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 West 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 directed 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, Bartow, Florida

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

2. Date of judgment of conviction: December 3rd, 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? unknown (if more than one, complete 6 and 7 below as necessary)

   (a) Name of court: Tampa Federal Court
   (b) Case number: unknown
   (c) Nature of proceeding: 28 U.S.C. § 2254
   (d) Grounds raised (list all grounds; use extra pages if necessary):

   1. Failure to prove Corpus Delecti - I believe.

   (e) Did you receive an evidentiary hearing on your petition, application, or motion?
   Yes ( ) No (X)
   (f) Result: Denied – I think.
   (g) Date of result: Unknown.

6. As to any second federal petition, application, or motion, give the same information: This case is 30 years plus old and no court has addressed the merits. Also, the Florida Department of Corrections does not provide for storage of legal papers of inmate that are not active. As such, numbers 5 through 9 are unable to be answered by the Petitioner. Petitioner will have to rely on the Court's records and computer storage.

   (e) Did you receive an evidentiary hearing on your petition, application, or motion?

   Yes ( ) No ( )
   (f) Result: _____
   _____
   _____
   (g) Date of result: _____

7. As to any third federal petition, application, or motion, give the same information:
   (a) Name of court: _____
   (b) Case number: _____
   (c) Nature of proceeding: _____
   _____
   (d) Grounds raised (list all grounds; use extra pages if necessary):
   _____
   _____
   (e) Did you receive an evidentiary hearing on your petition, application, or motion?
   Yes ( ) No ( )
   (f) Result: _____
   _____
   (g) Date of result: _____

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 ( ) Appeal No. _____
   (2) Second petition, etc. No ( ) Yes ( ) Appeal No. _____
   (3) Third petition, etc. No ( ) Yes ( ) Appeal No. _____

9. If you did not appeal from the adverse action on any petition, application, motion, explain briefly why you did not: _____
   _____
   _____

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

    A. Ground one: THE INDICTMENT DOES NOT ESTABLISH PROBABLE CAUSE WHEN THE PERJURED AFFIDAVIT IS

REMOVED AND THE TRIAL COURT LACKS SUBJECT MATTER JURISDICTION VIOLATING DUE PROCESS.

Supporting FACTS (tell your story briefly without citing cases or laws): The material facts in this case are undisputed, and the undisputed facts (with the proven and admitted Probable Cause Affidavit/Arrest Report (hereinafter "affidavit") removed do not establish probable cause for a First Appearance; nor does the indictment establish probable cause, where the Assistant State Attorney (hereinafter "ASA") as an Officer of the Court committed FRAUD on the Court, violating due process of law. He presented the grand jury with a perjured affidavit, knowing it to be such in order to influence them into returning their true bill. However, he never informed the grand jury, the court and, the defense of such, that he knew to be perjury, and the Trial Court lacked Subject Matter Jurisdiction, which violated due process.

In order to show that the INDICTMENT does not establish probable cause (with the perjured affidavit removed) and that the Trial Court lacked Subject Matter Jurisdiction, defendant Broom will start with the First Appearance, that he was not allow to be present at.

The ASA as an Officer of the Court, first committed FRAUD on the Court and denied Broom due process of law at the First appearance, where he presented the perjured affidavit as probable cause to detain Broom. The First Appearance established NO valid probable cause and the Trial Court, therefore Lacked Subject Matter Jurisdiction.

The ASA had possession of the witness statements, which clearly establish from their statements, as used in the perjured affidavit, were not what they actually stated. The ASA never corrected what he learned to be false. Hence, FRAUD on the Court was perpetrated by the ASA, an Officer of the Court, violating due

process.

To further establish that the affidavit contained perjured material information that the witnesses (Singhs) did not state, a Bond Reduction Hearing was held with Broom present. Once aware of the information in the sworn affidavit used as probable cause form the arresting detective, Broom informed his attorney that the affidavit was a lie and that Det. Woodard was a liar, for there could not have been an argument between Broom and the victim where he was not in the room at the time of the tragedy, but rather at the Coke machine. With this information from Broom, his attorney questioned Det. Woodard under oath and she candidly admitted that the material information in her sworn affidavit was **not** what the witnesses had stated, establishing the affidavit to be perjury.

Next, the ASA presented this perjured affidavit to the grand jury to influence them into returning their true bill. This violated the grand jury's independent finding of probable cause. As such, the indictment does not establish probable cause and the Trial Court Lacks Subject Matter Jurisdiction.

An indictment obtained with a fraudulent document cannot become a valid probable cause where through State Action the ASA as Prosecutor presented what he knew to be a perjured material affidavit. With a void indictment there is no probable cause, and the Trial Court lacks Subject Matter Jurisdiction because no crime is shown to have been committed.

Due process is violated and an indictment must be set aside when the Prosecutor permits a defendant to be tried upon an indictment to which he knows is based on a perjured material affidavit without informing the grand jury, the court, and the defense of such.

The grand jury was influenced by the ASA's use of the knowingly perjured material affidavit; the trial conviction is based upon the grand jury's materially tainted indictment, causing said indictment to lack a valid probable cause that a crime had been perpetrated by the criminal agency of another – causing the trial court to Lack Subject Matter Jurisdiction.

The CAUSE is Broom was prosecuted on an empty Grand Jury Indictment obtained by FRAUD by State Action with a proven and admittedly (by the Affiant) perjured affidavit stating that the death of Ms. Charlotte Swenson Martz was caused by the criminal agency of another, specifically by the defendant. This fraudulently insinuated that Charlotte's death was other than suicide or by a bizarre accident, as established by the evidence.

The PREJUDICE to the defendant is the fact that the grand jury was unduly influenced into believing that a criminal act occurred instead of an accident or suicide, as the evidence established. The fraud perpetrated on the grand jury and the court by the ASA shows a miscarriage of justice, imprisoning an innocent man for a murder that never occurred. NO valid evidence of a crime exists with the

perjured affidavit removed; therefore, the Trial Court clearly Lacks Subject Matter Jurisdiction.

It was approximately five (5) years after the conviction, and after Petitioner's appeal and federal habeas was denied, that the Prosecuting attorney admitted in his Response to a Post-Conviction Motion filed January 20, 1986, that he utilized said perjured affidavit to obtain the "true bill". The Defendant could not have known this or discovered it through due diligence.

This type of prosecuting appears to have been ASA Hardy Pickard's **modus operandi** as the Prosecuting Attorney, which is seen by the following case law:

Petitioner provides this Court with a limited portion of the substantive evidence which corroborates the claim of fraud perpetrated by the prosecutor through State Action. Appraisal of the following allows this Court to view this issue no longer as a matter of opinion for decision by a jury but as a matter of FACTS and LAW for the Court to decide regarding due process rights of Petitioner violated by State Action.

This Court is now undeniably in possession of these facts and laws. Upon full review of this Application, establishing the reckless disregard and malicious intent through FRAUD by State Action, this Court will see that the State violated both State and Federal due process of law.

Petitioner recently discovered numerous State Actions of fraud perpetrated by

Assistant State Attorney Hardy O. Pickard while prosecuting additional cases.[1] These acts of fraud are clearly prosecutorial misconduct and reflect Mr. Pickard's **modus operandi** in the courtroom.

In Kelley v. Singletary, the District Court held, "This case presents many incidences of prosecutorial misconduct. Hardy O. Pickard, Assistant State Attorney, has a **habit** of failing to turn over exculpatory and impeachment evidence [FN3]". 222 F. Supp. 2d. 1357 (S.D. Fla. 2002)(emphasis added).

[FN3] goes on to state: "In another capital murder case, Circuit Court Judge Barbara Fleischer, sitting by designation by the Florida Supreme Court as a temporary judge of the Tenth Circuit, ordered a new trial for a defendant because Assistant State Attorney Hardy Pickard withheld impeachment material from the defense. State of Florida v. Melendez, No.: 84-1016A2-XX (Tenth Judicial Circuit of Florida), slip op. Filed December 5, 2001."

A recent Supreme Court case, Johnson v. State, emphatically and unequivocally reveals the ongoing corruption of ASA Pickard. The Court held in pertinent part: ". . .we must vacate the death sentence under Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d. 104 (1972). . .This result is dictated by the misconduct of the original prosecutor in the case, **Hardy Pickard**. His misconduct **tainted the state's case at every stage** of the proceeding. . .This is not a case of

[1] These additional cases are in addition to Petitioner's present case.

over zealous advocacy, but rather a case of deliberately misleading both the trial court and this Court." 44 So. 3d. 51, 56, n. 18 (Fla. 2010)(emphasis added).

The Johnson Court further held, "It must be emphasized that in our American legal system there is no room for such misconduct. . . .Jones v. State, 705 So. 2d. 1364, 1367 (Fla. 1998). . . .In our system of justice, ends do not justify means. Rather, experience teaches that the means become the end and that irregular and untruthful arguments lead to unreliable results. Lawlessness by a defendant never justifies lawyers conduct at trial. *See, e.g.*, United States v. Bagley, 473 So. 2d. 667, 105 S. Ct. 3375, 87 L. Ed. 2d. 481 (1985); Giglio, *supra.*, Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d. 1217 (1954); Guzman v. State, 868 So. 2d. 498 (Fla. 2003). The State must cling to the higher standard even in its dealing with those who do not." Johnson, id. (emphasis added).

As previously illustrated, ASA Hardy Pickard was fully aware that the Probable Cause Affidavit/Arrest Report, sworn to by the investigating officer was fraudulent due to the fact that it contained material facts that Mr. Pickard knew the witnesses (Singhs) did not present in their statements. Where case-related facts or evidence is withheld by other State agents, such as law enforcement officers, the State Attorney is charged with constructive knowledge and possession of that withheld evidence. The prosecutor is, therefore, charged with possession of what the state possesses.

Nevertheless, a grand jury hearing was held, but: When a duly constituted grand jury returns an indictment valid on its face, no independent inquiry may be made to determine the kind of evidence considered by the grand jury in making its decision. To do so would further invade the independence of the grand jury. HOWEVER, THIS FINDING DOES NOT AFFECT THE ESTABLISHED ROLE OF THE GRAND JURY, which relies upon the prosecutor to initiate and prepare criminal cases and investigate that which comes before it. The prosecutor is present while the grand jury hears testimony; he calls and questions the witnesses and draws the indictment. With that great power and authority there is a correlative duty, and that is not to permit a person to stand trial when he knows that perjury permeates the indictment.

At the point which he learned of the perjury before the grand jury, the prosecuting attorney was under a duty to notify the court and the grand jury, to correct the cancer of justice that had become apparent to him. To permit the Petitioner to stand trial when the Prosecutor knew of the perjury before the grand jury only allowed the cancer to grow.

Petitioner has shown that the Prosecuting attorney ASA Pickard knew from the First Appearance that the Probable Cause Affidavit/Arrest Report was perjured. However, Mr. Pickard took NO measures to correct what he knew to be false but instead utilized it to illegally obtain the "true bill" indictment.

As seen by the State Court's judicial finding below and the information stated aforestated, this indictment must be dismissed.

Judge Luten's 6th Judicial Circuit State Court made a **JUDICIAL FINDING** when she granted a Petition for Writ of Habeas Corpus July 28, 1987 making the **judicial finding** that the indictment underlying the conviction that Broom is now serving was based on false information, perjury and governmental misconduct.

The Court's perspective made the judicial finding that habeas corpus purpose is to deal with constitutional errors that have resulted in deprivation of due process rights. After a complete review of Broom's transcripts, Luten's Court was overwhelmed with the totality of the many circumstances of due process violation in this case.

The Luten Court made the **judicial finding** that an arrest affidavit must be presented to a committing magistrate for a probable cause determination that must presume that the facts contained therein are not perjured. Although Broom was not allowed to be at the First Appearance, he has shown that not only were the facts in the arrest affidavit proven to be false but that the Affiant even admitted to her perjury within the same – as seen in the Probable Cause Affidavit/Arrest Report and compared to excerpts from the Motion to Reduce Bond.

As seen in the ASA's Response to the 1986 Motion for Post-Conviction relief, after Broom's direct appeal and federal habeas had been denied, the ASA

admitted to using Det. Woodard's perjured affidavit in order to persuade the grand jury into returning the State's tainted drafted indictment with their true bill. The State however, never informed the Court, the Grand Jury, and the Defense of its use of the knowingly perjured Affidavit to secure the true bill.

Further, **Judicial finding** by Judge Luten's Court in Case Number 86-19114-1: Order Granting Petition for Writ of Habeas Corpus (hereinafter referred to as "Luten")(*Reversed on Different Grounds*) made **judicial findings** of:

The Probable Cause Affidavit. "The affidavit sworn to by Officer Woodard contains the following language: 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. The implication of the statement is to indicate that there was an argument between the deceased and the defendant, which argument was followed by a shot. The statements of the Singhs clearly reflect that this is not true, and that, furthermore, neither of them perceived the loud bang to be a gun shot. At the bond hearing held on 25 June 1981 Officer Woodard indicates that the affidavit is incorrect as to the Singh's statement as well as to the statement alleged to have been made by the defendant. To couch the probable cause affidavit in the language used is clearly to **manipulate the facts** in order to establish probable cause for a charge of first-degree murder." (emphasis added)(Exhibits omitted).

The Luten Court went on in its **judicial finding** for the Grand Jury Hearing:

The list of witnesses who testified before the grand jury was never given to defense counsel, despite the comments by the state that there was no objection to providing same." However the deposition of Officer Woodard taken on Sept. 28, 1981, gives us some idea of who was present. She confirms that the medical examiner was not called to testify before the grand Jury. This view appears to have been confirmed in that during the motion hearings, the State did not deny defense counsels [sic] comment that defense counsel believed the medical examiner had not testified. Would this testimony have made a difference to the grand jury? No one can positively state, but based upon his trial testimony it certainly would have been valuable and could have given to the grand jury the only concrete view of the circumstances relevant to the homicide, especially as it **relates** to the possible powder burns on the deceased's hand and the inability to determine whether the wound was or was not self-inflicted.

"Thereafter in the deposition transcripts, Officer Woodard indicates that Ora Lee Eubanks (the deceased's sister), the deceased's brother, Mary Prochaska (a friend of the deceased) and Ted Shackleford (the bouncer at Liquor Mart) testified. From reviewing the trial testimony of these individuals, it is apparent that none had actual knowledge of the homicide, although some could testify to what occurred earlier in the evening and others could only testify as to the state of mind of the deceased and prior difficulties which the deceased had with the defendant." Luten

(emphasis added)(exhibits omitted).

The Luten Court made further **Judicial findings** of the Investigative Stage. "The actions of the investigating law enforcement agency fell far below normal standards and resulted in the loss of evidence which could have been exculpatory and promoted possible evidence which could have been false and prejudicial. The matter of the incorrect and possibly perjured complaint/arrest form has already been discussed. Upon arriving at the scene the officers required the defendant to pick up the weapon and toss it across the room. This required him to handle an alleged murder weapon and then potentially destroyed prints which may have indicated the deceased fired the gun.. Additionally the officers then handled the weapon, tucking it into one officers waistband removing it and replacing it for photographic purposes, replacing it in the waistband, taking it to the station and unloading it and subsequently sending it off for fingerprint analysis. (emphasis added)(exhibits omitted).

"Tests which were performed either had little bearing on the case (such as a paraffin test on the spent cartridge) or did not occur until such time as any evidentiary value had been lost (such as not preserving the gun for fingerprint purpose and not doing scrappings [sic] of the deceased's hand until the autopsy) or weren't the type needed to ascertain probative information (such as neutron/vs paraffin tests on both the decedent's and defendant's hands)." Luten (exhibit omitted).

See the Bond Reduction hearing, where the **JUDICIAL FINDING** regarding

the Probable Cause Affidavit/Arrest Report was proven and admitted to by its Affiant to being perjury. No one, however, not even the Prosecuting Attorney – who is to take corrective measures when it has been shown to be false – ever, corrected and/or suppressed this proven and admittedly perjured material document. Instead, it was utilized to draft an indictment used to bolster the State's tainted indictment to obtain the jurors "true bill". These **JUDICIAL FINDINGS** clearly establish intentional use by the State of perjured material documents and/or government misconduct to convict an innocent man.

With Det. Woodard's perjured statement within the Probable Cause Affidavit/Arrest Report removed there is **NO** Probable Cause; and the Trial Court, therefore lacked Subject Matter Jurisdiction.

Dismissal of an indictment is required when the Grand Jury has been overreached or deceived in some significant way, including, as has been shown, where a perjured affidavit has been intentionally presented.

The deliberate use of a knowingly perjured document (i.e. the Probable Cause Affidavit/Arrest Report) by the State Prosecuting Attorney is fraud on the Court and the Grand Jury when: If the State Attorney and 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 should be set aside for improper influence. An overstepping of the State Attorney's function could constitute an

invasion of the functions of the Grand Jury, and interfere with their independence. A denial of due process occurs where the grand jury has been overreached or deceived in some significant way (*e.g.*, as in this present case a perjured affidavit has deliberately been presented to the grand jury).

The grand jury indictment must be dismissed in this case due to the State's overreaching, causing the grand jury to no longer be a grand jury and the indictment no longer to be an indictment.

When prosecutorial misconduct amounts to overreaching the will of the grand jury (as in this case) so that the indictment, is, in effect, that of the prosecutor rather than the grand jury, an indictment must be dismissed. Our State and Federal Constitutional guarantee presupposes an investigative body acting independently of either prosecuting attorney or judge. When a prosecutor uses perjured evidence he knows to be perjured, he commits FRAUD on the Court.

Based upon the foregoing and/or with said perjured affidavit removed, 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 applicant guilty of the underlying offense. No evidence or testimony put Broom in the motel room with the deceased at the time of the alleged crime. This perjured document has never been suppressed and/or stricken from evidence but continues to play a role in Broom's conviction.

This Court has recently held that a defective indictment does not deprive a court of jurisdiction and further held that a conviction remained in effect and the. . . .court retained jurisdiction, despite the dismissal of the indictment. However, where perjury was deliberately used to obtain an indictment (as in this case), the ASA overreached the grand jury by presenting the knowingly perjured affidavit to influence the grand jury in their independent finding. The resulting conviction was founded upon the perjured affidavit just like the indictment. The court lacks subject matter jurisdiction where there is NO valid Probable Cause. Therefore, a conviction obtained on knowingly perjured evidence presented by the State is void and the Court loses any jurisdiction it improperly obtained.

In the foregoing, Petitioner has shown there was no crime committed and, thus, his actual innocence for the "gateway" through which he must pass in order to have the federal claims heard that are procedurally barred. Petitioner has also shown the prosecutorial misconduct and Fraud on the Court by the Prosecuting Attorney, which can be raised at anytime as a miscarriage of justice.

CONCLUSION

A court without authority to adjudicate a matter has NO jurisdiction. . .*e.g.*, a court of limited criminal jurisdiction has no power to try a murder indictment and its judgment therein would be void and of no effect because it Lacks Subject Matter Jurisdiction.

WHEREFORE, based upon the aforementioned arguments, grounds and

authorities, Petitioner, Anthony W. Broom, request that this Court utilize its inherent power to address the merits raised in the foregoing grounds, dismiss the indictment, reverse the Court's void and/or illegal Order and grant his immediate release from illegal confinement, or in the alternative any other relief the court deems just and proper, **i.e., granting leave to file a second or successive Habeas Corpus Petition to the District Court.**

Respectfully submitted,

Anthony Broom, *in propia persona*
081443/E2108L - Petitioner
Mayo Correctional Institution Annex
8784 West U.S. Hwy 27
Mayo, FL 32066

OATH/VERIFICATION

I HEREBY CERTIFY under the penalties of perjury that I am the Petitioner in the above pleading and have read the foregoing document and that the facts stated therein are true and correct.

Anthony Broom, *in propia persona*
081443 – Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was placed in the hands of Mayo Correctional Institution Annex officials for mailing, via U.S. Mail, to: The Office of the Attorney General, State of Florida,

Criminal Division, PL-01, The Capitol, Tallahassee, FL. 32399 –1050 on this 10 day of October, 2013.

Respectfully submitted,

Anthony Broom, *in propia persona*
081443/E2108L - Petitioner
Mayo Correctional Institution Annex
8784 West U.S. Hwy 27
Mayo, FL 32066