Filed in The District Court
of Travis County, Texas
February 28, 2023 11:15 AM
Velva L. Price, District Clerk AM

APPENDIX E
COURT OF CRIMINAL APPEALS OF TEXAS
APPLICATION FOR A WRIT OF HABEAS CORPUS SEEKING RELIEF FROM FINAL FELONY CONVICTION UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07

DEFINITIONS

In this application form:

1. "Applicant" means a person seeking relief in an application for a writ of habeas corpus from his or her felony conviction imposing a sentence other than the death penalty or a probated sentence that has not been revoked. An applicant can be an inmate or a non-inmate whose liberty is restrained.

2. "Inmate" means a person who is in custody in a prison or jail.

3. "Petitioner" means a person, **including an attorney or a non-attorney**, presenting an application for a writ of habeas corpus on behalf of another person (the applicant). Any petitioner may present an application on behalf of an applicant for the purpose of obtaining relief from the applicant's felony conviction. However, the petitioner presenting the application form must sign and attest that he or she has consulted with the applicant concerning the application and the applicant has given consent to the filing of this application form.

INSTRUCTIONS

1. **All applicants and petitioners, including attorneys, must use the complete application form**. You must use this application form, which begins on the page following these instructions, to file an application, or an amended or supplemental application, for a writ of habeas corpus seeking relief **from a final felony conviction under Article 11.07 of the Code of Criminal Procedure**. (This application form is not for death-penalty cases, probated sentences which have not been revoked, misdemeanors, or pretrial habeas applications under Article 11.08 of the Code of Criminal Procedure.)

2. **Failure to follow these instructions may cause your entire application to be dismissed.**

3. The district clerk of the county in which you were convicted will make this application form available to you, on request, without charge. The form can also be obtained from the Court of Criminal Appeals' website.

4. learned about Baker from a prosecutor's note in the case file about a conFEBversation with her in 2000 which indicated You must file the entire application form, including those sections that do not apply to you. If any pages are missing from the form, or if the questions have been renumbered or omitted, your entire application may be dismissed as non-compliant.

5. You must make a separate application on a separate form for each case number from which you seek relief. Even if the judgments were entered in the same court on the same day, you must complete a separate application form for each case number. If a case number has multiple counts, include all the counts on one application form.

6. You **must** include all grounds for relief on the application form as provided by the instructions under item 18. You **must** also briefly summarize the facts of your ground on the application form as provided by the instructions under item 18. Each ground shall begin on a new page, and the recitation of the facts supporting the ground shall be no longer than the two pages provided for the ground in the form.

7. Answer every item that applies to you on the application form. Do not attach any additional pages for any ground. However, if you have more than five grounds for relief, you may include additional copies of pages 14 and 15 to add more grounds for relief. Additional grounds must still comply with instruction 6.

8. Legal citations and arguments may be made in a separate memorandum that complies with Texas Rule of Appellate Procedure 73 and certifies that the document does not exceed 15,000 words if computer-generated or 50 pages if not.

9. You must verify the application form by signing either the appropriate Unsworn Declaration or the "Oath Before a Notary Public," which are at the end of this form. If you are a petitioner presenting the application on behalf of an applicant, you may sign and verify the application form on behalf of the applicant. **However, any petitioner who signs and verifies the application form may be prosecuted and convicted for aggravated perjury if the application form contains any false statement of a material fact.**

10. When the application form is fully completed, mail the original and any exhibits and memorandum of law to the district clerk of the county of conviction or electronically file the application form with the district clerk of the county of conviction following the current electronic filing rules for criminal cases. Keep a copy of the application form for your records.

11. You must notify the district clerk of the county of conviction of any change in your address or email address after you have filed your application form. In addition, after the application form has been received by the Court of Criminal Appeals, you must notify the Clerk of the Court of Criminal Appeals of any change in your address or email address.

12. **Warning: If the application form does not include all of the grounds for relief, additional grounds brought at a later date may be procedurally barred.** *See* TEX. CODE CRIM. PROC. Art. 11.07 § 4.

learned about Baker from a prosecutor's note in the case file about a conFEBFEversation with her in 2000 which indicatec
Department Homicide Unit under the leadership of Hector Polanco, whichFE he denied making. His defense at

Case No. D-1-DC-91-915672-A

(The district clerk of the county of conviction will fill in this blank.)

FIRST AMENDED

IN THE COURT OF CRIMINAL APPEALS OF TEXAS APPLICATION FOR A WRIT OF HABEAS CORPUS SEEKING RELIEF FROM FINAL FELONY CONVICTION UNDER CODE OF CRIMINAL PROCEDURE ARTICLE 11.07

NAME: Allen Andre Causey

DATE OF BIRTH: 3/26/1965

PLACE OF CONFINEMENT: Thomas Havins, 500 FM 45 East, Brownwood TX 76801

WARDEN: Alonzo Hammond

TDCJ-CID NUMBER: 00629820 **SID NUMBER:** 04317630

(1) This application concerns (check all that apply):

- ☒ **a conviction**
- ☒ **a sentence**
- ☐ **time credit**
- ☐ **parole**
- ☐ **mandatory supervision**
- ☐ **out-of-time appeal or petition for discretionary review**

(2) What are the court number and county of the district court in which you were convicted?

331st District Court, Travis County

(3) What was the case number in the trial court? (Put only one case number here, even if it includes multiple counts. You must make a separate application on a separate form for other case numbers.)

Cause No. 91-5672

(4) What was the name of the trial judge?

Bob Perkins

(5) Were you represented by counsel? If yes, provide the attorney's name:

Yes, Michael Etchison

(6) What was the date that the judgment was entered?

Judgment entered on July 14, 1992. Sentenced on July 21, 1992.

(7) For what offense were you convicted and what was the sentence?

Murder, 50 years

(8) If you were sentenced on more than one count of an indictment in the same court at the same time, what counts were you convicted of and what was the sentence in each count?

N/A

(9) What was the plea you entered? (Check one.)

☐ **guilty-open plea**
☒ **not guilty**
☐ **guilty-plea bargain**
☐ ***nolo contendere*/no contest**

If you entered different pleas to counts in a multi-count indictment, please explain:

N/A

(10) What kind of trial did you have?

☐ **no jury**
☒ **jury for guilt and punishment**
☐ **jury for guilt, judge for punishment**

(11) **Did you testify at trial? If yes, at what phase of the trial did you testify?**

Yes, both pre-trial and during the trial on the merits

(12) **Has your sentence discharged?** ☐ **yes** ☒ **no**

If you answered yes, when did your sentence discharge? N/A

(13) **Did you appeal from the judgment of conviction?**

☒ **yes** ☐ **no**

If you did appeal, answer the following questions:

(A) Which court of appeals decided the appeal? Third Court of Appeals of Texas

(B) What was the case number? 03-92-00378-CR

(C) Were you represented by counsel on appeal? If yes, provide the attorney's name: Yes, Michael Etchison

(D) What was the decision and the date of the decision?

Conviction affirmed - 9/14/1994

(14) **Did you file a petition for discretionary review in the Court of Criminal Appeals?**

☒ **yes** ☐ **no**

If you did file a petition for discretionary review, answer the following questions:

(A) What was the case number? PD-1415-94

(B) What was the decision and the date of the decision?

Refused on February 10, 1995.

(15) **Have you previously filed an application for a writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure challenging *the conviction in this case number*?**

☐ **yes** ☒ **no**

If you answered yes, answer the following questions:

(A) What was the Court of Criminal Appeals' writ number? N/A

(B) What was the decision and the date of the decision? N/A

(C) Please briefly explain why the current grounds were not presented and could not have been presented in your previous application.

N/A

(16) Do you currently have any petition or appeal pending in any other state or federal court?

☐ **yes** ☒ **no**

If you answered yes, please provide the name of the court and the case number:

N/A

(17) If you are presenting a time credit claim, other than for pre-sentence jail time credit, have you exhausted your administrative remedies by presenting the time credit claim to the time credit resolution system of the Texas Department of Criminal Justice? (This requirement applies to any final felony conviction, including state jail felonies.)

☐ **yes** ☐ **no**

If you answered yes, answer the following questions:

(A) What date did you present the claim to the time credit resolution system?

N/A

(B) Did you receive a decision and, if yes, what was the date of the decision? _____

N/A

If you answered no, please explain why you have not presented your time credit claim to the time credit resolution system of the Texas Department of Criminal Justice:

N/A

(18) **Beginning on page 6, state concisely every legal ground for why you think that you are being illegally confined or restrained and then briefly summarize the facts supporting each ground. You must present each ground and a brief summary of the facts on the application form. If your grounds and a brief summary of the facts have not been presented on the application form, the Court will not consider your grounds. A factual summary that merely references an attached memorandum or another ground for relief will not constitute a sufficient summary of the facts.**

If you have more than four grounds, use pages 14 and 15 of the application form, which you may copy as many times as needed to give you a separate page for each ground, with each ground numbered in sequence. The recitation of the facts supporting each ground must be no longer than the two pages provided for the ground in the form.

You may include with the application form a memorandum of law if you want to present legal authorities or provide greater factual detail, but the Court will *not* consider grounds for relief set out in a memorandum of law that were not raised on the application form. The memorandum of law must comply with Texas Rule of Appellate Procedure 73 and must not exceed 15,000 words if computer-generated or 50 pages if not. If you are challenging the validity of your conviction, please include a summary of the facts pertaining to your offense and trial in your memorandum of law.

If the application form does not include all of the grounds for relief, additional grounds brought at a later date may be procedurally barred.

GROUND ONE:

New clear and convincing evidence shows Applicant is actually innocent and no reasonable juror could have found him guilty beyond a reasonable doubt in light of new evidence.

FACTS SUPPORTING GROUND ONE:

Applicant was convicted of the August 11, 1991, murder of Anita Byington. Byington was found murdered behind an apartment complex in East Austin after a night out on Sixth Street with six friends, one of whom (Kevin Harris) was the last to be seen with her alive. Harris testified that he had consensual sex with her at his home in North Austin after leaving the bar with her in her gold Honda, before separating from her after he said she told him she wanted to go buy crack (6 RR 25-27, 37-38); her kin said she was not a drug user (6 RR 103-04). The morning after, Harris had an arm injury that he said was from a stove-top burn after tripping over a bunched rug moved by his dog when he had gotten home after his night with the victim (6 RR 28). The victim's car was discovered on the afternoon of August 12 at Marshall Apartments, nearly five miles away from where her body was found. Months later, her purse was discovered near LBJ High School in East Austin (7 RR 166-67). The only evidence against Applicant was a signed confession taken by the Austin Police Department Homicide Unit under the leadership of Hector Polanco, which he denied making. His defense at trial was that the statement was false. Trial counsel diligently requested Brady evidence regarding the agency's taking of false confession at the time of trial and nothing was disclosed (Trial Tr. 8-16 (May 29, 1992)). In 2022, pursuant to Brady v. Maryland, the State disclosed that the officers involved in obtaining his confession

had a history and pattern of obtaining false confessions during the time frame in which he alleged the same.

Also in 2022, newly discovered witness, the 1991 ex-girlfriend of Kevin Harris, disclosed in a sworn deposition that Harris contacted her after midnight the night of August 11, 1991, to help him "move a friend's car" which the witness identified (in State's 25 & 26) as the victim's. Her sworn testimony is corroborated by a second newly discovered witness, her childhood best friend. Both show that both Applicant's confession and Kevin Harris's trial testimony are false. The Brady evidence and newly discovered evidence discovered in 2022 show by clear and convincing evidence no reasonable juror could have found him guilty beyond a reasonable doubt in light of new evidence, and that he is actually innocent. Ex parte Elizondo, 947 S.W.2d 202 (Tex. Crim. App. 1996).

GROUND TWO:

The State unknowingly sponsored the materially false testimony of the witness who was last seen with the victim alive (Kevin Harris) and violated Applicant's right to federal due process.

FACTS SUPPORTING GROUND TWO:

Harris, the State's first witness, testified that he had consensual sex with the victim at his home in North Austin after leaving the bar with her in her gold Honda (State's 25 & 26), before separating from her after he said she told him she wanted to go buy crack or marijuana (6 RR 25-27, 37-38); the victim's kin said she was not a drug user (6 RR 103-04). The morning after, Harris had an injury to his forearm he claimed was from a stove-top burn after tripping over a bunched rug moved by his dog when he had gotten home that night (6 RR 28). When questioned about any involvement in the murder, Harris said he knew no one from, and had never been to, the east side of Austin (6 RR 39). Months later, the victim's purse was discovered on the east side of Austin near LBJ high school. (7 RR 166-67). Newly discovered witness (Baker), the 1991 ex-girlfriend of Harris, disclosed that on the night of August 11, 1991, she was at her best childhood friend's Eastin Austin home, celebrating the friend's birthday when Harris contacted her after midnight to help him "move a friend's car". The parties learned about Baker from a prosecutor's note in the case file about a conversation with her in 2000 which indicated Harris had contacted her the night of the murder, had an arm injury, said something happened and was acting strange (Ex. 1 O'Connell Note). Baker said Baker and the friend (Echelmeyer) went to LBJ High School in East Austin. Baker identified State's 25 & 26, which depict the victim's car, as the car she helped Harris move.

She also recalled seeing an unfamiliar purse in Harris's possession that Harris said was his stepmother's. She also recalled Harris having an arm injury that night. Baker's testimony is corroborated by the friend's statement (Echelmeyer). Harris's testimony was materially false in that he: (1) denied having any knowledge of East Austin (6 RR 39); (2) denied having any knowledge of anyone who lived in East Austin (6 RR 39); (3) did not disclose asking his ex-girlfriend to help him move the victim's car after midnight (6 RR 39, 41); (4) said the last time he saw the victim was when she dropped him off which could not be true if he moved her car after she was killed (6 RR 27, 41, 44); (5) lied about how his arm was injured (6 RR 28). Harris's materially false testimony more likely than not contributed to Applicant's conviction.

Ex Parte Chabot, 300 S.W.3d 768 (Tex. Crim. App. 2009).

GROUND THREE:

The materially false officers' testimony violated Applicant's right to federal due process.

FACTS SUPPORTING GROUND THREE:

Because the only evidence against Applicant was his statement (6 RR 14), the testimony of the officers who took the statement (Hector Polanco, Mike Huckaby, Bruce Boardman, Ruben Fuentes) was material (6 RR 12-13; 9 RR 865-70, 72, 74, 78). The statement said that Applicant and the brother of his then-girlfriend (now wife) got into a dispute with the victim over cocaine and when she took off running, he grabbed her to stop stop her and his brother-in-law beat her with a large cement brick laying nearby; after, it said his brother-in-law moved the victim's car to a nearby apartment complex while Applicant followed in another vehicle. In 2022, pursuant to Brady v. Maryland, the State made a voluminous disclosure that the officers, most notably Hector Polanco, involved in obtaining Applicant's confession had a history and pattern of knowingly obtaining false confessions during the time frame in which Applicant alleged the same. Trial counsel diligently requested this Brady evidence regarding the officers' taking of false confession at the time of trial and nothing was disclosed (Trial Tr. 8-16 (May 29, 1992)). To the extent that the Coty presumption of falsity may need to apply to Hector Polanco, it should. Ex parte Mathews, 638 S.W.3d 685 (Tex. Crim. App. 2022) (extending Coty test to police officers). The officers' materially false testimony more likely than not contributed to Applicant's conviction. Ex Parte Chabot, 300 S.W.3d 768 (Tex. Crim. App. 2009).

GROUND FOUR:

At the time of trial, the State suppressed material exculpatory evidence that Applicant requested regarding APD Homicide Unit officers, most notably Hector Polanco, knowingly obtaining false confessions; if it had been disclosed, there is a reasonable probability that Applicant would not have been convicted.

FACTS SUPPORTING GROUND FOUR:

In 2022, pursuant to Brady v. Maryland, the State made a voluminous disclosure that the agency's homicide unit officers involved in obtaining Applicant's confession, most notably Hector Polanco, had a history and pattern of knowingly obtaining false confessions during the time frame in which Applicant alleged the same. Trial counsel diligently requested this Brady evidence regarding the agency's taking of false confession at the time of trial and nothing was disclosed (Trial Tr. 8-16 (May 29, 1992); 10 RR 1076). There was a multi-day (11-26,12-17-91) suppression hearing on the statement. The court and State knew Applicant's defense was that the statement was false, and he was coerced (by trickery and threat) into signing it (9 RR 865-70, 872, 874, 878;10 RR 1039); he testified to the same pretrial and at trial. Had the evidence that has now been disclosed disclosed to Applicant been available to him at the time of trial and not suppressed, there is a reasonable probability that he would not have been convicted. Brady v. Maryland, 373 U.S. 83 (1963).

GROUND FIVE **:**

Applicant was coerced into making a false statement in violation of his 5th Amendment right against self-incrimination and his substantive right to federal due process. Ex parte Brandley, 781 S.W.2d 886 (Tex. Crim. App. 1989).

FACTS SUPPORTING GROUND:

The only evidence against Applicant was a signed confession taken by the 1991 Austin Police Department Homicide Unit, under the leadership of Hector Polanco. Applicant denied making the confession, explaining at trial that he had maintained his innocence the entire interrogation and could not read well enough to understand what he was signing and that he was not read the true contents of the statement before he signed (9 RR 865-70, 877, 879). The State's officer-witnesses denied using such tactics and testified that Applicant voluntarily and freely gave his confession (7 RR 356, 361-62). The issue was litigated at trial and on direct appeal. Causey v. State, No. 3-92-378 (Tex. App.—Austin, Sept. 14, 1994, pet. ref'd); see also Zuliani v. State, 903 S.W.2d 812 (Tex. App.–Austin 1995, pet.ref'd) (reversed for finding confession taken by Polanco, Huckaby & Boardman to be coerced). In 2022, pursuant to Brady v. Maryland, the State made a voluminous disclosure that the officers, most notably Hector Polanco, involved in obtaining Applicant's confession had a history and pattern of knowingly obtaining false confessions during the time frame in which Applicant alleged the same. To the extent that the Coty presumption of falsity may need to apply to Hector Polanco, it should. Ex parte Mathews, 638 S.W.3d 685 (Tex. Crim. App. 2022)) (extending Coty test to police officers). In light of Applicant's trial testimony, and what is known now about the patterns and

practices of the officers involved in taking his statement that makes the statement unreliable, Applicant's statement was coerced in violation of his 5th Amendment right against self-incrimination and his substantive right to federal due process. Ex parte Brandley, 781 S.W.2d 886 (Tex. Crim. App. 1989).

WHEREFORE, I PRAY THAT THE COURT GRANT THE RELIEF TO WHICH APPLICANT MAY BE ENTITLED IN THIS PROCEEDING.

VERIFICATION

This application form *must be verified* in one of the following ways by either an applicant or a petitioner or it may be dismissed for noncompliance.

Applicants

In order to verify this application form, an applicant must sign one of the following:

(1) the "Unsworn Declaration" for inmates (page 16) if applicant is an inmate; or
(2) the "Unsworn Declaration" for non-inmates (page 17) if applicant is not an inmate; or
(3) the "Oath Before a Notary Public" before a notary public (page 18).

Petitioners

If a petitioner, including an attorney, presents an application form on behalf of an applicant, the petitioner may verify the application form for the applicant. In order to verify this application form, a petitioner must sign one of the following:

(1) the "Unsworn Declaration" for inmates (page 16) if petitioner is an inmate; or
(2) the "Unsworn Declaration" for non-inmates (page 17) if petitioner is not an inmate; or
(3) the "Oath Before a Notary Public" before a notary public (page 18).

In addition, *all petitioners*, including attorneys, presenting an application on behalf of an applicant must complete "Petitioner's Information" and sign "Petitioner's Statement" (page 19).

UNSWORN DECLARATION (INMATE)

My name is (First)_____ (Middle)_____(Last)_____, my date of birth is _____, and my inmate identifying number, if any, is _____.

I am presently incarcerated in (Corrections unit name)_____ in (City) _____, (County)_____, (State) _____, (Zip Code)_____. I declare under penalty of perjury that the contents of this application for a writ of habeas corpus and the facts stated in the application form are true and correct.

Executed on the _____ day of (Month)_____ (Year)_____.

Signature of Declarant: _____

test ttest to police officers). In light of Applicant's trial testimony, and what is known now about the patterns and test to po

UNSWORN DECLARATION (NON-INMATE)

My name is (First) _____ (Middle) _____ (Last)_____, my date of birth is _____, and my address is (Street)_____ _____, (City)_____ , (State)_____, (Zip Code)_____, and (Country)_____. I declare under penalty of perjury that the contents of this application for a writ of habeas corpus and the facts stated in the application form are true and correct.

Executed in _____County, State of _____, on the _____day of (Month)_____ (Year)_____.

Signature of Declarant: _____

OATH BEFORE A NOTARY PUBLIC

STATE OF TEXAS

COUNTY OF McLennan

Jessica S. Freud, being duly sworn, under oath says: "I am the applicant or petitioner in this action and know the contents of this application for a writ of habeas corpus and, according to my belief, the facts stated in the application form are true."

Signature of Declarant

SUBSCRIBED AND SWORN TO BEFORE ME THIS 27 DAY OF February, 2023.

E. ASHLEY WINDHAM
Notary Public, State of Texas
Comm. Expires 12-13-2023
Notary ID 126602515

Notary Public, State of Texas

PETITIONER'S INFORMATION

(Contact information for a petitioner presenting this application on behalf of the applicant)

Petitioner's printed name: Jessica S. Freud

State bar number, if applicable: 24095303

Address: 100 North 6th St., Suite 804, Waco, Texas, 76701

Telephone: 254-307-3384

Fax: 254-765-2739

Email Address: jessi@ipoftexas.org

PETITIONER'S STATEMENT

"I am signing and presenting this application form on behalf of the applicant for the purpose of obtaining relief from the applicant's felony conviction. I have consulted with the applicant concerning this application and the applicant has given consent to the filing of this application form."

Signature of Petitioner

Signed on February 27, 2023.