IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 14-12194-B

IN RE:

ANTHONY W. BROOM,

Petitioner.

Application for Leave to File a Second or Successive
Habeas Corpus Petition, 28 U.S.C. § 2244(b)

BEFORE: MARCUS, WILSON and MARTIN, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. § 2244(b)(3)(A), Anthony W. Broom has filed an application seeking an order authorizing the district court to consider a second or successive petition for a writ of habeas corpus. Such authorization may be granted only if:

> (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 factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2). "The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection." *Id.* § 2244(b)(3)(C).

In his application, Broom indicates that he wishes to raise one claims in a second or successive § 2254 petition. Broom claims that the chief investigator fabricated her own series of events in order to implicate him in a crime that did not occur and the prosecutor proceeded with the case despite knowing that the investigator had fabricated documents in violation of his due process rights, and this resulted in his conviction even though he was actually innocent. Broom asserts that his claim relies upon both newly discovered evidence and a new rule of constitutional law, citing *McQuiggin v. Perkins*, 569 U.S. ___, 133 S.Ct. 1924, 185 L.Ed.2d 1019 (2013). Broom describes his newly discovered evidence as documents that expose the fabrication of pseudo-evidence; admissions from the person who fabricated the evidence; forensic and empirical proof that no crime occurred; state court proceedings and record evidence that the state court had previously ruled in his favor, but that higher state courts had ignored this ruling; witness statements that contradicted his conviction; and "intra-judicial documents" that established his actual innocence. He asserts that these documents were hidden in a file that had been denied to him, but a paralegal was able to obtain pursuant to the Florida Public Records Act.

Broom's claim fails to satisfy the statutory criteria. First, Broom does not identify any new evidence that establishes that by clear and convincing evidence that no reasonable factfinder would have found him guilty of the offense. *See* 28 U.S.C. § 2244(b)(2)(B)(ii). While Broom asserts that he has recently obtained documents to support his claim, he does not identify and/or cite to any specific documents. Instead, Broom offers nothing more than his own unsubstantiated assertions that he has documents that show that no crime was committed and that fabricated

evidence was used to convict him.

Second, Broom's reliance on *McQuiggin* is misplaced. In *McQuiggin*, the Supreme Court held that, if proved, actual innocence permits a petitioner to overcome either a procedural bar or the expiration of the statute of limitations in order to have the merits of his constitutional claims heard. *McQuiggin*, 569 U.S. at ____, 133 S.Ct. at 1928. However, the Supreme Court did not expressly hold that *McQuiggin* is retroactive on collateral review. *See Tyler v. Cain*, 533 U.S. 656, 663, 121 S.Ct. 2478, 2482, 150 L.Ed.2d 632 (2001) ("We thus conclude that a new rule is not 'made retroactive to cases on collateral review' unless the Supreme Court holds it to be retroactive."); *see generally McQuiggin*, 569 U.S. ___, 133 S.Ct. 1924. Nor has the Court made *McQuiggin* retroactive through a combination of cases that necessarily dictate retroactivity. *See Tyler*, 533 U.S. at 666, 121 S.Ct. at 2484. Additionally, although *McQuiggin* was decided in the context of collateral review, the Court indicated that its holding was limited to initial habeas petitions and was not applicable to second or successive petitions. *See McQuiggin*, 569 U.S. at ___, 133 S.Ct. at 1933-34 (differentiating initial habeas petitions from second or successive petitions in the context of the miscarriage-of-justice exception).

Accordingly, because Broom has failed to make a *prima facie* showing of the existence of either of the grounds set forth in § 2244(b)(2), his application for leave to file a second or successive petition is hereby DENIED.