

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 1959

BY: MASS

AS INTRODUCED

AN ACT RELATING TO CRIMINAL PROCEDURE; AUTHORIZING THE COURT OF CRIMINAL APPEALS TO CONSIDER CERTAIN APPEALS AND OTHER APPLICATIONS; PROVIDING FOR RULES; AUTHORIZING THE COURT OF CRIMINAL APPEALS TO DIRECT THE PREPARATION OF CERTAIN DOCUMENTS AND THE APPOINTMENT OF COUNSEL; REQUIRING CERTAIN ISSUES TO BE INCLUDED IN THE FIRST POST-CONVICTION APPLICATION AND THE FIRST HABEAS CORPUS PETITION; REPEALING 22 O.S. 1991, SECTIONS 1081, 1082, 1083, 1084, 1085, 1086, 1087 AND 1088, WHICH RELATE TO THE POST-CONVICTION PROCEDURE ACT; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1091 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The Court of Criminal Appeals may entertain an appeal, after the original time in which an appeal should have been perfected has expired, if the Court determines that any person confined in any penitentiary or penal institution within the State of Oklahoma has been denied any right guaranteed to that person by the Constitution

of the United States or the Constitution of the State of Oklahoma relating to the right to appeal.

B. The Court of Criminal Appeals may entertain an application to set aside a verdict if the Court determines that new evidence has been discovered, more than one (1) year after judgment has been rendered, which is material to the defense and which was not subject to discovery through the reasonable diligence of the defendant or the defense attorney prior to or at the time of trial. If the Court finds in favor of the applicant, the Court may vacate and set aside the judgment and sentence and discharge or resentence the applicant, grant a new trial, or correct or modify the judgment and sentence as may appear appropriate.

C. The Court of Criminal Appeals may by appropriate rules prescribe the manner in which the determinations provided for in subsections A and B of this section shall be made, and may direct any inferior court to conduct hearings, make findings of fact, and transmit the same to said appellate court.

D. In the exercise of said appellate jurisdiction, the Court of Criminal Appeals may direct the preparation of a case made or transcript and the appointment of counsel, which cost shall be paid in the manner as otherwise provided by law.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1092 of Title 22, unless there is created a duplication in numbering, reads as follows:

All state and federal constitutional issues affecting guilt and/or sentence shall be raised and decided on the merits in the first application made pursuant to Section 1 of this act and in the first habeas corpus petition. Any issue not so raised and decided shall be dismissed from any subsequent application for relief and any subsequent habeas corpus petition, unless the accused shows good cause why the issue was not raised previously.

SECTION 3. REPEALER 22 O.S. 1991, Sections 1081, 1082, 1083, 1084, 1085, 1086, 1087 and 1088, are hereby repealed.

SECTION 4. This act shall become effective September 1, 1992.

43-2-7039 SD