

ENGROSSED HOUSE
BILL NO. 1659

By: Rice, Askins, Dank and
Breckinridge of the
House

and

Wilkerson of the Senate

(criminal procedure - amending 22 O.S., Sections 1001.1
and 1089 - execution of judgment in capital cases -
effective date)

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 1001.1, as amended by Section 1, Chapter 106, O.S.L. 1992 (22 O.S. Supp. 1994, Section 1001.1), is amended to read as follows:

Section 1001.1 A. The execution of the judgment in cases where sentence of death is imposed shall be ordered by the Court of Criminal Appeals to be carried out ~~sixty (60)~~ thirty (30) days after the defendant fails to meet any of the following time conditions:

1. If a defendant does not file a petition for writ of certiorari in the United States Supreme Court within ninety (90) days from the issuance of the mandate in the original state direct appeal;

~~2. If a defendant does not file the first application for post-conviction relief in the state district court within sixty (60) days of a denial of certiorari or from a decision by the United States Supreme Court from his direct appeal, or from the expiration date of~~

~~the time for filing a petition for writ of certiorari with the United States Supreme Court~~ unless a first application for post-conviction relief is pending;

~~3.~~ 2. If a defendant does not file an appeal to the Oklahoma Court of Criminal Appeals from a denial of state post-conviction relief within forty-five (45) days from the date the transcript is filed in the Court of Criminal Appeals or, if no evidentiary hearing was held, within forty-five (45) days from the date of filing of the notice of appeal;

~~4.~~ 3. If a defendant does not file a writ of certiorari to the United States Supreme Court within ninety (90) days from a denial of state post-conviction relief by the Oklahoma Court of Criminal Appeals;

~~5.~~ 4. If a defendant does not file the first petition for a federal writ of habeas corpus within sixty (60) days from a denial of his certiorari petition or from a decision by the United States Supreme Court from post-conviction relief;

~~6.~~ 5. If a defendant does not file an appeal in the United States Court of Appeals for the Tenth Circuit from a denial of a federal writ of habeas corpus within seventy (70) days; or

~~7.~~ 6. If a defendant does not file a petition for writ of certiorari with the United States Supreme Court from a denial of the appeal of the federal writ of habeas corpus within ninety (90) days.

B. The filing of a petition for rehearing in any federal court shall not serve to stay the execution dates or the time restraints set forth in the above section unless the defendant makes the showing set forth in subsection C of this section. The provisions of subsection A do not apply to second or subsequent petitions or appeals filed in any court. The filing of a second or subsequent petition or appeal in any court does not prevent the setting of an execution date.

C. When an action challenging the conviction or sentence of death is pending before it, a district court of the state or the Court of Criminal Appeals may stay an execution date, or issue any order which effectively stays an execution date only upon a showing by the defendant that there exists a significant possibility of reversal of the defendant's conviction, or vacation of the defendant's sentence, and that irreparable harm will result if no stay is issued.

D. Should a stay of execution be issued by any state or federal court, a new execution date shall be set by operation of law sixty (60) days after the dissolution of the stay of execution. The new execution date shall be set by the Court of Criminal Appeals without necessity of application by the state, but the Attorney General, on behalf of the state, shall bring to the attention of the Court of Criminal Appeals the fact of the dissolution of a stay of execution and suggest the appropriateness of the setting of a new execution date.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1089, is amended to read as follows:

Section 1089. A. The application for post-conviction relief of a defendant who is under the sentence of death and whose death sentence has been or is being reviewed by the Court of Criminal Appeals in accordance with the provisions of Section 701.13 of Title 21 of the Oklahoma Statutes, and affirmed, shall be expedited as provided in this section.

B. The Oklahoma ~~Appellate Public Defender~~ Indigent Defense System shall represent all indigent defendants in capital cases

seeking post-conviction relief only in the first timely application upon appointment by the appropriate district court after a hearing determining the indigency of any such defendant. The Oklahoma Indigent Defense System shall represent indigent defendants in untimely or subsequent applications only when appointed to do so pursuant to paragraph 6 of subsection D of this section.

C. ~~1.~~ The only issues that may be raised in an application for post-conviction relief are those that were not and could not have been raised in a direct appeal and that support a conclusion either that the outcome of the trial would have been different but for the errors or that the defendant is factually innocent. The applicant shall state in the application specific facts explaining as to each claim why it was not or could not have been raised in a direct appeal and how it supports a conclusion that the outcome of the trial would have been different but for the errors or that the defendant is factually innocent.

D. 1. The application for post-conviction relief shall be filed in the ~~district court which imposed the sentence~~ Court of Criminal Appeals within ~~sixty (60)~~ ninety (90) days:

- ~~a.~~ from the ~~expiration date of the time for filing a petition for a writ of certiorari with the United States Supreme Court; or~~
- ~~b.~~ from the date that the United States Supreme Court denied the defendant's petition for writ of certiorari appellant's original brief is filed on direct appeal with the Court of Criminal Appeals. Where the appellant's original brief on direct appeal has been filed prior to November 1, 1995, and no application for post-conviction relief has been filed, any application for post-conviction relief must be filed in the Court of Criminal Appeals within one hundred eighty (180) days of November 1, 1995.

2. ~~The state shall have fifteen (15) days thereafter within which to file a response to the application. The district court shall make its decision within forty-five (45) days from the date that the state filed its response~~ A failure to file a timely application constitutes a waiver of all grounds for relief that were available to the applicant before the last date on which an application could be timely filed.

An application may be amended or supplemented within the time specified under this section. If an amended or supplemental application is not filed within the time specified under this subsection, the Court of Criminal Appeals shall treat the application as a subsequent or untimely application.

3. The Court of Criminal Appeals shall review the application to determine whether controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist, whether the applicant's grounds are res judicata or procedurally barred, and whether relief may be granted under this act. If the Court of Criminal Appeals determines the issues do not exist, or that the claims are res judicata or procedurally barred, or that relief may not be granted under this act and enters an order to that effect, the parties may file proposed findings of fact and conclusions of law for the court to consider on or before a date set by the court that is not later than thirty (30) days after the date the order is issued. After argument of counsel, if requested by the court, the Court of Criminal Appeals shall make appropriate written findings of fact and conclusions of law not later than fifteen (15) days after the date the parties filed proposed findings. If the Court of Criminal Appeals determines that controverted, previously unresolved factual issues material to the legality of the applicant's confinement do exist, that they are not res judicata or procedurally barred and that relief may be granted under this act, the court shall enter an order to the district court that imposed

the sentence designating the issues of fact to be resolved and the manner in which the issues shall be resolved. Once the application has been remanded to the district court, it may not be amended to include issues not raised in the original application except upon motion to and order of the Court of Criminal Appeals subject to the limitations of this paragraph and paragraph 2 of this subsection.

4. The District Attorney's office shall have twenty (20) days after the application is remanded to the district court within which to file a response to the application. The district court may grant one extension of twenty (20) days for good cause shown. Any applications for extension beyond the twenty (20) days shall be presented to the Court of Criminal Appeals. If the district court determines that an evidentiary hearing should be held, that hearing shall be held within thirty (30) days from the date that the state filed its response, and the district court shall issue its ruling. The district court shall file its decision, and file it with the Court of Criminal Appeals, within forty-five (45) days from the date that the state filed its response or within forty-five (45) days from the date of the conclusion of the evidentiary hearing.

~~4. If the defendant's application for post-conviction relief is denied by the district court, a notice of intent to appeal and a designation of the record shall be filed by the defendant's counsel in district court within ten (10) days from the denial of the application~~ 5. The ruling of the district court disposing of the application on remand may be appealed to the Court of Criminal Appeals on petition in error filed by either the defendant or the state within thirty (30) days from the entry of judgment. The party appealing the ruling of the district court shall file a notice of intent to appeal and a designation of the record in the district court within ten (10) days from the entry of judgment. A copy of the notice of intent to appeal and the designation of the record shall be served on the court reporter, the defendant, the district

attorney, and the Attorney General, and shall be filed with the Court of Criminal Appeals. If an evidentiary hearing was held, the court reporter shall prepare and file all transcripts necessary for the appeal within sixty (60) days from the date the notice of intent to appeal and designation of record is filed. The appellant's brief-in-chief shall be filed within forty-five (45) days from the date the transcript is filed in the Court of Criminal Appeals or, if no evidentiary hearing was held, within forty-five (45) days from the date of the filing of the notice of appeal. The ~~Attorney General~~ appellee shall have twenty (20) days thereafter to file a response brief. The court clerk shall file the records on appeal with the Court of Criminal Appeals on or before the date the appellant's brief-in-chief is due. The Court of Criminal Appeals shall issue an opinion in the case within one hundred twenty (120) days of the filing of the response brief ~~by the Attorney General~~.

6. If an original application for post-conviction relief is untimely or if a subsequent application is filed after filing an original application, the Court of Criminal Appeals may not consider the merits of or grant relief based on the subsequent or untimely original application unless the application contains sufficient specific facts establishing that the current claims and issues have not been and could not have been presented previously in a timely original application or in a previously considered application filed under this section because the factual or legal basis for the claim was unavailable:

- a. on the date the applicant filed the original application, or
- b. if the applicant did not file an original application, on or before the last day for the timely filing of an original application, and:
 - (1) by clear and convincing evidence, a probability exists that the applicant is factually innocent

of the offense for which the applicant was convicted because of a violation of the United States Constitution or the laws of this state, or
(2) by clear and convincing evidence and in the absence of a violation of the United States Constitution or the laws of this state, no rational jury could have found one or more of the aggravating circumstances that were submitted to the jury in the applicant's trial under Section 701.12 of Title 21 of the Oklahoma Statutes.

If the Court of Criminal Appeals determines that the requirements have not been satisfied, the court shall issue an order dismissing the application. Should the court determine after a review of the application that it warrants consideration on the merits, and further determines that appointment of counsel is necessary to adequately address the application, the Court of Criminal Appeals may appoint the Oklahoma Indigent Defense System to represent the indigent defendant. The Oklahoma Indigent Defense System may not assist or aid directly or indirectly in the initiation or preparation of an untimely or subsequent application.

7. For purposes of this act, a legal basis of a claim is unavailable on or before a date described by this subsection if the legal basis:

- a. was not recognized by or could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date, or
- b. is a new rule of constitutional law that was given retroactive effect by the United States Supreme Court and had not been announced by the court on or before that date.

For purposes of this subsection, a factual basis of a claim is unavailable on or before a date described by this subsection if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.

~~D.~~ E. All matters not specifically governed by the provisions of this section shall be subject to the provisions of the Post-Conviction Procedure Act. If the provisions of this act conflict with the provisions of the Post-Conviction Procedure Act, the provisions of this act shall govern.

SECTION 3. This act shall become effective November 1, 1995.

Passed the House of Representatives the 8th day of March, 1995.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate