

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2073

Session of
1986

INTRODUCED BY HAGARTY, PICCOLA, SWEET, CHADWICK, G. M. SNYDER,
SAURMAN, GANNON, WOGAN, JOHNSON, GALLAGHER, GODSHALL, BOWSER,
NOYE, TRELLO, BARLEY, NAHILL, ARTY, DISTLER, MERRY, SIRIANNI,
FLICK, FOX, ROBBINS, BALDWIN AND LANGTRY, JANUARY 29, 1986

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 7, 1986

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 post conviction relief.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 SECTION 1. SECTION 722(4) OF TITLE 42 OF THE PENNSYLVANIA <—
7 CONSOLIDATED STATUTES IS AMENDED TO READ:

8 § 722. DIRECT APPEALS FROM COURTS OF COMMON PLEAS.

9 THE SUPREME COURT SHALL HAVE EXCLUSIVE JURISDICTION OF
10 APPEALS FROM FINAL ORDERS OF THE COURTS OF COMMON PLEAS IN THE
11 FOLLOWING CLASSES OF CASES:

12 * * *

13 (4) AUTOMATIC REVIEW OF SENTENCES AS PROVIDED BY 42
14 PA.C.S. §§ 9546(D) (RELATING TO RELIEF AND ORDER) AND 9711(H)
15 (RELATING TO REVIEW OF DEATH SENTENCE).

16 * * *

17 Section ± 2. The heading of Subchapter B of Chapter 95 and <—

1 sections 9541, 9542, 9543, 9544, 9545, ~~9546 and 9547 of Title 42~~ <—
2 ~~of the Pennsylvania Consolidated Statutes~~ AND 9546 OF TITLE 42 <—
3 are amended to read:

4 CHAPTER 95
5 POST-TRIAL MATTERS

6 * * *

7 SUBCHAPTER B
8 POST CONVICTION [HEARINGS] RELIEF

9 § 9541. Short title of subchapter.

10 This subchapter shall be known and may be cited as the ["Post
11 Conviction Hearing Act."] Post Conviction Relief Act.

12 § 9542. Scope of subchapter.

13 [This subchapter establishes a post conviction procedure for
14 providing relief from convictions obtained and sentences imposed
15 without due process of law. The procedure established in this
16 subchapter shall encompass all common law and statutory
17 procedures for the same purpose that exist when this subchapter
18 takes effect, including habeas corpus and coram nobis. However,
19 nothing in this subchapter limits the availability of remedies
20 in the trial court or on direct appeal.]

21 This subchapter provides for an action by which persons
22 convicted of crimes they did not commit or serving unlawful
23 sentences may obtain collateral relief AND FOR AN ACTION BY <—
24 WHICH PERSONS CAN RAISE CLAIMS WHICH ARE PROPERLY A BASIS FOR
25 FEDERAL HABEAS CORPUS RELIEF. The action established in this
26 subchapter shall be the sole means of obtaining collateral
27 relief and encompasses all other common law and statutory
28 remedies for the same purpose that exist when this subchapter
29 takes effect, including habeas corpus and coram nobis. This
30 subchapter is not intended to limit the availability of remedies

1 in the trial court or on direct appeal from the judgment of
2 sentence nor is this subchapter intended to provide a means for
3 raising issues waived in prior proceedings.

4 § 9543. Eligibility for relief.

5 [To be eligible for relief under this subchapter, a person
6 must initiate a proceeding by filing a petition under section
7 9545 (relating to filing and content of petition) and must prove
8 the following:

9 (1) That he has been convicted of a crime.

10 (2) That he is incarcerated in this Commonwealth under a
11 sentence of death or imprisonment or on parole or probation.

12 (3) That his conviction or sentence resulted from one or
13 more of the following reasons:

14 (i) The introduction of evidence obtained pursuant
15 to an unlawful arrest.

16 (ii) The introduction of evidence obtained by an
17 unconstitutional search and seizure.

18 (iii) The introduction of a coerced confession into
19 evidence.

20 (iv) The introduction into evidence of a statement
21 obtained in the absence of counsel at a time when
22 representation is constitutionally required.

23 (v) The infringement of his privilege against self-
24 incrimination under either Federal or State law.

25 (vi) The denial of his constitutional right to
26 representation by competent counsel.

27 (vii) A plea of guilty unlawfully induced.

28 (viii) The unconstitutional suppression of evidence
29 by the Commonwealth.

30 (ix) The unconstitutional use by the Commonwealth of

1 perjured testimony.

2 (x) The obstruction by Commonwealth officials of
3 petitioner's right of appeal.

4 (xi) His being twice placed in jeopardy.

5 (xii) The abridgment in any other way of any right
6 guaranteed by the constitutions or laws of this
7 Commonwealth or of the United States, including a right
8 that was not recognized as existing at the time of the
9 trial if the constitution requires retrospective
10 application of that right.

11 (xiii) The unavailability at the time of trial of
12 exculpatory evidence that has subsequently become
13 available and that would have affected the outcome of the
14 trial if it had been introduced.

15 (4) That the error resulting in his conviction and
16 sentence has not been finally litigated or waived.]

17 (A) GENERAL RULE.--To be eligible for relief under this <—
18 subchapter, a person must plead and prove by a preponderance of
19 the evidence all of the following:

20 (1) That he has been convicted of a crime under the laws
21 of this Commonwealth and is:

22 (i) currently serving a sentence of imprisonment,
23 probation or parole for the crime;

24 (ii) awaiting execution of a sentence of death for
25 the crime; or

26 (iii) serving a sentence which must expire before he
27 may commence serving the disputed sentence.

28 (2) That his conviction or sentence resulted from one or
29 more of the following:

30 (i) A violation of the Constitution or laws of this

1 Commonwealth or the Constitution of the United States
2 which, in the circumstances of the particular case,÷ <—

3 ~~(A) was likely to have resulted in the~~
4 ~~conviction of an individual; or~~

5 ~~(B) so undermined the truth determining process~~
6 ~~that no fair RELIABLE adjudication of guilt or~~ <—
7 ~~innocence could have taken place.~~

8 (ii) ~~Incompetence~~ INEFFECTIVE ASSISTANCE of counsel <—
9 which, in the circumstances of the particular case, ~~was~~ <—
10 ~~likely to have resulted in the conviction of an innocent~~
11 ~~individual.~~ SO UNDERMINED THE TRUTH DETERMINING PROCESS <—
12 THAT NO RELIABLE ADJUDICATION OF GUILT OR INNOCENCE COULD
13 HAVE TAKEN PLACE.

14 (iii) A plea of guilty unlawfully induced where the
15 circumstances make it likely that the inducement ~~would~~ <—
16 ~~have caused an innocent individual to plead guilty.~~ <—

17 (iv) The IMPROPER obstruction by Commonwealth <—
18 officials of the petitioner's right of appeal where a
19 meritorious appealable issue exists which was properly
20 preserved in the trial court.

21 (v) A violation of the provisions of the
22 Constitution, LAW OR TREATIES of the United States which <—
23 would require the granting of Federal habeas corpus
24 relief to a State prisoner.

25 ~~(vii)~~ (VI) The unavailability at the time of trial <—
26 of exculpatory evidence that has subsequently become
27 available and that would have affected the outcome of the
28 trial if it had been introduced.

29 ~~(viii)~~ (VII) The imposition of a sentence greater <—
30 than the lawful maximum.

1 ~~(ix)~~ (VIII) A proceeding in a tribunal without <—
2 jurisdiction.

3 (3) That the allegation of error has not been waived by <—
4 ~~the petitioner and has not been previously litigated.~~

5 PREVIOUSLY LITIGATED AND ONE OF THE FOLLOWING APPLIES: <—

6 (I) THE ALLEGATION OF ERROR HAS NOT BEEN WAIVED.

7 (II) IF THE ALLEGATION OF ERROR HAS BEEN WAIVED, THE
8 ALLEGED ERROR HAS RESULTED IN THE CONVICTION OR
9 AFFIRMANCE OF SENTENCE OF AN INNOCENT INDIVIDUAL.

10 (III) IF THE ALLEGATION OF ERROR HAS BEEN WAIVED,
11 THE WAIVER OF THE ALLEGATION OF ERROR DURING PRETRIAL,
12 TRIAL, POST-TRIAL OR DIRECT APPEAL PROCEEDINGS DOES NOT
13 CONSTITUTE A STATE PROCEDURAL DEFAULT BARRING FEDERAL
14 HABEAS CORPUS RELIEF.

15 (4) That the failure to litigate the issue prior or
16 during trial or on direct appeal could not have been the
17 result of any rational strategic or tactical decision by
18 counsel.

19 (B) EXCEPTION.--EVEN IF THE PETITIONER MEETS THE <—
20 REQUIREMENTS OF SUBSECTION (A), THE PETITION SHALL BE DISMISSED
21 IF IT APPEARS THAT, BECAUSE OF DELAY IN FILING THE PETITION, THE
22 COMMONWEALTH HAS BEEN PREJUDICED EITHER IN ITS ABILITY TO
23 RESPOND TO THE PETITION OR IN ITS ABILITY TO RE-TRY THE
24 PETITIONER. THIS SUBSECTION DOES NOT APPLY IF THE PETITIONER
25 SHOWS THAT THE PETITION IS BASED ON GROUNDS OF WHICH THE
26 PETITIONER COULD NOT HAVE HAD KNOWLEDGE BY THE EXERCISE OF
27 REASONABLE DILIGENCE BEFORE THE DELAY BECAME PREJUDICIAL TO THE
28 COMMONWEALTH.

29 § 9544. [When an issue is finally litigated or waived] Previous
30 litigation AND WAIVER. <—

1 [(a) Issues finally litigated.--For the purpose of this
2 subchapter, an issue is finally litigated if:

3 (1) It has been raised in the trial court, the trial
4 court has ruled on the merits of the issue and the petitioner
5 has knowingly and understandingly failed to appeal the trial
6 court's ruling.

7 (2) The Superior Court has ruled on the merits of the
8 issue and the petitioner has knowingly and understandingly
9 failed to avail himself of further appeals.

10 (3) The Supreme Court has ruled on the merits of the
11 issue.

12 (b) Issues waived.--For the purposes of this subchapter, an
13 issue is waived if:

14 (1) The petitioner knowingly and understandingly failed
15 to raise it and it could have been raised before the trial,
16 at the trial, on appeal, in a habeas corpus proceeding or any
17 other proceeding actually conducted or in a prior proceeding
18 actually initiated under this subchapter.

19 (2) The petitioner is unable to prove the existence of
20 extraordinary circumstances to justify his failure to raise
21 the issue.

22 (c) Presumption.--There is a rebuttable presumption that a
23 failure to appeal a ruling or to raise an issue is a knowing and
24 understanding failure.]

25 (A) PREVIOUS LITIGATION.--For the purpose of this
26 subchapter, an issue has been previously litigated if:

27 (1) it has been raised in the trial court, the trial
28 court has ruled on the merits of the issue and the petitioner
29 did not appeal;

30 (2) the highest appellate court in which the petitioner

<—

1 could have had review as a matter of right has ruled on the
2 merits of the issue; or

3 (3) it has been raised and decided in a proceeding
4 collaterally attacking the conviction or sentence.

5 (B) ISSUES WAIVED.--FOR THE PURPOSES OF THIS SUBCHAPTER, AN <—
6 ISSUE IS WAIVED IF THE PETITIONER FAILED TO RAISE IT AND IF IT
7 COULD HAVE BEEN RAISED BEFORE THE TRIAL, AT THE TRIAL, ON
8 APPEAL, IN A HABEAS CORPUS PROCEEDING OR OTHER PROCEEDING
9 ACTUALLY CONDUCTED OR IN A PRIOR PROCEEDING ACTUALLY INITIATED
10 UNDER THIS SUBCHAPTER.

11 § 9545. [Filing and content of petition] Jurisdiction and
12 proceedings.

13 [(a) Filing.--Any person who desires to obtain relief under
14 this subchapter may initiate a post conviction proceeding by
15 filing a petition (together with three copies thereof), verified
16 by affidavit, with the clerk of the court in which he was
17 convicted and sentenced which court is hereby granted
18 jurisdiction to hear and determine the petition. Subject to the
19 provisions of subsection (c), he may file a petition at any
20 time.

21 (b) Content.--A petition shall be in the following forms:

22 (1) The petition must state that it is a Post Conviction
23 Hearing Act petition and must include the name of the
24 petitioner, his place of confinement, an identification of
25 the proceedings in which the petitioner was convicted and the
26 place of conviction, the date of the entry of judgment, the
27 sentence imposed, all facts in support of the alleged error
28 on which the petition is based, the relief desired and an
29 identification of all previous proceedings that the
30 petitioner has taken to secure relief from his conviction or

1 sentence.

2 (2) The petition must either include affidavits, records
3 and other supporting evidence or state why they are not
4 included.

5 (3) The petition shall not include argument or citation
6 and discussion of authorities.

7 (4) All facts within the personal knowledge of the
8 petitioner must be set forth separately from other
9 allegations of fact.

10 (c) All available grounds to be set forth.--Any person
11 desiring to obtain relief under this subchapter shall set forth
12 in the petition all of his then available grounds for such
13 relief for any particular sentence he is currently serving and
14 he shall be entitled to only one petition for each crime. The
15 failure to raise any issue in the petition shall be deemed a
16 waiver of any right to future presentation of another petition
17 containing grounds for relief that were available and could have
18 been presented.]

19 (a) Original jurisdiction.--Original jurisdiction over a
20 proceeding under this subchapter shall be in the court in which
21 the conviction was obtained.

22 (b) Rules governing proceedings.--The Supreme Court may, by
23 general rule, prescribe procedures to implement the action
24 established under this subchapter but shall not expand, contract
25 or modify the grounds for relief set forth in this subchapter.

26 § 9546. [Docketing and service of petition] Bail RELIEF AND
27 ORDER.

28 [(a) General rule.--Upon receipt of a petition seeking
29 relief under this subchapter, the clerk of the court in which
30 the indictment upon which sentence was imposed shall immediately

<—

1 docket the petition to the same term and number as the original
2 proceedings and promptly notify the court and serve a copy upon
3 the district attorney.

4 (b) Multiple indictments and sentences.--In the event the
5 petitioner's incarceration is by virtue of multiple indictments
6 and sentences, the case shall be docketed to the same term and
7 number as the indictment upon which the first unexpired sentence
8 was imposed, but the court may take judicial notice of all
9 proceedings had upon the multiple indictments.]

10 ~~There shall be no right to bail pending disposition of a~~ <—
11 ~~petition under this subchapter.~~

12 ~~§ 9547. [Amendment and withdrawal of petition] Relief and~~
13 ~~order.~~

14 ~~[The court may grant leave to amend or withdraw the petition~~
15 ~~at any time. Amendment shall be freely allowed in order to~~
16 ~~achieve substantial justice. No petition may be dismissed for~~
17 ~~want of particularity unless the petitioner is first given an~~
18 ~~opportunity to clarify the petition.]~~

19 (a) General rule.--If the court finds in favor of the
20 petitioner, it shall order appropriate relief and issue any
21 supplementary orders as to rearraignment, retrial, custody,
22 bail, discharge, correction of sentence or other matters that
23 are necessary and proper.

24 (b) Grounds to be stated.--The order finally disposing of
25 the petition shall state grounds on which the case was
26 determined.

27 (c) Status of order.--The order constitutes a final judgment
28 for purposes of review.

29 (D) REVIEW OF ORDER IN DEATH PENALTY CASES.--A FINAL COURT <—
30 ORDER UNDER THIS SUBCHAPTER IN A CASE IN WHICH THE DEATH PENALTY

1 HAS BEEN IMPOSED SHALL BE DIRECTLY APPEALABLE ONLY TO THE
2 SUPREME COURT PURSUANT TO ITS RULES.

3 Section ~~2~~ 3. Sections 9547, 9548, 9549, 9550 and 9551 of <—
4 Title 42 are repealed.

5 Section ~~3~~ 4. This act shall apply to all actions for <—
6 collateral relief, whether statutory or common law, instituted
7 on and after the effective date of this act irrespective of the
8 date of conviction or sentence.

9 Section ~~4~~ 5. This act shall take effect immediately. <—