

IN THE _____ COURT OF
_____ COUNTY, TENNESSEE AT _____

_____)
PETITIONER (FULL NAME) _____)
_____)
_____) CASE NO. _____
VS. _____)
_____) (POST-CONVICTION)
_____)
STATE OF TENNESSEE _____)

TENNESSEE RULE 28 PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

Mailing Address of Petitioner _____

(including zip code) _____

Place of Confinement _____

Dep't of Corrections Number _____

NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY THE ACCOMPANYING INSTRUCTIONS.

1. Name and location (city and county) of court which entered the judgment of conviction or sentence challenged

2. Date of judgment of conviction _____

3. Case Number _____

4. Length of sentence _____

5. Offense Convicted of _____

6. What was your plea? (Check One)

(a) Guilty _____

(b) Not Guilty _____

(c) Not Guilty by reason of mental disease or defect _____

(d) Not guilty and not guilty by reason of mental disease or defect _____

(e) Nolo contendere _____

(f) None _____

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, specify.

(a) guilty plea counts: _____

(b) not guilty counts: _____

7. Kind of trial: (Check One)

(a) Jury _____ (b) Judge only _____

8. Did you testify at the trial?

Yes _____ No _____

9. Did you appeal from the judgment of conviction?

Yes _____ No _____

10. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court _____

(2) Result _____

(3) Date of result _____

(4) Grounds raised on appeal _____

(Attach additional sheets if necessary)

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court _____

(2) Result _____

(3) Date of result _____

(4) Grounds raised on appeal _____

(Attach additional sheets if necessary)

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court _____

(2) Result _____

(3) Date of result _____

(4) Grounds raised on appeal _____

(Attach additional sheets if necessary)

11. If more than one (1) year has passed since the date of final action on your direct appeal by the state appellate courts, state why the statute of limitations should not bar your claim.

12. Other than a direct appeal from the judgment(s) of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to the judgment(s) in any state or federal court?

Yes _____ No _____

13. If your answer to Question 12 was Yes, then give the following information in regard to the first such petition, application, or motion you filed:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(Attach additional sheets if necessary)

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

Yes _____ No _____

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application, or motion, give same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(Attach additional sheets if necessary)

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

Yes _____ No _____

(5) Result _____

(6) Date of result _____

(c) Did you appeal the result of the action taken on any petition, application, or motion identified above?

(1) First petition, etc. Yes _____ No _____

(2) Second petition, etc. Yes _____ No _____

(d) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not appeal:

14. If you did not raise the grounds you raised here in your original prosecution and on your appeal from that prosecution, explain why your claim in this case has not been waived for failure to raise it on appeal. If the claim was raised, explain why your claim is not previously determined.

15. If you have previously filed a petition, application, or motion with respect to the judgment(s) in any court, explain why your claim in this case has not been waived for failure to raise it in that prior proceeding. If the claim was raised, explain why your claim is not previously determined.

16. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information or by attaching separate pages.

INCLUDE ALL FACTS WHICH SUPPORT THE GROUNDS YOU CLAIM.

GROUND(S) OF PETITION

Listed below are possible grounds for relief. Consider the ground(s) that apply in your case, and follow the instruction under the ground(s):

- _____ (1) Conviction was based on unlawfully induced guilty plea or guilty plea involuntarily entered without understanding of the nature and consequences of the plea.
- _____ (2) Conviction was based on use of coerced confession.
- _____ (3) Conviction was based on use of evidence gained pursuant to an unconstitutional search and seizure.
- _____ (4) Conviction was based on use of evidence obtained pursuant to an unlawful arrest.
- _____ (5) Conviction was based on a violation of the privilege against self incrimination.
- _____ (6) Conviction was based on the unconstitutional failure of the prosecution to disclose to defendant evidence favorable to defendant.
- _____ (7) Conviction was based on a violation of the protection against double jeopardy.
- _____ (8) Conviction was based on action of a grand or petit jury that was unconstitutionally selected and impaneled.
- _____ (9) Denial of effective assistance of counsel.
- _____ (10) Newly discovered evidence.
- _____ (11) Illegal evidence.
- _____ (12) Other grounds.

THE LIST ABOVE DOES NOT INCLUDE A COMPLETE LIST OF ALL CONSTITUTIONAL VIOLATIONS. YOU MAY ADD ANY OTHERS YOU DEEM APPROPRIATE. ATTACH A SEPARATE SHEET OF PAPER LISTING EACH CONSTITUTIONAL VIOLATION THAT YOU CLAIM, WHETHER OR NOT IT IS LISTED ABOVE. UNDER EACH CLAIMED VIOLATION YOU CLAIM, LIST EACH AND EVERY FACT YOU FEEL SUPPORTS THIS GROUND. EXPLAIN IN DETAIL HOW YOU ARE PREJUDICED BY THE VIOLATION AND WHY YOU ARE ENTITLED TO RELIEF. BE SPECIFIC.

IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS: TENN. CODE ANN. § 40-30-102(c) LIMITS YOU TO ONLY ONE PETITION. TENN. CODE ANN. § 40-30-102(c) PROVIDES:

This chapter contemplates the filing of only one (1) petition for post-conviction relief. In no event may more than one (1) petition for post-conviction relief be filed attacking a single judgment. If a prior petition has been filed which was resolved on the merits by a court of competent jurisdiction, any second or subsequent petition shall be summarily dismissed.

17. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes _____ No _____

18. Give the name and address, if known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from adverse ruling in a post-conviction proceeding

19. Are you currently represented by counsel?

Yes _____ No _____

(a) If Yes, give name and address, if known, of the attorney representing you.

(b) If No, do you wish to have an attorney appointed?

Yes _____ No _____

(c) Has any attorney assisted in drafting or given advice regarding this petition for post-conviction relief?

Yes _____ No _____

If Yes, give name and address of attorney(s).

20. In the judgment you are attacking, were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes _____ No _____

21. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes _____ No _____

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) And give date and length of sentence to be served in the future:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes _____ No _____

22. What date is this petition being given to prison authorities for mailing? _____

Wherefore, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

PETITIONER'S VERIFICATION UNDER OATH
SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct. Executed on _____.

(Date)

Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the _____ day of _____, 20____.

Notary Public

My commission expires: _____

APPENDIX B. AFFIDAVIT OF INDIGENCY

I, _____, do solemnly swear (or affirm) that because of my poverty, I am not able to bear the expenses of the action which I am about to commence. I further swear (or affirm) that, to the best of my knowledge, I am justly entitled to the relief sought.

Petitioner

APPENDIX C. CERTIFICATION OF COUNSEL CERTIFICATE

I, _____, certify that I have thoroughly investi-

(Appointed or retained counsel)

gated the possible constitutional violations alleged by petitioner, including all those in paragraph 16 petitioner's possible constitutional claims, including all those in paragraph 15 of the form petition set forth in Appendix A and any other ground that petitioner may have for relief. I have discussed other possible constitutional grounds with petitioner. I have raised all non-frivolous constitutional grounds warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law which petitioner has. I am aware that any ground not raised shall be forever barred by application of Tenn. Code Ann. § 40-30-106(g), and have explained this to petitioner.

Counsel for Petitioner

Board of Professional Responsibility Number

[Adopted October 28, 1996.]

APPENDIX D. FORM MOTION TO REOPEN

The following form petition shall be available without cost to a prisoner in the prisons and other places of detention and shall also be available without cost to any potential petitioner in the office of the clerk of court for any court of

record with criminal jurisdiction. The Post-Conviction Procedure Act contemplates the filing of only one (1) petition for post-conviction relief. A motion to reopen should be filed only under the limited circumstances set out in Tenn. Code Ann. § 40-30-117.

READ THESE INSTRUCTIONS CAREFULLY BEFORE PREPARING THE PETITION

(1) This petition must be legibly handwritten or typewritten and must be signed by petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered completely in the proper space on the form or on additional sheets submitted with the form. This form may be obtained at the place of confinement corrections institution where you are confined or from any clerk of a court of record with criminal jurisdiction.

(2) No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum and not as part of this form.

(3) A separate petition must be filed for each judgment you seek to challenge. Only the judgments entered in a single trial or guilty plea proceeding may be challenged in a particular petition. If you seek to challenge judgments entered in different trials or guilty plea proceedings, either in the same county or in different counties, you must file separate petitions.

(4) YOU MUST INCLUDE IN THIS PETITION ALL GROUNDS FOR RELIEF. FAILURE TO INCLUDE A GROUND FOR RELIEF IN THIS PETITION WILL RESULT IN YOUR BEING BARRED FROM PRESENTING IT IN A FUTURE PETITION.

(5) YOU MUST INCLUDE ALL FACTS SUPPORTING EACH GROUND FOR RELIEF. YOU MUST BE AS SPECIFIC AS POSSIBLE AS TO THE FACTS.

(6) Complete all applicable items in the petition. When the petition is fully completed, the ORIGINAL must be mailed to the appropriate clerk of court.

(7) You must comply with these instructions in order to have your petition promptly considered.

(8) REMEMBER, A PETITIONER IS ENTITLED TO FILE ONLY ONE PETITION PER CASE.

IN THE _____ COURT OF _____ COUNTY, TENNESSEE
AT _____

_____))
PETITIONER (FULL NAME)))
))
VS.)) CASE NO.
_____)))
))
CONVICTION))) (POST-
STATE OF TENNESSEE))

MOTION TO REOPEN POST-CONVICTION PETITION

Mailing Address of Petitioner _____

(including zip code) _____

Place of Confinement _____

Department of Corrections Number _____

NOTICE: BEFORE COMPLETING THIS FORM, CAREFULLY READ THE ACCOMPANYING INSTRUCTIONS.

1. Name and location (city and county) of court which entered the judgment of conviction or sentence under attack

2. Date of judgment of conviction _____

3. Case Number _____

4. Length of sentence _____

5. Offense convicted of _____

6. What was your plea? (Check one)

(a) Guilty _____

(b) Not Guilty _____

(c) Not Guilty by reason of mental disease or defect _____

(d) Not guilty and not guilty by reason of mental disease or defect _____

(e) Nolo contendere _____

(f) None _____

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, specify:

(a) Guilty plea counts: _____

(b) Not guilty plea counts: _____

7. Give the following information in regard to the post-conviction proceeding(s) you seek to reopen at this time:

(a) _____

(1) Name and location of post-conviction trial court _____

(2) Grounds raised _____

(attach additional sheets if necessary)

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

Yes _____ No _____

(4) Result _____

(5) Date of result _____

(b) Did you appeal to any appellate court the result of the action taken on that petition?

Yes _____ No _____

(c) If you did not appeal when you lost the petition, explain briefly why you did not appeal: _____

8. What grounds exist under Tenn. Code Ann. § 40-30-117 to justify reopening the first post-conviction petition? Check all that apply.

_____ (a) A state or federal appellate court has issued a final ruling establishing a constitutional right that was not recognized as existing at the time of trial but now is required to be recognized and applied in your case.

(1) What was the name and style of the case establishing the constitutional right?

(2) On what date was that opinion or ruling filed?

(3) If more than one (1) year has passed since the appellate court ruled establishing this new constitutional right, state why the one year statute of limitations should not bar you claim.

(4) Attach a separate sheet of paper listing each constitutional right that you claim that was not recognized as existing at the time of your trial but is now required to be recognized and applied in your case. Include all facts of your case which support your claim that this right now entitles you to relief. Specify how you were prejudiced.

_____ (b) There exists new scientific evidence that establishes that you are actually innocent of the offense or offenses for which you were convicted.

(1) What is the scientific evidence consist of?

(2) On what date did the scientific evidence come into existence?

(3) How and when did you become aware of the existence of this evidence?

(4) How does the evidence establish your actual innocence?

(c) The sentence in this case was enhanced because of a prior conviction has subsequently been held to be invalid.

(1) Name and location of court which entered the judgment of the prior conviction. _____

(2) Case number of prior case. _____

(3) Name and location of court that held the prior conviction invalid.

(4) Date the conviction held invalid. _____

(5) Describe how the prior conviction was used to enhance the sentence you are now attacking.

(6) If more than one (1) year has passed since the date the prior conviction was set aside, state why the one year statute of limitations should not bar your claim.

9. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes _____ No _____

10. Give the name(s) and address(es), if known, of each attorney who represented you on your petition for post-conviction relief.

(a) In any post-conviction proceeding _____

(b) On appeal from adverse ruling in a post-conviction proceeding

11. Are you currently represented by counsel?

Yes _____ No _____

If Yes, give name and address, if known, of the attorney representing you.

If No, do you wish to have an attorney appointed?

Yes _____ No _____

12. Has any attorney assisted in drafting or given advice regarding drafting this petition for post-conviction relief?

Yes _____ No _____

If Yes, give name and address of attorney(s).

13. In the judgment you are attacking, were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at the same time?

Yes _____ No _____

14. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes _____ No _____

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) And give date and length of sentence to be served in the future:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes _____ No _____

15. What date is this motion being given to prison authorities for mailing?

Wherefore, petitioner prays that the court grant petitioner's motion to reopen the post-conviction proceedings and grant any relief to which petitioner may be entitled in this proceeding.

PETITIONER'S VERIFICATION UNDER OATH
SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct. Executed on _____.

(Date)

Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the ___ day of _____, 20__.

Notary Public

My commission expires: _____

APPENDIX E. AFFIDAVIT OF INDIGENCY

I, _____, do solemnly swear (or affirm) that because of my poverty, I am not able to bear the expenses of the action which I am about to commence. I further swear (or affirm) that, to the best of my knowledge, I am justly entitled to the relief sought.

Petitioner

APPENDIX F. FORM PRELIMINARY ORDER

IN THE _____ COURT FOR _____ COUNTY, TENNESSEE
AT _____

_____)

PETITIONER)

)

VS.) POST-CONVICTION NO. _____

)

STATE OF TENNESSEE)

PRELIMINARY ORDER

(COLORABLE CLAIM)

After examination of the (petition for post-conviction relief) or (motion to reopen) filed in this case, together with the files, records, transcripts and correspondence relating to the judgment under attack, this court finds as follows:

(1) Petitioner is indigent under the standards of Tenn. Code Ann. § 40-14-201. The court hereby appoints _____ of the _____ (County Bar) (_____ District Public Defender's Office) to represent the petitioner.

(2) The petition presents a colorable claim.

(3) Counsel is hereby ordered to review the petition, consult with petitioner, and investigate all possible constitutional grounds for relief for the purpose of filing an amended petition, if necessary. The amended petition shall be filed within thirty (30) days of the date of this order. In the event no amended petition will be filed, counsel shall file a notice stating that no amended petition will be filed. In any event, counsel shall file the certificate of counsel required in post-conviction cases.

(4) The District Attorney General is ordered to file an answer or other responsive pleading, together with any record or transcripts, material to the (petition) or (motion to reopen) within thirty (30) days of the filing of the amended petition or of the notice that no amended petition will be filed.

(5) The District Attorney General is ordered to provide discovery to petitioner in accordance with Rule 16, Tennessee Rules of Criminal Procedure, to the extent relevant to the grounds in the petition. The District Attorney General shall make all other disclosures required by the state and federal constitution.

(6) The District Attorney General shall file with the clerk the following items from the prior record:

ENTERED this ____ day of _____, 20__.

JUDGE

APPENDIX G. FORM PRELIMINARY ORDER

IN THE _____ COURT FOR _____ COUNTY, TENNESSEE
AT _____

_____)
PETITIONER)
)
VS.) POST-CONVICTION NO. _____
)
STATE OF TENNESSEE)

PRELIMINARY ORDER

(NO COLORABLE CLAIM)

After examination of the (petition for post-conviction relief) or (motion to reopen) filed in this case, together with the files, record, transcripts and correspondence relating to the judgment under attack, this court finds as follows:

(1) The petition shall be dismissed.

(2) The petition shall be dismissed for failure to assert a colorable claim based on the following findings of fact:

_____ ; and

(3) The petition shall be dismissed for failure to assert a colorable claim based on the following conclusions of law:

ENTERED this ____ day of _____, 20____.

JUDGE

APPENDIX H. FORM SCHEDULING ORDER