

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 524

By: Henry of the Senate

and

Vaughn of the House

COMMITTEE SUBSTITUTE

(Criminal procedure - order of trial - post-conviction relief - grandfather provision - successive applications - emergency)

SECTION 1. AMENDATORY 22 O.S. 1991, Section 831, is amended to read as follows:

Section 831. The jury having been impaneled and sworn, the trial must proceed in the following order:

1. If the indictment or information is for a felony, the clerk or district attorney must read it, and state the plea of the defendant to the jury. In other cases this formality may be dispensed with.

2. The district attorney, or other counsel for the state, must open the case and offer the evidence in support of the indictment or information.

3. The defendant or his counsel ~~may then open his defense, and offer his evidence in support thereof~~ shall give his opening statement immediately after the opening statement of the district attorney unless the defendant affirmatively reserves the opening statement until the district attorney has rested the state's case.
The defense may offer evidence after the close of the state's case.

4. The parties may then, respectively, offer rebutting testimony only, unless the court for good reason, in furtherance of justice, or to correct an evident oversight, permit them to offer evidence upon their original case.

5. When the evidence is concluded, the attorneys for the prosecution may submit to the court written instructions. If the questions of law involved in the instructions are to be argued, the court shall direct the jury to withdraw during the argument, and after the argument, must settle the instructions, and may give or refuse any instructions asked, or may modify the same as he deems the law to be. Instructions refused shall be marked in writing by the judge, if modified, modification shall be shown in the instruction. When the instructions are thus settled, the jury, if sent out, shall be recalled and the court shall thereupon read the instructions to the jury.

6. Thereupon, unless the case is submitted to the jury without argument, the counsel for the state shall commence, and the defendant or his counsel shall follow, then the counsel for the state shall conclude the argument to the jury. During the argument the attorneys shall be permitted to read and comment upon the instructions as applied to the evidence given, but shall not argue to the jury the correctness or incorrectness of the propositions of law therein contained. The court may permit one or more counsel to address the jury on the same side, and may arrange the order in which they shall speak, but shall not without the consent of the attorneys limit the time of their arguments. When the arguments are concluded, if the court be of the opinion that the jury might be misled by the arguments of counsel, he may to prevent the same further instruct the jury. All instructions given shall be in writing unless waived by both parties, and shall be filed and become a part of the record in the case.

SECTION 2. 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) that~~ 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) that~~ 2. That the court was without jurisdiction to impose sentence;

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

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

~~(f) that~~ 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~~ the Post-Conviction Procedure Act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence.

B. A one (1) year statute of limitations shall apply to an application for post-conviction relief in non-capital cases. The limitation period shall run from the latest of:

1. The date the judgment and sentence is filed or recorded in the district court or, if the conviction is timely appealed, from the date the mandate is issued by the Court of Criminal Appeals;

2. If an applicant timely files a petition for writ of certiorari from his or her appeal, the date the petition for certiorari is denied, or if the petition is granted, the date the mandate is issued by the United States Supreme Court;

3. The date on which the Court of Criminal Appeals or the United States Supreme Court issues the mandate in a case in which the decision is retroactively applicable to cases on collateral review. In this event, if the applicant does not have an application for post-conviction relief pending and the statute of limitations has expired, only the claims based on the new decision may be raised, or if a post-conviction relief is pending or the statute of limitations has not expired, the claims based on the decision may be added to the application within one (1) year of the decision allowing collateral review; or

4. The date on which the factual predicate of the claim or claims could have been discovered through the exercise of due diligence.

C. The statutes of limitation provided in subsection B of this section are jurisdictional and not subject to equitable tolling. The failure to timely file a post-conviction application constitutes a waiver of the right to post-conviction relief. Provided, if the application is based on an event listed in subsection B of this section and the event occurred before the effective date of this act, the applicant shall have one (1) year from the effective date of this act to file the application.

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

1. Could not have been raised on direct appeal; and

2. Support a conclusion either that the outcome of the trial would have been different or that the defendant is not guilty.

SECTION 3. 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 original, supplemental or amended 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. A claim presented in a second or successive post-conviction application brought pursuant to this act that was presented in a prior application on direct appeal shall be dismissed.

B. A claim presented in a second or successive application that was not presented in a prior application on direct appeal shall be dismissed unless:

1. The applicant shows that the claim relies on a new rule of law specifically made retroactive to cases on collateral review by the Court of Criminal Appeals or the United States Supreme Court; or

2. The factual predicate for the claim could not have been discovered previously through the exercise of due diligence and the facts underlying the claim, if proven, in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the applicant guilty.

C. A second or successive application shall be filed within one (1) year from either the date the mandate was issued for the new decision set forth in paragraph 1 of subsection B of this section or

the date of discovery of the factual predicate set forth in
paragraph 2 of subsection B of this section.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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