

Alabama Rules of Criminal Procedure

Rule 32. Post-conviction remedies.

Rule 32.2. Preclusion of remedy.

(a) PRECLUSION OF GROUNDS. A petitioner will not be given relief under this rule based upon any ground:

- (1) Which may still be raised on direct appeal under the Alabama Rules of Appellate Procedure or by posttrial motion under Rule 24; or
- (2) Which was raised or addressed at trial; or
- (3) Which could have been but was not raised at trial, unless the ground for relief arises under Rule 32.1(b); or
- (4) Which was raised or addressed on appeal or in any previous collateral proceeding not dismissed pursuant to the last sentence of Rule 32.1 as a petition that challenges multiple judgments, whether or not the previous collateral proceeding was adjudicated on the merits of the grounds raised; or
- (5) Which could have been but was not raised on appeal, unless the ground for relief arises under Rule 32.1(b).

(b) SUCCESSIVE PETITIONS. If a petitioner has previously filed a petition that challenges any judgment, all subsequent petitions by that petitioner challenging any judgment arising out of that same trial or guilty-plea proceeding shall be treated as successive petitions under this rule. The court shall not grant relief on a successive petition on the same or similar grounds on behalf of the same petitioner. A successive petition on different grounds shall be denied unless (1) the petitioner is entitled to relief on the ground that the court was without jurisdiction to render a judgment or to impose sentence or (2) 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.

(c) LIMITATIONS PERIOD. Subject to the further provisions hereinafter set out in this section, the court shall not entertain any petition for relief from a conviction or sentence on the grounds specified in Rule 32.1(a) and (f), unless the petition is filed: (1) In the case of a conviction appealed to the Court of Criminal Appeals, within one (1) year after the issuance of the certificate of judgment by the Court of Criminal Appeals under Rule 41, Ala.R.App.P.; or (2) in the case of a conviction not appealed to the Court of Criminal Appeals, within one (1) year after the time for filing an appeal lapses; provided, however, that the time for

filing a petition under Rule 32.1(f) to seek an out-of-time appeal from the dismissal or denial of a petition previously filed under any provision of Rule 32.1 shall be six (6) months from the date the petitioner discovers the dismissal or denial, irrespective of the one-year deadlines specified in the preceding subparts (1) and (2) of this sentence; and provided further that the immediately preceding proviso shall not extend either of those one-year deadlines as they may apply to the previously filed petition. The court shall not entertain a petition based on the grounds specified in Rule 32.1(e) unless the petition is filed within the applicable one-year period specified in the first sentence of this section, or within six (6) months after the discovery of the newly discovered material facts, whichever is later; provided, however, that the one-year period during which a petition may be brought shall in no case be deemed to have begun to run before the effective date of the precursor of this rule, i.e., April 1, 1987.

(d) CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL. Any claim that counsel was ineffective must be raised as soon as practicable, either at trial, on direct appeal, or in the first Rule 32 petition, whichever is applicable. In no event can relief be granted on a claim of ineffective assistance of trial or appellate counsel raised in a successive petition.*

[Amended eff. 8-1-2002; Amended eff. 8-8-2002; Amended 1-13-2005, eff. 6-1-2005.]

* Ordered July 1, 2002, in the Supreme Court of Alabama:

“The order of this Court issued on March 22, 2002, amending Rule 32.2, Ala. R. Crim. P., provided that the amendment of Rule 32.2 was effective August 1, 2002. IT IS ORDERED that that effective-date language shall be interpreted to mean that defendants in cases in which the Court of Criminal Appeals issued its certificate of judgment or the time for filing an appeal has lapsed during the period between August 1, 2001, and August 1, 2002, would have one year from August 1, 2002, within which to file a postconviction petition pursuant to Rule 32, Ala. R. Crim. P.”

**Court Comment of January 27, 2004, to Amendment to Rule 32.2
Effective August 1, 2002**

This Court on March 22, 2002, amended Rule 32.2 effective August 1, 2002. That amendment, among other things, changed the period within which a defendant could file a Rule 32 petition from two years to one year. On July 1, 2002, this Court issued an order explaining the effective-date provision as it related to that limitations period. It appears that this Court's intent as to the effective date requires further clarification.

The triggering date for calculating the timeliness of a postconviction petition pursuant to Rule 32, Ala. R. Crim. P., is either the date on which the Court of Criminal Appeals issues its certificate of judgment or, if no appeal is taken, the date upon which the time for filing an appeal lapses. The order of this Court issued on March 22, 2002, amending Rule 32.2, Ala. R. Crim. P., provided that the amendment of Rule 32.2 was effective August 1, 2002. That effective-date language shall be interpreted to mean

1) that defendants in cases in which the triggering date occurs on or before July 31, 2001, shall have two years from the triggering date within which to file a postconviction petition pursuant to Rule 32, Ala. R. Crim. P.;

2) that defendants in cases in which the triggering date occurs during the period beginning August 1, 2001, and ending July 31, 2002, shall have one year from August 1, 2002, within which to file a postconviction petition pursuant to Rule 32, Ala. R. Crim. P.; and

3) that defendants in cases in which the triggering date occurs on or after August 1, 2002, shall have one year from the triggering date within which to file a postconviction petition pursuant to Rule 32, Ala. R. Crim. P.

**Court Comment to Amendment to Rule 32.2(c)
Effective June 1, 2005**

The amendment to Rule 32.2(c) sets a deadline of six months from discovery for filing a Rule 32.1(f) petition seeking an out-of-time appeal from the dismissal or denial of a previously filed Rule 32 petition; it expressly preserves the existing one-year deadlines for the filing of the previously filed petition.

Note from the reporter of decisions: The order amending Rule 32.2, effective August 1, 2002, is published in that volume of *Alabama Reporter* that contains Alabama cases from 810 So.2d.

Note from the reporter of decisions: The order amending Rule 32.2(a), effective August 8, 2002, is published in that volume of *Alabama Reporter* that contains Alabama cases from 822 So.2d.

Note from the reporter of decisions: The order adopting the "Court Comment of January 27, 2004, to Amendment to Rule 32.2 Effective August 1, 2002" is published in that volume of *Alabama Reporter* that contains cases from 862 So.2d.

Note from the reporter of decisions: The order amending Rule 32.1(f) and Rule 32.2 (c), and adopting the Court Comment to Amendment 32.2(c),

effective June 1, 2005, is published in that volume of *Alabama Reporter* that contains Alabama cases from 890 So.2d.