**IN THE CIRCUIT COURT OF COUNTY, WEST VIRGINIA**

**STATE OF WEST VIRGINIA EX REL.**

**XXXXXXXXXXXXXXXXXX**

 **Petitioner,**

**v. Case No. XX-C-XX**

 **HONORABLE JUDGE**

**DAVID BALLARD, Warden,**

**Mount Olive Correctional Complex,**

 **Respondent.**

**PETITIONER’S “LOSH CHECKLIST” OF GROUNDS FOR
POST-CONVICTION HABEAS CORPUS RELIEF**

Pursuant *Losh v. McKenzie*, 166 W.Va. 762, 277 S.E.2d 606 (1981) and this Court’s order filed on or about January 20, 2012, XXXXXX, by counsel, files the following “Losh List” which might be considered sufficient for habeas corpus relief. Petitioner has marked with an “X” each ground in the following list which he considers inapplicable to his convictions and that he is therefore waiving and not raising. With respect to the grounds not checked and thereby raised, petitioner has identified the applicable claim or ground in the *pro se* habeas petition, amended *pro se* petition, or the amended petition.

INAPPLICABLE:

 (1) Trial Court lacked jurisdiction.

 (2) Statute under which conviction obtained is unconstitutional

 (3) Indictment shows on its face that no offense was committed.

 (4) Prejudicial pre-trial publicity. (*Pro Se* Petition, ground 23).

 (5) Denial of right to speedy trial.

 (6) Involuntary guilty plea.

 (7) Mental competency at time of crime.

 (8) Mental competency at time of trial, cognizable even if not asserted at proper

 time or if resolution not adequate.

 (9) Incapacity to stand trial due to drug use.

 (10) Language barrier to understanding the proceedings.

 (11) Denial of counsel.

 (12) Unintelligent waiver of counsel.

 (13) Failure of counsel to take an appeal.

 (14) Consecutive sentence for same transaction.

 (15) Coerced confessions.

 (16) Suppression of helpful evidence by prosecutor. (Amended *Pro Se* Petition).

 (17) State’s knowing use of perjured testimony. (*Pro Se* Petition, ground 23).

 (18) Falsification of a transcript by prosecutor.

 (19) Unfulfilled plea bargains.

 (20) Information in pre-sentence report erroneous.

 (21) Ineffective assistance of counsel (*Pro Se* Petition grounds 1-12,14-20, 22-26,

 28-29, 31-33; Amended *Pro Se* Petition; Amended Petition grounds 1-2).

 (22) Double jeopardy.

 (23) Irregularities in arrest.

 (24) Excessiveness or denial of bail.

 (25) No preliminary hearing.

 (26) Illegal detention prior to arraignment.

 (27) Irregularities or errors in arraignment.

 (28) Challenges to the composition of grand jury or its procedures.

 (29) Failure to provide copy of indictment to defendant.

 (30) Defects in indictment.

 (31) Improper venue.

 (32) Pre-trial delay.

 (33) Refusal of continuance.

 (34) Refusal to subpoena witnesses.

 (35) Prejudicial joinder of defendants.

 (36) Lack of full public hearing.

 (37) Non-disclosure of Grand Jury minutes.

 (38) Refusal to turn over witness notes after witness has testified.

 (39) Claim of incompetence at time of offense, as opposed to time of trial.

 (40) Claims concerning use of informers to convict.

 (41) Constitutional errors in evidentiary rulings. (*Pro Se* Petition grounds 1, 22,

25, 28, Amended Petition ground 1).

 (42) Instructions to the jury. (*Pro Se* Petition grounds 27, 32; Amended Petition

ground 1).

 (43) Claims of prejudicial statements by trial judge.

 (44) Claims of prejudicial statements by prosecutor. (Amended *Pro Se* Petition;

*Pro Se* Petition grounds 21, 23, 29, 31).

\_ (45) Sufficiency of evidence. (*Pro Se* Petition ground 30).

 (46) Acquittal of co-defendant on same charge.

 (47) Defendant’s absence from part of the proceedings.

 (48) Improper communications between prosecutor or witness and jury.

 (49) Question of actual guilt upon an acceptable guilty plea.

 (50) Severer sentence than expected.

 (51) Excessive sentence.

 (52) Mistaken advice of counsel as to parole or probation eligibility.

 (53) Amount of time served on sentence, credit for time served.

XXXXXXXXXXXXX Petitioner