

ENGROSSED HOUSE
BILL NO. 2615

By: Paulk of the House
and
Douglass of the Senate

An Act relating to Post-Conviction Procedure Act;
amending 22 O.S. 1991, Section 1080, which relates
to the right to challenge a conviction or sentence;
specifying issues proper for relief; setting time
limitations for filing of application; amending 22
O.S. 1991, Section 1086, which relates to
subsequent applications; specifying district court
may not consider subsequent application unless
certain information is provided; defining term; and
providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 1080, is
amended to read as follows:

Section 1080. A. Any person who has been convicted of, or
sentenced for, a crime and who claims:

~~(a)~~ 1. That the conviction or the sentence was in violation of
the Constitution of the United States or the Constitution or laws of
this state;

~~(b)~~ 2. That the court was without jurisdiction to impose
sentence;

~~(c)~~ 3. That the sentence exceeds the maximum authorized by law;

~~(d)~~ 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

~~(e)~~ 5. That ~~his~~ the sentence has expired, ~~his~~ the suspended sentence, probation, parole, or conditional release unlawfully revoked, or ~~he~~ the person is otherwise unlawfully held in custody or other restraint; or

~~(f)~~ 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy;

may institute a proceeding under this act in the court in which the judgment and sentence on conviction was imposed to secure the appropriate relief. Excluding a timely appeal, this act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence.

B. The only issues that may be raised in an application for post-conviction relief are those that:

1. Were not and could not have been raised in a direct appeal;
and

2. 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.

C. All applications under this section must be filed within one (1) year from the date the conviction is final or, in the event of an appeal, one (1) year from the date the appellate decision is final. When an application is untimely filed, the standard to be

applied for reviewing the application shall be that set forth in Section 1086 of this title.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1086, is amended to read as follows:

Section 1086. All grounds for relief available to an applicant under this act must be raised in his an original, supplemental or amended or subsequent application. ~~Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the prior application.~~ A district court may not consider the merits of or grant relief based upon a subsequent 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 subsequent application filed under this section, because the factual or legal basis for the claim was unavailable. For purposes of this section, "subsequent application" shall mean any application for post-conviction relief filed outside the time periods listed in subsection C of Section 1080 of this title.

SECTION 3. This act shall become effective November 1, 1996.

Passed the House of Representatives the 5th day of March, 1996.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1996.

President

of the Senate