

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2409

Session of
1982

INTRODUCED BY HAGARTY, SNYDER, MAIALE, PICCOLA, McVERRY,
FRAZIER, GANNON, SAURMAN, CORNELL, WOGAN, VROON, JOHNSON,
DAIKELER, GREENWOOD, SWAIM, HEISER, MERRY, PETERSON AND
BOYES, APRIL 14, 1982

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 14, 1982

AN ACT

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

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

6 Section 1. Chapter 95 of Title 42, act of November 25, 1970
7 (P.L.707, No.230), known as the Pennsylvania Consolidated
8 Statutes, is amended by adding a subchapter heading and a
9 subchapter to read:

10 CHAPTER 95

11 POST-TRIAL MATTERS

12 [(Reserved)]

13 SUBCHAPTER A

14 GENERAL PROVISIONS

15 (Reserved)

16 SUBCHAPTER B

17 POST CONVICTION RELIEF

1 Sec.

2 9541. Short title of subchapter.

3 9542. Scope of subchapter.

4 9543. Eligibility for relief.

5 9544. Previous litigation.

6 9545. Jurisdiction and proceedings.

7 9546. Bail.

8 9547. Relief and order.

9 § 9541. Short title of subchapter.

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

12 § 9542. Scope of subchapter.

13 This subchapter provides for an action by which persons
14 convicted of crimes they did not commit or serving unlawful
15 sentences may obtain collateral relief. The action established
16 in this subchapter shall be the sole means of obtaining
17 collateral relief and encompasses all other common law and
18 statutory remedies for the same purpose that exist when this
19 subchapter takes effect, including habeas corpus and coram
20 nobis. This subchapter is not intended to limit the availability
21 of remedies in the trial court or on direct appeal from the
22 judgment of sentence nor is this subchapter intended to provide
23 a means for raising issues waived in prior proceedings.

24 § 9543. Eligibility for relief.

25 To be eligible for relief under this subchapter, a person
26 must plead and prove by a preponderance of the evidence all of
27 the following:

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

30 (i) Currently serving a sentence of imprisonment,

1 probation or parole for the crime or

2 (ii) Awaiting execution of a sentence of death for
3 the crime or

4 (iii) Serving a sentence which must expire before he
5 may commence serving the disputed sentence.

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

8 (i) A violation of the Constitution or laws of this
9 Commonwealth or the Constitution of the United States
10 which in the circumstances of the particular case:

11 (A) Was likely to have resulted in the
12 conviction of an innocent individual or

13 (B) So undermined the truth determining process
14 that no fair adjudication of guilt or innocence could
15 have taken place.

16 (ii) Incompetence of counsel which, in the
17 circumstances of the particular case, was likely to have
18 resulted in the conviction of an innocent individual.

19 (iii) A plea of guilty unlawfully induced where the
20 circumstances make it likely that the inducement would
21 have caused an innocent individual to plead guilty.

22 (iv) The obstruction by Commonwealth officials of
23 the petitioner's right of appeal where a meritorious
24 appealable issue exists which was properly preserved in
25 the trial court.

26 (v) A violation of the provisions of the
27 Constitution of the United States or this Commonwealth
28 prohibiting double jeopardy.

29 (vi) Any violation of the Constitution of the United
30 States which would require the granting of Federal habeas

corpus relief to a State prisoner.

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

(viii) The imposition of a sentence greater than the lawful maximum.

(ix) A proceeding in a tribunal without jurisdiction.

(3) That the allegation of error has not been waived by the petitioner and has not been previously litigated and

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

§ 9544. Previous litigation.

For the purpose of this subchapter, an issue has been previously litigated if:

(1) It has been raised in the trial court, the trial court has ruled on the merits of the issue and the petitioner did not appeal or

(2) The highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue or

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

§ 9545. Jurisdiction and proceedings.

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

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

5 § 9546. Bail.

6 There shall be no right to bail pending disposition of a
7 petition under this subchapter.

8 § 9547. Relief and order.

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

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

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

19 Section 2. Applicability.

20 This act shall apply to all actions for collateral relief,
21 whether statutory or common law, instituted on or after the
22 effective date of this act irrespective of the date of
23 conviction or sentence.

24 Section 3. Repeal.

25 The act of January 25, 1966 (1965 P.L.1580, No.554), known as
26 the "Post Conviction Hearing Act," is repealed.

27 Section 4. Effective date.

28 This act shall take effect immediately.