

APPENDIX TO RULE 32

Form for Use in State Court for Petitions for Relief from Conviction or Sentence Imposed in State Court (Rule 32, Alabama Rules of Criminal Procedure)

(This form is not to be used to challenge loss of good time deductions from sentence, changes in custody classification, or jail or prison conditions.)

READ THESE INSTRUCTIONS CAREFULLY BEFORE YOU BEGIN PREPARING THE PETITION

(1) This petition must be legibly handwritten or typewritten, and must be signed by the petitioner or petitioner's attorney 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 from the librarian or other authorized officer of the corrections institution where you are confined.

(2) Additional pages are permitted. 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) Only the judgments entered in a single trial may be challenged in a particular petition. If you seek to challenge judgments entered in different trials, 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 MAY RESULT IN YOUR BEING BARRED FROM PRESENTING IT IN A FUTURE PETITION.

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

(6) Upon receipt of the appropriate fee, your petition will be filed if it is in proper order. If you do not know the amount of the fee, ask the librarian or other authorized officer of the corrections institution where you are confined to give you this information.

(7) If you do not have the necessary fee, you may request permission to proceed in forma pauperis, in which event you must complete the declaration at the end of this form, setting forth information establishing your inability to pay the fees and costs or give security therefor. Your declaration must include financial information relating to the twelve (12) months preceding the filing of this petition.

If you wish to proceed in forma pauperis, you must have an authorized officer at the corrections institution where you are confined complete the certificate at the end of your in forma pauperis declaration as to the amount of money and securities on deposit to your credit in any account in the institution.

(8) Complete *all* applicable items in the petition. When the petition is fully completed, the ORIGINAL AND TWO (2) COPIES must be mailed to the Clerk of the Court in which you were convicted.

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

Case Number

ID YR NUMBER

(To be Completed by Court Clerk)

PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

(Pursuant to Rule 32, Alabama Rules of Criminal Procedure)

IN THE _____ COURT OF _____, ALABAMA

_____ v. _____

Petitioner (Full Name)

Respondent

[Indicate either the "State" or, if filed in
municipal court, the name of the
"Municipality"]

Prison Number _____ Place of Confinement _____

County of Conviction _____

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 under attack _____

2. Date of judgment of conviction _____

3. Length of sentence _____

4. Nature of offense involved (all counts) _____

5. 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 _____

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

6. Kind of trial: (Check one)

(a) Jury _____ (b) Judge only _____

7. Did you testify at the trial?

Yes _____ No _____

8. Did you appeal from the judgment of conviction?

Yes _____ No _____

9. 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 _____

(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 _____

(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 _____

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

Yes _____ No _____

11. If your answer to Question 10 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 the 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) As to any third petition, application, or motion, give the same information (attach additional sheets giving the same information for any subsequent petitions, applications, or motions):

- (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 _____

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

- (1) First petition, etc. Yes ___ No ___
- (2) Second petition, etc. Yes ___ No ___
- (3) Third petition, etc. Yes ___ No ___

ATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.

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

12. 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. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

GROUNDS OF PETITION

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

A. *The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.*

For your information, the following is a list of the most frequently raised claims of constitutional violation:

- (1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (2) Conviction obtained by use of coerced confession.
- (3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (5) Conviction obtained by a violation of the privilege against self-incrimination.
- (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (7) Conviction obtained by a violation of the protection against double jeopardy.
- (8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (9) Denial of effective assistance of counsel.

This list is not a complete listing of all possible constitutional violations.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.

B. *The court was without jurisdiction to render the judgment or to impose the sentence.*

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

C. *The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.*

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

D. *Petitioner is being held in custody after his sentence has expired.*

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

- ___ E. *Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:*
The facts relied upon were not known by petitioner or petitioner’s counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and
The facts are not merely cumulative to other facts that were known; and
The facts do not merely amount to impeachment evidence; and
If the facts had been known at the time of trial or sentencing, the result would probably have been different; and
The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

- ___ F. *The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner’s part.*

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

13. IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:

“Successive Petitions. The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice.”

- A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes _____ No _____

- B. If you checked “Yes,” give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court _____

(b) Result _____

(c) Date of result _____

(attach additional sheets if necessary)

- C. If you checked the “Yes” line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labelled: “EXPLANATION FOR NEW GROUND(S) OF RELIEF.”

On the separate sheet(s) explain why “good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable

diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice.”

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

Yes _____ No _____

15. 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 _____

16. 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 _____

17. 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 _____

18. What date is this petition being mailed? _____

Wherefore, petitioner prays that the Court grant petitioner relief to which he 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 _____,
19_____.

Notary Public

OR*

ATTORNEY'S VERIFICATION UNDER OATH SUBJECT TO PENALTY
FOR PERJURY

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

(Date)

Signature of Petitioner's Attorney

SWORN TO AND SUBSCRIBED before me this the ____ day of _____,
19_____.

Notary Public

Name and address of attorney representing petitioner in this proceeding (if any)

* If petitioner is represented by counsel, Rule 32.6(a) permits either petitioner or counsel to verify the petition.

Case Number

ID YR NUMBER

(To be Completed by Court Clerk)

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

(Petitioner)

v.

(Respondent(s))

DECLARATION IN SUPPORT OF REQUEST TO
PROCEED IN FORMA PAUPERIS

I, _____, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed Yes [] No []
 - a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.

 - b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?
 - a. Business, profession, or other form of self-employment?
Yes [] No []
 - b. Rent payments, interest, or dividends?
Yes [] No []
 - c. Pensions, annuities, or life insurance payments?
Yes [] No []
 - d. Gifts or inheritances?
Yes [] No []
 - e. Any other sources?
Yes [] No []

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

3. Do you own cash, or do you have money in a checking or savings account?

Yes [] No []

(Include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes [] No []

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____.

(date)

Signature of Petitioner

Certificate

I hereby certify that the petitioner herein has the sum of \$_____ on account to his credit at the _____ institution where he is confined. I further certify that petitioner likewise has the foregoing securities to his credit according to the records of said _____ institution:

DATE

AUTHORIZED OFFICER OF INSTITUTION