. Det. Woodard's falsified Death Investigator Report states:

> "According to investigator, the victim and suspect were in Rm. #539 just prior to shooting. . . ."

Id. Exhibit I, *supra.*

With this falsified Death Investigator Report statement Dr. Youngs, however, could not rule out homicide in his findings TT. 121:14-18:

> "It's not possible for me to determine the manner of death in this case. I think that the findings that we have could have been produced in the case of suicide, a homicide, or even a bizarre accident. I can't exclude any of those possibilities."

Not only was this false document misleading, it also removed the question of law to prove "the criminal agency of another" violating due process. This unlawfully made the matter a prima facie case for the jury and a question of fact of whether Applicant did the shooting.

Dr. Youngs' findings, without Det. Woodard's fraudulent Death Investigator Report, would have been some form of a self-inflicted fatal injury *e.g.*, "suicide or a bizarre accident". There is no prima facie evidence for a homicide. However, the state court swept the entire matter under the rug and failed in totality to address Applicant's newly-discovered evidence, which had been unattainable until Mrs.

Diane Heisler personally made her trip to WHPD in Florida and requested all documents pertaining to the arrest of Anthony W. Broom. Her numerous written requests never produced this "Death Investigator Report."

(h) _____ On July 28, 1987, Judge Claire K. Luten of the Sixth Judicial Circuit Court, Pinellas County (where Applicant was being unlawfully detained at the time) issued an Order granting Petitioner for Writ of Habeas Corpus and granting Applicant relief for denial of due process. *See* Exhibit K, attached with the exhibit herein. However, this relief was reversed on procedures only by the district court.

(i) _____ The totality of all evidence conclusively establishes that not only did the Applicant not commit the crime, no crime by Applicant in fact, ever occurred.

Dr. Youngs presented two (2) theories (TT. 113:2-6) one of which he negated himself. His first theory was:

> "had the hand been on the side of the head, like this (indicates) this is when the gun was discharged, it is possible that some of the gunpowder residue could have landed on the top of the hand and produced the stippling effect he saw."

This theory, however, did not hold up as Dr. Youngs proved, *See* TT. 97:14-20, which states:

> A: The gunshot wound itself was rounded, the entrance gunshot wound was six millimeters in diameter and surrounding that there was a rounded zone of stippling of the skin. . . .

Q: What is stippling?
A: Stippling is the presence of fine punctuate indentation of the skin.

Based on this information there could not have been a rounded zone if the hand had been interposed between the end of the barrel of the gun and the head (*See* Exhibit C, *supra.*). Stippling on the backside of her fingers would void stipplings in that rounded zone. Therefore, Dr. Youngs' first theory is disproven by the evidence.

This leaves only his second theory which states TT. 113:6-10:

> "Also in the discharge of some revolvers, gunpowder may be discharged around the cylinder of the revolver onto the hand. If the individual holding the revolver discharged it, they may get gunpowder residue of this type on the back of the hand."

Hence, the stippling/tattooing on the back side of Ms. Martz's trigger and middle finger, as stated in Dr. Youngs' Autopsy Report. *See* Exhibit B, *supra.*; TT. 111:15-25 and 112:1-3. Also, the newly-discovered evidence cement the fact that no reasonable fact-finder would have found Applicant guilty Exhibit I, *supra.* The result of the issue would have been an acquittal. This evidence was not presented at Trial.

CONCLUSION FOR ACTUAL INNOCENCE CLAIM

Had the falsified "Death Investigation Report" (Exhibit I, *supra.*) not been sent to the morgue with the body to mislead and misguide Dr. Youngs', his finding (TT. 121:14-18, *supra.*) would have been that of a self-inflicted fatal wound.

Absent any valid evidence to prima facially show a homicide, there would have been no indictment or conviction.

Furthermore, had the Probable Cause Affidavit/Arrest Report (Exhibit F, *supra.*) not been fabricated, then left uncorrected, there would have been no indictment or conviction as well.

Det. Woodard should have recused herself for her personal dislike for Applicant Exhibit D, *supra.* 7:19-22.

The foregoing shows this Honorable Court that Applicant is actually innocent and should thus be allowed to file a successive federal habeas corpus in light of these facts. At the time of his 1st federal habeas corpus there was material evidence withheld by the Prosecutor (Exhibit H, *supra.*) which was, at that time, unknown to Applicant and clearly showed that the Prosecutor and other State Actions perpetrated "Fraud on the Court." This evidence was not presented at trial but clearly establishes that there was not a crime by the Applicant. Petitioner is factually and actually innocent.

For whatever reason that possessed the perpetrator(s) to wrongfully convict an innocent person, it is long past the time for some Court to correct this travesty of justice. It has been over 3 decades since a lie put Petitioner in the room with the victim at the time of the shooting. Just as another lie stated that the witnesses heard an argument before the gunshot. Nevertheless, the Prosecutor with

scrupulous principles and ethics utilized these lies to persecute an innocent man. This Prosecutor's *modus operandi* is seen in the cases like: Kelley v. Singletary, 222 F. Supp. 2d. 1357, 1363 (S.D. Fla. 2002); State of Florida v. Melendez, No.: CF-84-1016A2-XX (Tenth Judicial Circuit of Florida, slip op. Filed December 5, 2001). Kelley, id., n. 3; and Johnson v. State, 44 So. 3d. 51, 73 (Fla. 2010).

Applicant honorably served his country, receiving one of the highest military awards before being honorably discharged. He now asks this Court to address the merits, making its finding the way the Court would want him to make his finding if the situation was reversed, that the Applicant has been wrongfully convicted for over 30 years based on lies.

VANGUARD OVERVIEW

(j) _____ In light of the recent clarification of "actual innocence" > McQuiggin v. Perkins, 569 U.S. _____, 133 S. Ct. 1924, ____ L. Ed. 2d. ____ (2013), the Applicant meets the threshold requirements for being heard beneath the shroud of actual innocence. The Supreme Court clarifies its ruling in numerous prior cases.

(k) _____ "Sensitivity to the injustice of incarcerating an innocent individual should not abate when the impediment is AEDPA's statue of limitations. Pp. 1931-1932."

> ("A court. . . .may consider an untimely §2254 petition if, **by refusing to consider the petition for untimeliness, the court thereby would**

endorse a 'fundamental miscarriage of justice' because it would require that an individual who is actually innocent remain imprisoned.")

Here, Applicant maintains, as Perkins did, "that a plea of actual innocence can overcome AEDPA's one-year statute of limitations. Perkins, 133 S. Ct. at 1931. Applicant thus seeks an equitable exception to §2241(d)(1), not an extension of the time statutorily prescribed. *Id.*; *See also* Rivas, 687 F. 3d. at 547, n. 42.

Applicant is in possession of empirical record-evidence of actual innocence; evidence in which no court, state or federal has ruled upon the merits. Using the State's own evidence of Dr. Youngs' findings, his testimony and Det. Woodard's clear admittance to the (only) Probable Cause Affidavit/Arrest Report being false in material facts, Applicant has shown that no probable cause of Appellant committing a crime exists. *See* Facts Relied Upon to Support Ground of Actual Innocence, *supra*.

Applicant will substantiate a number of underlying constitutional claims in addition to the constitutional claims established in the foregoing Facts Relied Upon to Support Ground of Actual Innocence, *supra*. These include: (1) The denial of effective assistance of counsel (a) where trial counsel, after having learned that false material evidence had been presented to the state in the form of a false Probable Cause Affidavit/Arrest Report and knowing that no probable cause

existed, should have filed a habeas corpus under Florida Statute 907.045 - which would have exonerated Applicant because there is/was no prima facie case of probable cause that he committed a crime; (b) Trial counsel was further ineffective for not uncovering and learning of the facts that false material evidence had been presented to Dr. Youngs to mislead him into a anti-evidence theory of homicide; (c) Counsel was ineffective for not rebutting Dr. Youngs' theory that stippling/tattooing could have appeared on the deceased's left hand as she held it up in a defensive position between the end of the barrel of the gun and her head, where the physical and scientific evidence clearly established that this could not have happened. (2) Applicant was denied due process of law, under the state and federal constitutions. Where Applicant has the right against unreasonable seizures without a valid probable cause; the right to an unbiased Grand Jury Indictment; he has the right to face his accuser's, the right not to face cruel and unusual punishment as been established from the foregoing. (3) Newly discovered evidence was recently uncovered by an Advocate for Wrongfully Convicted but only after her personal trip to the WHPD where she physically made a request for Broom's record of arrest was she provided with the material Death Investigator Report which is shown to be false. (4) Fraud on the Court is readily apparent.

This is prima facie showing of the constitutional violations as established in the foregoing Facts Relied Upon to Support Ground of Actual Innocence, *supra.*

Applicant has also shown this Court that there are other constitutional violations exist in addition to the claim of actual innocence.

FEDERAL STANDING

Perkins is just a clarification of the Actual Innocence Standard, Justice Ginsburg, who delivered the opinion of the Court stated:

> "We hold that actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in *Schlup*[2] and *House*[3], or, as in this case, expiration of the statute of limitations. . . ."
>
> "[A] federal habeas court should consider a petitioner's delay irrelevant to appraisal of an actual-innocence claim. . . .[A] federal habeas court, faced with an actual-innocence gateway claim, should count unjustifiable delay on a habeas petitioner's part, not as an absolute barrier to relief, but as a factor in determining whether actual innocence has been reliably shown'."

Perkins, 569 U.S. ____, 133 S. Ct. 1924. The Applicant is in possession of empirical evidence demonstrating actual innocence. This evidence has never been heard on the merits due to repeated denial of due process of law, **resulting in a fundamental miscarriage of justice**.

In *Perkins*, the Court quoting > *Martin v. McNeil*, 633 F. 3d. 1257 (11th Cir. 2011), stated:

> **"A court. . . .may consider an untimely §2254 petition if by refusing to consider the petition for untimeliness, the court would thereby endorse a 'fundamental miscarriage of justice' because it**

[2] *Schlup v. Delo*, 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d. 808 (1995).
[3] *House v. Bell*, 547 U.S. 518, 126 S. Ct. 2064, 165 L. Ed. 2d. 1 (2006).

> **would require an individual who is actually innocent to remain imprisoned.**"

Perkins, 569 U.S. ____, 133 S. Ct. 1924, (quoting) > *Martin*, 633 F. 3d. at 1267-63. Therefore, because the Applicant is actually innocent, and failure to consider his application and ensuing petition for untimeliness, **the court(s) would thereby be endorsing a fundamental miscarriage of justice, requiring an individual, Anthony Broom, who is actually innocent, to remain imprisoned**. The Applicant maintains that his plea of actual innocence overcomes AEDPA's one-year statute of limitations.

Decisions of the Supreme Court support the applicant's view of the significance of his convincing actual innocence claim. The Court has stated that a prisoner,

> "otherwise subject to defenses of abusive or **successive use** of the writ [of habeas corpus] may have his federal constitutional claim considered on the merits if he makes a proper **showing of actual innocence**."

Perkins, 569 U.S. ____, 133 S. Ct. 1924, (quoting) > *Herrera v. Collins*, 506 U.S. 390, 404-05, 113 S. Ct. 853, 122 L. Ed. 2d. 203 (1993).

The Applicant's evidence is so strong that the court cannot have confidence in the outcome of his trial, and no court could be satisfied that the trial was free of nonharmless constitutional error. See generally > *Schlup*, 513 U.S. at 316.

The Applicant is in possession of "new reliable evidence" of "actual

innocence" required by AEDPA's statute of limitations due to the Suspension Clause. See U.S. Const. Art. I, §9, cl. 2, ("The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of Rebellion or Invasion the public safety may require it.") Among the items of new reliable evidence, which have previously been properly filed in state court, are documents exposing : (1) Corrupted conspiratorial fabrications of material evidence; (2) Admissions from the persons who fabricated the material evidence against the Applicant; (3) Forensic and empirical proof that no crime occurred; (4) State-court proceedings and record evidence of an initial finding (on one occasion) for or in favor of, the Applicant, and then a subsequent injudicious ignorance of the higher state-court ruling by subordinate state courts; exposing and establishing a series of fraudulent acts executed by primary police investigator and the state prosecutor; (5) Statements of witnesses which conclusively contradict the Applicant's conviction; and (6) Intra-judicial documents establishing actual innocence.

The court in > *Authur v. Allen*, 452 F. 3d. 1234 (11th Cir.), modified, 459 F. 3d. 1310 (2006) stated:

> "We have held that. . . . .where the §2244(d)(1) limitation period has expired and the petitioner is claiming actual innocence, we must first consider whether the petitioner can show actual innocence before we address whether an exception to the limitation period is required by the Suspension Clause of the U.S. Constitution."

Arthur, 452 F. 3d. 1234. See also > *Sibley v. Culliver*, 377 F. 3d. 1190, 1205 (11th

Cir. 2004)(same); > *Wyzykowski v. Dep't of Corr.*, 226 F. 3d. 1213, 1218 (11th Cir. 2000)(same).

In this Application, the Applicant trumpets that his actual innocence should serve as a gateway to consideration of constitutional claims time-barred under AEDPA's one-year limitation period. > 28 U.S.C. §2244(d); > *Johnson v. Dep't of Corr.*, 513 F. 3d. 1328, 1333-34 (11th Cir. 2008); > *Arthur*, 452 F. 3d. at 1244-46. Because the standard for actual innocence in cases of procedural default and untimely federal habeas petitions derive from the Supreme Court's decision in *Schlup*, this Court has at times conflated these two case types. See > *Arthur*, 452 F. 3d. at 1245, (applying the concept of the actual innocence exception to "procedural bar" to the *Arthur* case involving an AEDPA-time-barred §2254 petition). Therefore, like the actual innocence exception for procedural default, the alleged exception for AEDPA untimeliness requires the petitioner, (1) to present "new reliable evidence. . . .that was not presented at trial" (Applicant meets this point), > *Arthur*, 452 F. 3d. at 1245 (quoting) > *Schlup*, 513 U.S. at 324, 115 S. Ct. at 865; and (2) to show "that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt" in light of the new evidence (the Applicant has demonstrated such), > *Johnson*, 513 F. 3d. at 1334, (quoting) *Schlup*, 513 U.S. at 327, 115 S. Ct. at 867. See also > House, 347 U.S. at 538, 126 S. Ct. at 2077.

Was this claim raised in a prior federal petition, application, or motion?
Yes ( ) No (**X**)

Does this claim rely on a "new rule of law?" Yes ( ) No (**X**)
If "yes," state the new rule of law (give case name and citation):

Does this claim rely on "newly discovered evidence?" Yes (**X**) No ( )
If "yes," briefly state the newly discovered evidence, and why it was not previously available to you:

Documents of fraud exposing no crime having been committed which were hidden in a file that had been denied to Applicant; that is, until a paralegal personally reported to the agency and demanded all records, invoking Florida's Public Records Act.

11. Do you have any motion or appeal now pending in any court as to the judgment now under attack? Yes ( ) No (**X**)
If yes, name of court: N/A. Case number: N/A.

Wherefore, applicant respectfully requests that the United States Court of Appeals for the Eleventh Circuit grant an Order Authorizing the district Court to Consider applicant's Second or Successive Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254.

Anthony W. Broom

Anthony W. Broom, *in propria persona*

I declare under Penalty of Perjury that my answers to all the questions in this Application are true and correct.

Executed on July 3, 2014.

Anthony W. Broom

Anthony W. Broom, *in propria persona*

PROOF OF SERVICE

Applicant must send a copy of this application and all attachments to the attorney general of the state in which applicant was convicted.

I certify that on July 3 2014, I mailed a copy of this Application* and all attachments to: Attorney General, Pamela Jo Bondi, State of Florida, Criminal Division at the following address: The Capitol, PL-01, Tallahassee, Florida 32399, on this 3 day of July, 2014.

Anthony W. Broom

Anthony W. Broom, *in propria persona*
081443 / D4108U
Mayo Correctional Institution Annex
8784 W. U.S. Hwy. 27
Mayo, FL. 32066

* Pursuant to Fed. R. App. P. 25(a), "Papers filed by an inmate confined in an institution are timely filed if deposited in the institution's internal mail system on or before the last day of filing. Timely filing of papers by an inmate confined in an institution may be shown by a notarized statement or declaration (in compliance with 28 U.S.C. §1746) setting forth the date of deposit and stating that first-class postage has been prepaid."