

**APPENDIX A:**

Opinion, United States v. Henry Paul Richardson,  
Appeal No 17-7517 (4th Cir. April 3, 2018)  
(unpublished opinion).

App. 1

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 17-7517**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HENRY PAUL RICHARDSON, a/k/a Packer,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:06-cr-00106-HEH-1; 3:17-cv-00732-HEH)

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Submitted: March 29, 2018      Decided: April 3, 2018

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Before AGEE and DIAZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Henry Paul Richardson, Appellant Pro Se. Gurney Wingate Grant, II, Assistant United States Attorney, Brian R. Hood, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Henry Paul Richardson seeks to appeal the district court's order denying his untimely Fed. R. Civ. P. 59(e) motion challenging the dismissal of his unauthorized 28 U.S.C. § 2255 (2012) motion and denial of his motion to amend. He also seeks to appeal that part of the court's order denying his motions to stay the mandate and stay the appeal period. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion

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states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Richardson has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*DISMISSED*

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FILED: April 3, 2018

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 17-7517  
(3:06-cr-00106-HEH-1)  
(3:17-cv-00732-HEH)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

HENRY PAUL RICHARDSON, a/k/a Packer

Defendant - Appellant

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JUDGMENT

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In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

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**APPENDIX B:**  
Memorandum of Opinion  
Dismissing Successive 28 U.S.C. §2255 Motion,  
United States v. Henry Paul Richardson,  
Civil No17-cv-00732 (E.D. VA Oct. 31, 2017).

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

UNITED STATES )  
OF AMERICA )  
v. ) Criminal No.  
HENRY PAUL ) 3:06CR106-HEH  
RICHARDSON, ) Civil Action No: \_\_\_\_\_  
Petitioner. )

**MEMORANDUM OPINION**  
**(Dismissing Successive 28 U.S.C. § 2255 Motion)**

(Filed Oct. 3, 2017)

By Memorandum Opinion and Order entered on July 26, 2012, the Court denied a 28 U.S.C. § 2255 Motion filed by Petitioner (ECF Nos. 186, 187). Since that date, Petitioner has filed a variety of motions attempting to challenge his conviction. On June 16, 2017, the Court received yet another motion pursuant to 28 U.S.C. § 2255 (“Successive § 2255 Motion,” ECF No. 221-4), and a Motion for Discovery (ECF No. 221-1) related to that Successive § 2255 Motion. Petitioner also filed a Motion for an Evidentiary Hearing (ECF No. 222) for his Successive § 2255 Motion.

The Antiterrorism and Effective Death Penalty Act of 1996 restricted the jurisdiction of the district courts to hear second or successive applications for federal habeas corpus relief by prisoners attacking the validity of their convictions and sentences by

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establishing a “gatekeeping mechanism.” *Felker v. Turpin*, 518 U.S. 651, 657 (1996) (internal quotation marks omitted). Specifically, “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). The Court has not received permission from the United States Court of Appeals for the Fourth Circuit to entertain Petitioner’s Successive § 2255 Motion. The Clerk will be directed to assign a civil action number to the Successive § 2255 Motion (ECF No. 221–4). The Successive § 2255 Motion will be dismissed for want of jurisdiction. Petitioner’s Motion for Discovery (ECF No. 222–1) and Motion for an Evidentiary Hearing (ECF No. 222) pertaining to his Successive § 2255 Motion will be denied. A certificate of appealability will be denied.

An appropriate Final Order will accompany this Memorandum Opinion.

[HEH] /s/  
HENRY E. HUDSON  
UNITED STATES  
DISTRICT JUDGE

Date: Oct. 31, 2017  
Richmond, Virginia

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

UNITED STATES )  
OF AMERICA )  
v. ) Criminal No.  
HENRY PAUL ) 3:06CR106-HEH  
RICHARDSON, ) Civil Action No. \_\_\_\_\_  
Petitioner. )

**FINAL ORDER**  
**(Dismissing Successive 28 U.S.C. § 2255 Motion)**

(Filed Oct. 31, 2017)

In accordance with the accompanying Memorandum Opinion, it is hereby ORDERED that:

1. The Clerk is DIRECTED to assign a civil action number to the Successive § 2255 Motion (ECF No. 221-4);
2. The action is DISMISSED for want of jurisdiction;
3. Petitioner's Motion for Discovery (ECF No. 221-1) and Motion for Evidentiary Hearing (ECF No. 222) are DENIED; and,
4. A certificate of appealability is DENIED and the action is DISMISSED.

Should Petitioner desire to appeal, a written notice of appeal must be filed within sixty (60) days of the date of entry hereof. Failure to file a written notice of

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appeal within that period may result in the loss of the right to appeal.

The Clerk is DIRECTED to send the Memorandum Opinion and Final Order to Petitioner and counsel for the United States.

It is so ORDERED.

[HEH] /s/  
HENRY E. HUDSON  
UNITED STATES  
DISTRICT JUDGE

Date: Oct. 31, 2017  
Richmond, Virginia

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**APPENDIX C:**

Order Staying the Mandate until the fourth Circuit  
Ruled on Petition for rehearing or rehearing  
en banc, United States v. Henry Paul Richardson,  
No. 17-7517 (4th Cir. May 9, 2018).

FILED: May 8, 2018

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 17-7517  
(3:06-cr-00106-HEH-1)  
(3:17-cv-00732-HEH)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

HENRY PAUL RICHARDSON, a/k/a Packer

Defendant - Appellant

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STAY OF MANDATE UNDER  
FED. R. APP. P. 41(d)(1)

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Under Fed. R. App. P. 41(d)(1), the timely filing of a petition for rehearing or rehearing en banc or the timely filing of a motion to stay the mandate stays the mandate until the court has ruled on the petition for rehearing or rehearing en banc or motion to stay. In accordance with Rule 41(d)(1), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

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**APPENDIX D:**

Order denying Petition for rehearing and rehearing  
en banc, United States v. Henry Paul Richardson,  
No.17-7517 (4th Cir. June 12, 2018).

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FILED: June 12, 2018

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 17-7517  
(3:06-cr-00106-HEH-1)  
(3:17-cv-00732-HEH)

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UNITED STATES OF AMERICA  
Plaintiff - Appellee  
v.  
HENRY PAUL RICHARDSON, a/k/a Packer  
Defendant - Appellant

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ORDER

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The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Agee,  
Judge Diaz, and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

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#### **APPENDIX E:**

The Following Sworn Affidavits: (1) investigator Alfred C. Brown; (2) Government Sole eyewitness Sylvester T. Washington; (3) Natilia Johnson and 911 call log; (4) Andrew Grant; and (5) Medical Expert Elkhonon Goldberg.

**Affidavit of Alfred C. Brown**

I, Alfred C. Brown, do swear and affirm that the following information is true and correct to the best of my knowledge and belief.

1. I, Alfred C. Brown, am a Private Investigator with Insight Investigations located at 7206 Hull Street Road, Suite 210 North Chesterfield, Virginia 23235. No promise or agreement has been made in exchange for this statement, and I do not expect any in the future. I am willing to testify before any court if called upon concerning such matters stated herein.
2. I have been retained to conduct an investigation in the case of the United States v. Henry Paul Richardson, Criminal Case no: 3:06 cr-106 E.D. VA June 26, 2006. This investigation included conducting interviews with prior government witnesses, and developing potential new witnesses to shed light on Henry P. Richardson's innocence, the police and the prosecutorial misconduct that was concealed on this case and recently revealed by a key government witness.
3. As part of my investigation, I conducted several interviews with prior key government witness Sylvester T. Washington during August 2012, September 2013 and in March 2014 at his residence. I secured an Affidavit from Sylvester T. Washington based upon what was revealed to me during the investigation process and interviews with Mr. Washington (See Attachment Affidavit of Sylvester T. Washington.)

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4. According to Mr. Washington on the night of February 14, 2006 a shooting occurred in Gilpin Court near the corner West Coutt Street and Saint Paul Street at which time he was shot and Freeman Brown was killed. Mr. Washington lapsed into a coma for a week.

5. According to Mr. Washington, on February 21, 2006 Richmond Police Detective David Burt visited him at the hospital which at that time Detective Burt asked him some questions pertaining to him being shot. Washington stated that Detective Burt showed him some pictures and asked him did he know any of the people shown in the pictures. Mr. Washington stated that he informed the detective that he recognized the guys in the pictures as being from Jackson Ward area. Then Detective Burt showed Mr. Washington a picture of Henry Richardson a.k.a. Packer and asked if he knew him, which Washington stated "yeah". According to Mr. Washington, Detective Burt told him to initial and circle the picture of Henry Richardson. Mr. Washington stated that during that hospital encounter on February 21, 2006 with detective Burt, he was never asked to circle or initial the picture of the person who allegedly shot him and Freeman Brown. Mr. Washington stated that he did not initial or circle the picture Henry Richardson shown to him by Detective Burt as the person involved with the shooting on February 21, 2006 in which he shot and freeman Brown Killed. According to Mr. Washington, he signed the picture of Henry Richardson as only as knowing him when asked by Detective Burt and nothing further.

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6. According to Mr. Washington, on February 21, 2006, when he was visited at MCV Hospital by Detective Burt, he was so heavily medicated, and out of it that he didn't even remember what Detective Burt was talking about during such visit.

7. According to Mr. Washington, he was arrested for a probation violation in March 2006. That's when he was approached by Richmond Police Detective David Burt, Richmond Police Officer Sandy Ledbetter (who was the one that arrested him), F.B.I. Agent Gary Jennings (who put his wheelchair in the Van during the time that he arrested) and he was then taken to the Richmond City Jail visitation. During such interview Mr. Washington alleged that Richmond Police Officer Sand Ledbetter stated to him that District Attorney Roderick very pissed at him, real pissed at him, referring to when Mr. Washington testified in the General District Court before Judge Cheeks on March 13, 2006 that Henry Richardson wasn't the person that shot him.

8. According to Mr. Washington, at the time of his arrest for probation violation on March 2006, Richmond Police Officer Sandy Ledbetter and Richmond Detective Burt informed him Henry Richardson a.k.a. Packer was the person responsible for shooting him and Freeman Brown. Mr. Washington stated that these Richmond Police Officers also informed him that Mr. Richardson had confessed to shooting him and Freeman Brown, and that Mr. Richardson was around Jackson Ward bragging about it. Mr. Washington stated that Detective Burt and Officer Ledbetter continued to

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tell him the story of how he was shot and that Henry Richardson was the shooter.

9. According to Mr. Washington, he stated the he sat there quietly and listened. Mr. Washington then told Detective Burt and Officer Ledbetter that Henry Richardson wasn't the person that was responsible for shooting him. The police continued to tell him that Packer was the one that shot him. Mr. Washington stated that Detective Burt told him that he faced seven years for probation violation. Mr. Washington stated that he told Detective Burt that he had not done anything to violate his probation and that he was supposedly ready to come off probation. Mr. Washington stated that Detective Burt then alleged that they found cocaine in his pockets during the night he was shot on February 14, 2006 and they were withholding the charges.

10. According to Mr. Washington, in March 2006 or so he was approached by Richmond Police officer Sandy Ledbetter and she told him that they were going to charge him with murder and robbery stemming from 1992 that occurred in Jackson Ward on West Charity Street.

11. According to Mr. Washington, he stated that he was never formally charged or prosecuted by the Richmond Police Department with the 1992 murder and robbery, nor was he charged or prosecuted for forging documents, or cocaine possession. Mr. Washington stated that these charges were withheld by the

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Richmond Police in an effort to get him to cooperate in the case against Henry Richardson.

12. According to Mr. Washington, during the time of his arrest around March 2006, for probation violation, F.B.I. Agent Gary Jennings told Mr. Washington that they arrested him for his protection and safety. Mr. Washington then told the police that his wife and kids were still in Gilpin Court. Shortly thereafter, he was released from his probation violation in which they relocated him and his family to Southside of Richmond.

13. Mr. Washington stated that F.B.I. Agent Jennings gave him \$2000.00 in cash to help him move. Agent Jennings had him sign some piece of paper.

14. According to Mr. Washington, Richmond Police Detective Burt and Richmond Police Officer Ledbetter told him if Henry Richardson found out that he was talking to the police that he would kill his family. Also, Washington mentioned that Detective David Burt and Officer Ledbetter informed him that Richardson had committed a murder in Mosby court and that a guy was shot to death and his son was in the vehicle with him. Mr. Washington stated that Detective Burt felt like Mr. Richardson had gotten away with murder and they wanted to put him away for the rest of his life.

15. According to Mr. Washington, on or about April 2006, he met with Richmond Police Detective David Burt, F.B.I. Agent Gary Jennings and Prosecutor Roderick Young at the Federal Court Building in the case against Henry Richardson in which the Federal Grand Jury was meeting. Mr. Washington stated that he was

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informed by Richmond Detective David Burt that they needed him to go before the Grand Jury. Mr. Washington stated that is when he told them he didn't know what to say. According to Washington Detective Burt told him that "We already told you what to say. Henry Richardson aka "Packer" is around there bragging that he shot you. He confessed to the shooting".

16. According to Mr. Washington, he was coerced, and pressed by Richmond Police Officer Sandy Ledbetter, Detective David Burt, F.B.I. Agent Gary Jennings and Prosecutor Roderick Young into saying Henry Richardson was the shooter when he was shot and Freeman Brown was killed on February 14, 2006.

17. Mr. Washington informed me that the three people he saw on that night in the van were dark skinned and that Mr. Richardson was light skinned. He said none of the shooters was Mr. Richardson.

18. Mr. Washington also informed me that he did purchase drugs in the past from Mr. Richardson.

19. According to Mr. Washington, he stated that he and Andre Seward were friends and had been hanging together every day up until Mr. Seward was killed in August 2012.

The Information and facts  
contained herein are true and correct.

By: /s/ Alfred C. Brown

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**STATE OF VIRGINIA:**  
**CITY/COUNTY OF Richmond, to wit:**

Sworn and subscribed before me in my jurisdiction aforesaid the 7th day of June, 2014

My Commission Expires: September 30, 2017

222745 /s/ [Illegible]  
Reg# Notary Public

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**Affidavit of Sylvester Tyres Washington**

I, Sylvester T. Washington, do swear and affirm that the following information is true and correct to the best of my knowledge and belief.

1. I, Sylvester T. Washington currently reside at the 1347 Minefee Street Road, Richmond Virginia 23224. No promises or agreements have been made in exchange for this statement, and I do not expect any in the future.
2. I want to tell the truth regarding my participation in the case United States of America v. Henry Paul Richardson that happened in May of 2006.
3. At the time I was living on 913 South Meadow Street, Richmond Virginia.
4. I knew Mr. Henry Paul Richardson a.k.a. "Packer" because he was a familiar face in Gilpin Court and he knew the people of Jackson Ward.
5. I was wounded in the shooting that occurred on February 14, 2006, in which Freeman Brown was killed.
6. I was awakened in the hospital by two detectives. Detective David E. Burt and his partner. They began to question me, "you know this dude right here?" They were showing me an array of photographs, but he was pointing to one particular photograph. I said "yeah." They had me circle the photograph and initial it.

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7. When I was questioned by Judge Cheeks as to whether or not I knew who shot me, he had pointed to Mr. Richardson, I said "no." Judge Cheeks said he was going to dismiss the case.
8. The next morning, I was in bed and awakened by Special Agent Gary F. Jennings, Sandy Leadbetter, a large Black police officer and a Caucasian police officer that resembled Chuck Norris. Sandy Leadbetter stated "District Attorney Roderick Young is pissed at you. . . . real pissed at you." They rearrested me and took me to the Richmond City Jail.
9. I was taken to a visitation room in the Richmond City Jail where Detective David E. Burt and his partner, Special Agent Gary F. Jennings, Donna Mixner and an unknown female questioned me and stated that they wanted to keep me in jail for my safety. Gary Jennings stated to me that the charges they brought against me were to keep me off the streets and to protect me and my family. The charges were trespassing in Jackson, forging a public document and a probation violation.
10. Law enforcement was attempting to intimidate me and wanted my family to be afraid of Mr. Richardson. According to them, Mr. Richardson committed a murder in Mosby Court. A guy was shot to death while his son was in the vehicle with him. They felt as though Mr. Richardson had gotten away with that murder.
11. They asked me if I had ever bought drugs from Mr. Richardson and I said "yes".

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12. Special Agent Gary Jennings gave me \$2000.00 in cash to help me move away from the Gilpin Court apartment complex. My family and I moved from Gilpin Court in Jackson Ward to Southside where we live now. I was given a paper to sign that said I accepted the money. I didn't get a copy of that paper. This was done at their office and it was done at some point before court.
13. I was coerced into saying that the shooter was Mr. Henry Richardson when, in fact the shooters were three dark skinned men and Mr. Henry Richardson is light skinned.
14. The driver was also dark skinned and none of them were Mr. Henry Paul Richardson. The information and facts contained herein are true and correct.

/s/ Sylvester Washington  
Sylvester T. Washington

**State of**  
**City / County of Richmond, to wit:**

**Sworn and subscribed before me in my jurisdiction aforesaid the 25 day of February 2014.**

/s/ Alfred C. Brown  
**Notary Public**

**Registration Number: #238973**

**My Commission Expires on: October 31, 2017**

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**Affidavit of Natilia "Nikki" Johnson**

I, Natilia "Nikki" Johnson, do swear and affirm that the following information is true and correct to the best of my knowledge.

1. I, Natilia "Nikki" Johnson live at 1702 South Lawn Ave. Richmond, Virginia 23235. No promise or agreement has been made in exchange for this statement, and I don't expect anything in the future. I am willing to testify before any court if called upon concerning such matters as stated herein.
2. On February 14, 2006, I was living at 204 West Coutts Street Apartment # D in Gilpin Court, Richmond, Virginia 23220. My telephone number was 804-562-4895.
3. I was sitting on my porch when I first saw a Silver Van coming down St. Paul Street. There were three individuals in the Van. I had never seen them before. The Van went up the street, turned around and came back. The Van stopped on Coutts and St. Paul Street; the person on the passenger side got out and had a weapon in his hand. The Van sliding door opened and another guy got out and he also had a weapon and they both started shooting.
4. The description of the person who got out on the passenger side was brown skinned, with Cornrows. The person who opened the Van sliding door had real dark skin. The both looked to be about 5'10", between 140 to 160 pounds. The driver had Cornrows also, but he never got out of the Van. The all had on dark

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hoodies. After shooting stopped, the two guys got back in the Van and left.

5. When I looked out at the street, Freeman Brown was lying in the street, he had been shot and I called 911. I saw another individual lying by the telephone booth, he had been shot also.

6. I have heard of Henry Richardson aka "Packer" but never been formally introduced to him. I've seen him around and my memory of him is he is very light skinned. Neither one of the shooters were light skinned. They were much darker than Henry P. Richardson.

7. I lived next door to Jackie who was Freeman's girl-friend at that time. When the shooting was over I saw Jackie run over to Freeman Brown.

8. I called sometime before 11:21 p.m. to 911 and told the operator what I saw happen. I don't remember telling the operator that I didn't wish to be seen.

9. Since the 911 call, I have had no contact with police at all. No one has contacted me until Mr. Alfred C. Brown came to ask me questions regarding this incident.

The Information and facts contained herein are true and correct.

**By:** /s/ Alfred C. Brown

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**STATE OF VIRGINIA:  
CITY/COUNTY OF Richmond, to wit:**

Sworn and subscribed before me in my jurisdiction aforesaid the 6th day of June, 2014.

My Commission Expires: September 30, 2017

222745 /s/ [Illegible]  
Reg# Notary Public

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Detective Jeffrey Crewell  
Report # 20060214-1206  
911 Information  
Collected from Dispatcher Lloyd at 2-14-06 at 2321  
hours

Call #	Information	Number
1204	Two males shot, no suspected information Male caller doesn't wish to be seen	648-9804
1205	15 shots heard, caller doesn't wish to be seen	439-9390
1206	Two people shot on corner, "drive by" Female caller named NIKI doesn't wish to Be seen	562-4895
1207	Several shots heard, nothing seen	523-3492
1208	Two males in street, male caller doesn't wish to be seen	397-4675
1209	Shots heard, two bodies in street, female caller	938-2251
1210	Person shot, vehicle might have turned on to Watson Street	611-8876
1211	Two people shot, one possibly DOA Female caller	622-3838
1212	Two males shot, NFD	237-2135
1213	Subject shot, several shots heard, Male caller doesn't wish to be seen	303-7629
1214	Shots heard, one male in street, Fe- male caller doesn't wish to be seen	648-9087

## **AFFIDAVIT**

My name is Andrew Lee Grant, Jr. I am 34 years old and currently incarcerated in the Richmond City Jail. On August 6, 2013, I was visited by Attorney Joe Morrissey who asked me if I knew about the shooting that occurred on or about February 14, 2006 at the intersection of St. Paul and Coe Street in Gilpin Court. I told Mr. Morrissey that I did remember the facts very well and I told him the following.

On February 14, 2006. I had just exited the **Tiger Mart Convenience Store** and was crossing the street diagonally (See map). I told Mr. Morrissey that I saw Sylvester Washington walking on St. Paul Street. As I continued walking towards Washington I saw a car drive up Coe Street and stop in the middle of the road. At first, I did not think anything of the car. Then, all of sudden, I heard a loud voice yell at the person who was in the phone booth: "So you think that I am playing with you?" Then that person started shooting at the person in the phone booth. The person in the phone booth was Mr. Brown and he was killed by the gun shots.

As soon as the shooting took place, I ran and ducked behind some cars on St. Paul Street. However, I was able to see the person who was doing the shooting. He was a brown-skinned male approximately 5'8" tall and very muscular weighing approximately 190-195 pounds. The person who was shooting was using an assault rifle and fired approximately 8-9 shots. Brown was shot and killed and Washington was hit in the

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cross-fire. (The only reason that I was not shot/killed was because I ran behind the cars on St. Paul Street).

I also remember that the shooter had on a light tee shirt and a low-style haircut. While I do not know the name of the person that did the shooting, I know that it was not Henry Richardson. Henry Richardson is approximately 5'5", 145 pounds, light-skinned with curly, bushy hair.

I have not spoken to Henry Richardson in over 7 years – a couple of weeks before the shooting. Mr. Morrissey is the first person to ask me questions about the shooting in seven years.

I am currently incarcerated in the Richmond City Jail and have approximately 80 more days left to serve of my sentence. I will then be released and I have no other charges pending. Mr. Morrissey asked if I would provide information to any police or law enforcement officer if they have any questions and I said that I would. I can be reached at 592-42365 and I will be residing with my fiancé at 3407 Enslow Avenue, Richmond, Virginia 23222.

/s/ Andrew Grant  
Andrew Lee Grant Jr.

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City/County of Richmond  
Commonwealth  
Subscribed and [illegible]  
this 19 day of August 2013  
by \_\_\_\_\_  
Pamela Woody [Illegible] Notary Public  
Reg.# 7251018 Exp. 4/30/17

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**ELKHONON GOLDBERG, PH.D.**

Clinical Professor of Neurology  
New York University School of Medicine

Diplomate, American Board of Professional Psychology  
American Board of Clinical Neuropsychology

**AFFIDAVIT**

To The Honorable Court

Please find enclosed an affidavit for Mr. Henry P. Richardson

I have been retained by Mr. Henry Richardson to review the circumstances leading to his conviction and incarceration. Specifically, I have been asked to address the issues related to the validity of the presumed perpetrator's identification by the victim.

The following records have been made available to me for review:

Medical College of Virginia Hospital treatment notes and reports pertaining to Sylvester Washington (2/14/06-3/8/06)

Richmond Police Department Reports (select) (2/14/06-2/15/06)

United States of America vs. Henry Paul Richardson trial transcripts (6/26/06-6/27/06)

Based on my review of records, a shooting incident took place on February 14, 2006, in which Mr. Sylvester Washington was wounded and Mr. Freeman Brown

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was killed. Mr. Washington suffered five gunshot wounds to the left upper and lower extremities, which necessitated amputation of his left leg above the knee and also interfered with his motions in the left arm. Systolic blood pressure was reported 80 on hospital admission. Toxicology was positive for cocaine and opiates. Mr. Washington was reportedly conscious on arrival but then slipped into coma and remained comatose for 7 days. Before lapsing into coma he was questioned by detective Joseph Fultz but provided little information and said he was in pain, repeating "Not now, not now." He subsequently lapsed into coma on February 15 and remained comatose until February 21, 2006. He was put on Methadone immediately upon coming out of coma.

Identification of Henry Richardson as the alleged perpetrator in the shooting was made by Mr. Sylvester Washington on or about February 21, 2006 to Detective David Burt, who visited Mr. Washington in the hospital upon being advised that he had just come out of coma – reportedly the day after he came out of coma. It is my understanding that Mr. Washington was shown several photos, and that he began to nod when he saw Mr. Richardson's photo, and that this was interpreted by Detective Burt as positive identification. It is my understanding that at about the time of this interaction a note was made in the patient's progress notes by a treating physician that he was "extremely paranoid."

Several issues of concern exist, leading one to question the validity of the presumed perpetrator's identification by Mr. Washington. The first issue pertains to the

possibility of retrograde amnesia, i.e., memory impairment for the events antedating the assault. The second issue pertains to Mr. Washington's mental state at the time when he made the identification. The third issue pertains to the format of the identification procedure itself. The fourth issue pertains to the illicit substances Mr. Washington reportedly had taken before the assault. The fifth issue pertains to the medications Mr. Washington was on at and around the time of the identification. I will address the issues one by one.

**Retrograde amnesia** Retrograde amnesia (RA) is a complete or partial loss of memories pertaining to the events preceding the onset of brain dysfunction. RA is characterized by a "temporal gradient" whereby memory is most affected for the events relatively proximal to, and is less affected for the events further removed back in time from, the onset of brain dysfunction. RA may cover the time span ranging from minutes to days, weeks, or even months (1, 2). Mr. Washington lapsed into a week-long coma a day after the assault. Coma is clearly a form of brain dysfunction, and a distinct possibility exists that RA developed as a result, impairing Mr. Washington's memory for the events of the previous day, including the identity of the assailant. According to the records, Mr. Washington did not remember being given Methadone on admission even before coma. This clearly suggests the presence of RA, which could have also clouded his recollections about the circumstances of the assault.

The accuracy of Mr. Washington's memories for the events in question is challenged by several inconsistencies

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between his account and that of the witnesses. He referred to a “gold” van, whereas witness Jacqueline Jones referred to a “silver” van. Mr. Washington claimed that the assailant was “light-skinned” but a witness claimed that the people in the van were “dark-skinned”. Furthermore, it sounds like Mr. Washington’s assertion that Mr. Richardson was the assailant may have been based on inference rather than on direct recollection: it had to be “him” because he’s lighter than the rest of them

When he was asked in the ambulance “Who shot you, man?” Mr. Washington did not offer a definitive response, but said that he was in pain and asked for some medications to alleviate the pain. When subsequently asked by the prosecutor about prior identification, he said that he was in a coma and could not have identified anyone, and on another occasion he said the Mr. Richardson was not the shooter, and then again that he lied when he had said so. Assertions have been made that Mr. Washington “changed his mind” because he felt or actually was threatened, but the fact remained that he could not have been telling the truth both times, since he contradicted himself and kept making mutually exclusive statements.

**Mental state at the time of the identification.** The transition from coma to complete lucidity is usually not instantaneous. The patient usually does not “snap out of coma” and returns to complete mental clarity right away. It is often a gradual process, whereby the patient’s arousal level is compromised for a period of time and only gradually returns to a completely

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normal level (3). It is very probable that barely a day after coming out of coma, Mr. Washington's arousal level and overall cognition were still considerably impaired. Any recollections, statement, response; or decision, made by Mr. Washington's at that time, as well as his ability to understand the nature of his interaction with the Detective, must be taken with a considerable grain of salt. While the Detectives' eagerness to get critical information as soon as possible is perfectly understandable, it can be argued that trying to elicit information from a patient barely out of coma was a mistake.

**The format of identification.** According to the records made available to me, Mr. Washington was shown a series of photographs which included the photo of Mr. Richardson. The whole "identification" process consisted of the following: Mr. Washington nodded his head upon seeing Mr. Richardson's photograph and then signed and dated the photograph at the Detective's request. There is no report of any definitive verbal statement by Mr. Washington and it is thus not at all clear that he even understood the nature of inquiry. In his, very likely still compromised, mental state the nod, as well as the signature, could easily have meant a mere acknowledgment of familiarity, particularly if other photos were those of strangers or of individuals less well known to Mr. Washington. While interpreting a nod as a sign of identification may have been more acceptable in a cognitively intact individual, a mere nod is too ambiguous in a cognitively compromised individual when one cannot even be certain in his ability

to fully understand the nature of the interaction and of questions asked. Likewise, Mr. Washington did not specify what exactly he was attesting to with his signature: linking Mr. Richardson to the assault or a mere fact of recognition of Mr. Richardson's face.

**Illicit substances before the assault.** According to the records, Mr. Washington had been a heroin addict for 15 years. Furthermore, according to the records toxicology on hospital admission was positive for cocaine and opiates. Mr. Washington himself later acknowledged that he had ingested heroin a few hours before the assault. Cocaine is a stimulant, a powerful catecholamine agonist, and chronic cocaine abuse results in changes in several dopamine pathways in the brain. Heroin is an opioid. While their mechanisms of action are different, research has shown that both cocaine and heroin abusers have impaired attention, executive functions, and memory (4, 5, 6, 7, 8, 9, 10). Thus Mr. Washington's cognition, including his memory, was likely to have been somewhat compromised even before his lapse into coma, thus casting additional doubt on his ability to accurately register events at the time of the assault, and thus on the accuracy of his subsequent recollections and identification.

**Medications at the hospital.** At various times upon his admission, Mr. Washington was put on Methadone, Dilaudid, Oxycontin, and Morphine. Methadone is a synthetic opioid binding to opioid receptors. Methadone also binds to NMDA receptors, which makes it a glutamate antagonist. Methadone is known to produce cognitive symptoms including impairment of memory,

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decision making, impulse control, and of a wide range of other cognitive functions, as well as visual and auditory hallucinations. Dilaudid, Oxycontin and Morphine are analgesics acting on the opioid receptors. Among their side effects, hallucinations, disorientation, and other cognitive changes are known to occur (11, 12, 13, 14). Barely a day after coming out of coma, Mr. Washington's cognition was likely to have been further compromised by these side effects, this casting further doubt on his ability to comprehend the nature of his interaction with the Detective, as well as on the accuracy of his recollections and identification.

**CONCLUSIONS.** The combination of the above factors – the possibility of retrograde amnesia, the likelihood of compromised mental state at the time of identification so soon after coming out of coma, the ambiguous nature of the format in which identification was conducted, they likely effect of illicit drugs at the time of assault, and the likely effect of medications at the time of identification – make the validity and accuracy of the perpetrator's identification by Mr. Washington subject to considerable doubt and fall far short of the "beyond reasonable doubt" criterion and standard.

Sincerely,

/s/ Elkhonon Goldberg  
Elkhonon Goldberg, Ph.D.

March 31, 2010

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Sworn before me this  
31 day of March 2010

/s/ [Illegible]

SCOTT [ILLEGIBLE]  
Notary Public State of New York  
No. [Illegible]  
Certified [Illegible]  
Commission expires [Illegible]

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**APPENDIX F:**

Selected excerpts of Trial Transcripts  
of the Proceeding in United States v.  
Henry Paul Richardson, No3:06-Cr-106  
(E D. VA June 26, 2006, Day-1, page#135,  
trial testimony of Sylvester T. Washington,  
and pages#262 thru 265 trial Counsel  
Cary Bowen Arguments.

[135] released?

A No.

Q Not at all?

A No.

Q You're just taking the morphine?

A Yes, Oxycontin.

Q Oxycontin. No heroin, though?

A No.

Q What reward are you getting from the government, if any, for your testimony?

A Ain't no reward.

Q No reward?

A No.

Q You haven't gotten any money, or anything like that, have you, from the government?

A No.

Q Tell me this, Mr. Washington, when you went to court, the courtroom is about this size, right, that you went into in front of Judge Cheek?

A Yes.

Q And Judge Cheek was there, right?

A Yes.

Q Both the bailiffs up at the front?

A Yes.

Q Bailiff at the back, right?

\* \* \*

[262] MR. YOUNG: The government rests.

THE COURT: All right.

Ladies and gentlemen, we're moving at a very good pace today, and we're actually probably moving ahead of schedule, so I think what I'm going to do is I'm going to recess now until tomorrow morning. I have a few matters to take up, and it will give you a chance to have a little bit of additional personal time.

Now, between now and tomorrow, please remember, didn't discuss the case among yourselves or with anyone else. I know it's extremely tempting to go home and sit down with your spouse, friend, children or neighbors and tell them what you're doing at the courthouse. You simply can't do that. Keep your own counsel. Try to avoid reading any kind of news account of this case, or any other related matter.

Have a good night's sleep. See you back here tomorrow morning at 9:00. Can everyone be here at 9:00? See you then. You're excused and free to go.

(The jury is no longer present in the courtroom.)

THE COURT: Mr. Bowen or Mr. Stone, any legal issues you'd like to bring to my attention at this time?

MR. BOWEN: Yes, sir. Until about four days ago, this was scheduled to be a three defendant trial and [263] there were other counsel involved. Counsel for one of the other defendants made a motion to have a medical expert qualified, and we were piggybacking on that, Your Honor. Mr. Stone just asked did the Judge ever grant that motion.

THE COURT: I never – the motion was never brought to my attention.

MR. BOWEN: All right.

THE COURT: I don't believe.

MR. BOWEN: I could be wrong, but as I understood it, Ms. Windmueller was filing a motion to have a former medical examiner, Jack Daniel, qualified – appointed as an expert for her to be used by all defendants. And he in fact went with her and went through the medical records of Mr. Washington. I didn't follow up on that, sir, and that's why I'm trying to throw this up right now. I gather from what you're saying that he was not appointed?

THE COURT: No, sir, Mr. Bowen. To my knowledge, and, again, I could be wrong, there is a lot of matters brought to my attention every day, but I have no recollection of that, and I think I would. And Mr. Cerullo has a pretty good recollection of this stuff.

MR. BOWEN: Judge, may we move for that now? I [264] don't have his resume here that I know of, I don't have a motion here in writing that I know of, but I expect we can get it.

THE COURT: Is it for the purpose of engaging him as an expert to testify? Because if the request is for any kind of a continuance, I think you can forecast what my ruling will be.

MR. BOWEN: No, it's not for a continuance.

THE COURT: Okay.

MR. BOWEN: Judge, he's already gone over, as I understand it from Ms. Windmueller, the medical records of Sylvester Washington. And he's in a position to comment on what the drugs that were being administered to Mr. Washington, what affect they would have on the body.

THE COURT: Toxicologically?

MR. BOWEN: Yes.

THE COURT: Okay.

MR. BOWEN: And so as I understand it, he reviewed the morphine drips, Methadone drips, I'm not sure what else off the top, and it's that that we wanted to present to the jury.

THE COURT: Is he an MD?

MR. BOWEN: Yes, sir, he is.

THE COURT: Has a copy of his report been [265] submitted to the prosecution?

MR. BOWEN: There's been no report, sir. As I understand it, he didn't do this until – we had some trouble getting with the custodian of records and –

THE COURT: Well, hold on just one second.

MR. BOWEN: Yes, sir.

THE COURT: Mr. Young, you've not had a chance to interview this gentleman, have you?

MR. YOUNG: No, haven't had a chance to interview him, Your Honor. And I believe we have an agreed discovery order in the case which would provide for five days notice. Now, I will say defense in this case has been good and stipulated to a number of things –

THE COURT: So here's what I'm going to do if you no objection. I'll go ahead since your defense is predicated on this and allow you to call this witness. But what I want to do is I want to make sure in the morning before he comes in here that Mr. Young has a chance to talk to him in advance.

MR. BOWEN: We'll try to arrange for him to call Mr. Young tonight.

THE COURT: Absolutely.

MR. BOWEN: I haven't talked to him about it either, Judge. Ms. Windmueller has. And if it hadn't been for Mr. Stone to bring that to my attention, I

\* \* \*

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**APPENDIX G:**

Copy of United States Court of Appeals for the  
fourth Circuit Standard Application for filing  
Pre-filing Authorization Pursuant to 28 U.S.C. §2244

**United States Court of Appeals  
for the Fourth Circuit**

Instructions for Filing Motion Under 28 U.S.C.  
§ 2244 For Order Authorizing District Court to Con-  
sider Second or Successive Application for Relief  
Under 28 U.S.C. §§ 2254 or 2255

1. Use the attached form to file a **Motion Under 28 U.S.C. § 2244 For Order Authorizing District Court to Consider Second or Successive Application for Relief Under 28 U.S.C. §§ 2254 or 2255**.
2. Answer completely all the questions on the attached form. Your failure to provide complete answers may result in the Court's denying your motion.
3. **Include copies of the following documents with your motion:**
  - A. The § 2254 or § 2255 applications you want to file in the district court if the Court of Appeals grants your motion.
  - B. All § 2254 or § 2255 applications you previously filed in any federal court challenging the judgment of conviction or sentence you now want to challenge.
  - C. All court opinions and orders, final and interlocutory, disposing of the claims in your previous § 2254 or § 2255 applications that challenged the judgment of conviction or sentence you now want to challenge.
  - D. All magistrate judge's reports and recommendations issued in all previous § 2254 or § 2255 applications that challenged

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the judgment or conviction or sentence you now want to challenge.

4. You must **sign the motion in three places** at the end of page 4. Your failure to sign the motion or to complete the Proof of Service may result in the Court's denying your motion.
5. You must file with the Court of Appeals **the motion and all documents attached to it**.
6. If your motion seeks relief under 28 U.S.C. § 2254, you must serve a copy of the motion and all documents attached to it on the attorney general of the state in which you are confined. Your failure to serve the attorney general may result in the Court's denying your motion.
7. If your motion seeks relief under 28 U.S.C. § 2255, you must serve a copy of the motion and all documents attached to it on the United States Attorney for the federal judicial district in which you were convicted. Your failure to serve the United States may result in the Court's denying your motion.

DOCUMENTS ARE SCANNED INTO ELECTRONIC  
FORM AND POSTED TO THE DOCKET.  
DO NOT USE STAPLES, TAPE OR BINDING.

06/24/2014 SCC

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MOTION UNDER 28 U.S.C. § 2244 FOR ORDER  
AUTHORIZING DISTRICT COURT TO CONSIDER SECOND  
OR SUCCESSIVE APPLICATION FOR RELIEF UNDER  
28 U.S.C. §§ 2254 OR 2255

United States Court of Appeals  
for the Fourth Circuit

Name of Movant	Prisoner Number	Case Number (leave blank)
Place of Confinement		

IN RE: \_\_\_\_\_, MOVANT

---

1. Name and location of court which entered the judgment of conviction from which relief is sought:  
\_\_\_\_\_
2. Parties' Names: \_\_\_\_\_ vs. \_\_\_\_\_
3. Docket Number: \_\_\_\_\_ 4. Date Filed: \_\_\_\_\_
5. Date of judgment of conviction: \_\_\_\_\_
6. Length of sentence: \_\_\_\_\_
7. Nature of offense(s) involved (all counts): \_\_\_\_\_
8. What was your plea?  
(Check one)  Not Guilty  Guilty  Nolo  
Contendere
9. If you pleaded not guilty,  
what kind of trial did you  Jury  Judge  
have? (Check one) only

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10. Did you testify at your trial? (Check one)  Yes  No
11. Did you appeal from the judgment of conviction? (Check one)  Yes  No
12. If you did appeal, what was the  
Name of court appealed to: \_\_\_\_\_  
Parties' names on appeal: \_\_\_\_\_ vs. \_\_\_\_\_  
Docket number of appeal: \_\_\_\_\_ Date of decision: \_\_\_\_\_  
Result of appeal: \_\_\_\_\_
13. Other than a direct appeal from the judgment of conviction and sentence, have you filed any other petitions, applications for relief, or other motions regarding this judgment in any federal court?  Yes  No
14. If you answered "Yes" to question 13, answer the following questions:
  - A. FIRST PETITION, APPLICATION, OR MOTION
    - (1) In what court did you file the petition, application, or motion? \_\_\_\_\_
    - (2) What were the parties' names? \_\_\_\_\_ vs. \_\_\_\_\_
    - (3) What was the docket number of the case? \_\_\_\_\_
    - (4) What relief did you seek? \_\_\_\_\_

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(5) What grounds for relief did you state in your petition, application, or motion?

(6) Did the court hold an evidentiary hearing on your petition, application or motion?  Yes  No

(7) What was the result?

Relief granted  Relief denied on the merits

Relief denied for  Relief denied for procedural failure to exhaust default

(8) Date of court's decision: \_\_\_\_\_

B. SECOND PETITION, APPLICATION, OR MOTION

(1) In what court did you file the petition, application, or motion? \_\_\_\_\_

(2) What were the parties' names? \_\_\_\_\_  
vs. \_\_\_\_\_

(3) What was the docket number of the case? \_\_\_\_\_

(4) What relief did you seek? \_\_\_\_\_

(5) What grounds for relief did you state in your petition, application, or motion?

(6) Did the court hold an evidentiary hearing on your petition, application or motion?  Yes  No

(7) What was the result?

Relief granted  Relief denied on the merits

Relief denied for  Relief denied for procedural failure to exhaust default

(8) Date of court's decision: \_\_\_\_\_

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### C. THIRD AND SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS

For any third or subsequent petition, application, or motion, attach a separate page providing the information required in items (1) through (8) above for first and second petitions, applications, or motions.

### D. PRIOR APPELLATE REVIEW(S)

Did you appeal the results of your petitions, applications, or motions to a federal court of appeals having jurisdiction over your case? If so, list the docket numbers and dates of final disposition for all subsequent petitions, applications, or motions filed in a federal court of appeals.

First petition, application, or motion  Yes Appeal No. \_\_\_\_\_  No

Second petition, application, or motion  Yes Appeal No. \_\_\_\_\_  No

Subsequent petitions, applications or motions  Yes Appeal No. \_\_\_\_\_  No

Subsequent petitions, applications or motions  Yes Appeal No. \_\_\_\_\_  No

Subsequent petitions, applications or motions  Yes Appeal No. \_\_\_\_\_  No

Subsequent petitions, applications or motions  Yes Appeal No. \_\_\_\_\_  No

If you did not appeal from the denial of relief on any of your prior petitions, applications, or motions, state

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which denies you did not appeal and explain why you did not.

15. Did you present any of the claims in this application in any previous petition, application, or motion for relief under 28 U.S.C. § 2254 or § 2255? (Check one)  Yes  No
16. If your answer to question 15 is “Yes,” give the docket number(s) and court(s) in which such claims were raised and state the basis on which relief was denied.
17. If your answer to question 15 is “No,” why not? This Court will grant you authority to file in the district court only if you show that you could not have presented your present claims in your previous § 2254 or § 2255 application because . . .
  - A. (For § 2255 motions only) the claims involve “newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [you] guilty”; or,
  - B. (For § 2254 petitions only) “the factual predicate for the claim could not have been discovered previously through the exercise of due diligence” and “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 factfinder would have found [you] guilty of the offense”; or,

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C. (For both § 2254 and § 2255 applicants) the claims involve “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court [of the United States], that was previously unavailable.”

I did not present the following claims in any previous petition, application, or motion for relief under 28 U.S.C. § 2254:

I did not present the claims listed above in any previous petition, application, or motion because

Movant prays that the United States Court of Appeals for the Fourth Circuit grant an Order Authorizing the District Court to Consider Movant’s Second or Successive Application for Relief Under 28 U.S.C. §§ 2254 or 2255.

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Movant’s Signature

I declare under Penalty of Perjury that my answers to all questions in this Motion are true and correct.  
Executed on \_\_\_\_\_

[date]

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Movant’s Signature

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PROOF OF SERVICE

A copy of this motion and all attachments must be sent to the state attorney general (§ 2254 cases) or the United States Attorney for the United States judicial district in which you were convicted (§ 2255 cases).

I certify that on \_\_\_\_\_ I mailed a copy  
[date] of this motion and  
all attachments

to \_\_\_\_\_ at the following address:

---

Movant's Signature

NO STAPLES, TAPE, OR BINDING PLEASE

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