

**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	Prisoner Number: 081443
Institution: Mayo Correctional Institution Annex	
Street Address: 8784 W. U.S. Hwy. 27	
City: Mayo	State: Florida
	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**

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: No Record.

(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: See Response to #5(a), *supra*.

(b) Case number: No Record.

(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.

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 (X) 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, AND 14TH AMENDMENT TO
THE U.S. CONSTITUTION.

FACTS RELIEF UPON TO SUPPORT GROUND

(a)_____Applicant exited his motel room late one evening to fetch a soda for him and his girlfriend. Upon returning from the front of the building he found his friend shot and bleeding. He called the police.

(b)_____GSR (Gunshot Residue) was found on her hand where she had either accidentally or purposefully pulled the trigger of the gun which took her life.

(c)_____Applicant was tested for same GSR, none was found. A perfect circle of stippling surrounded the wound to her head and was completely uninterrupted.

(d)_____Chief investigator disregarded all witness testimony and fabricated her own series of events in which to inculcate the Applicant to a crime which did not occur.

(e)_____Investigator admitted to fabricating multiple documents in open court, expressing her apology to the court.

(f)_____Prosecutor admitted to knowing that the documents supplied by the investigator were fabricated, yet still proceeded as though a crime transpired, fraudulently deluding a grand jury, and the trial court. Then, failing to inform the Court, the Grand Jury, and the Defense of the above mentioned fraud and perjurious actions.

(g)_____ Numerous and authenticated documents have come to light over the years, the most grievous state-prosecutor documents were just recently uncovered and presented to the state courts. State-court swept entire matter under the carpet and failed in totality to address Applicant's newly-discovered evidence.

(h)_____ However, at one point, a single state court found error by the trial court and attending prosecutor, but when the matter reached the jurisdiction of the offending court, the issue miraculously disappeared. Higher state courts have since refused to correct or redress said recorded errors.

(i)_____ The full ambit of aggregated evidence conclusively establishes that not only did the applicant not commit a crime, no crime transpired in-fact. And, the newly-discovered evidence cements the fact that no reasonable fact-finder would have found the Applicant guilty – the result of the issue would have been acquittal.

VANGUARD OVERVIEW

(j)_____ In light of the recent decision > *McQuiggin v. Perkins*, 569 U.S. _____, 133 S. Ct. 1924 (2013), the Applicant meets the threshold requirements for being heard beneath the shroud of actual innocence.

(k)_____ Applicant is in possession of empirical record-evidence of actual innocence; evidence that no court, state or federal, has ruled upon the merits.

(l)_____ Applicant can substantiate a number of underlying constitutional claims, including: (1) the denial of effective assistance of counsel; (2) the denial of

due process of law; and (3) fraud on the court.

FEDERAL STANDING

In *Perkins*, 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*^[1] and *House*^[2], 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. Evidence which 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 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.

¹ *Schlup v. Delo*, 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d. 808 (1995).

² *House v. Bell*, 547 U.S. 518, 126 S. Ct. 2064, 165 L. Ed. 2d. 1 (2006).

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 has evidence 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 Alice-in-Wonderland pseudo-evidence; (2) Admissions from the persons who fabricated the pseudo-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 > *Arthur 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 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 can demonstrate 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 (X) No ()

If "yes," state the new rule of law (give case name and citation):

McQuiggin v. Perkins, 569 U.S. ____, 133 S. Ct. 1924 (2013).

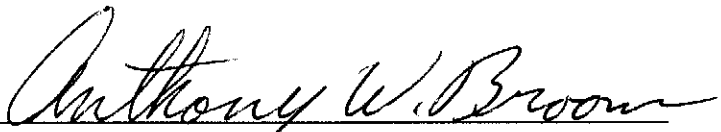
Does this claim rely on "newly discovered evidence?" Yes (X) No ()

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.

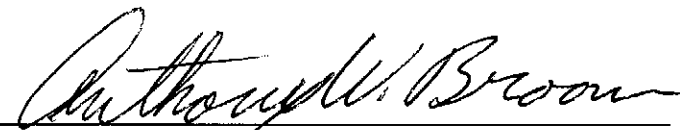
11. Do you have any motion or appeal now pending in any court as to the judgment now under attack? Yes () No (X)
If yes, name of court: N/A. Case number: N/A.

Wherefore, applicant respectfully requests that the United States District 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, *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 May 14, 2014.


Anthony W. Broom, *in propria persona*

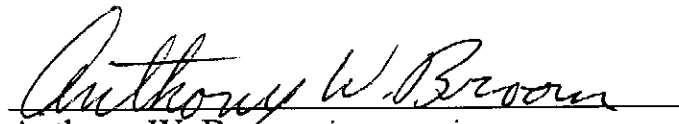
PROOF OF SERVICE

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 May 14, 2014, I mailed a copy of this Application* and all attachments to: Attorney General, State of Florida, Criminal Division at the following address: The Capitol, PL-01, Tallahassee, Florida 32399,

* 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."

on this 14 day of May, 2014.

A handwritten signature in cursive script that reads "Anthony W. Broom". The signature is written in black ink and is positioned above a horizontal line.

Anthony W. Broom, *in propria persona*

081443 / D4108U

Mayo Correctional Institution Annex

8784 W. U.S. Hwy. 27

Mayo, FL. 32066