§ 18-1-410. Postconviction remedy

(1) Notwithstanding the fact that no review of a conviction of crime was sought by appeal within the time prescribed therefor, or that a judgment of conviction was affirmed upon appeal, every person convicted of a crime is entitled as a matter of right to make applications for postconviction review. Except as otherwise required by subsection (1.5) of this section, an application for postconviction review must, in good faith, allege one or more of the following grounds to justify a hearing thereon:

(a) That the conviction was obtained or sentence imposed in violation of the constitution or laws of the United States or the constitution or laws of this state;

(b) That the applicant was convicted under a statute that is in violation of the constitution of the United States or the constitution of this state, or that the conduct for which the applicant was prosecuted is constitutionally protected;

(c) That the court rendering judgment was without jurisdiction over the person of the applicant or the subject matter;

(d) That the sentence imposed exceeded the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;

(e) That there exists evidence of material facts, not theretofore presented and heard, which, by the exercise of reasonable diligence, could not have been known to or learned of by the defendant or his attorney prior to the submission of the issues to the court or jury, and which requires vacation of the conviction or sentence in the interest of justice;

(f)(I) That there has been significant change in the law, applied to the applicant's conviction or sentence, allowing in the interests of justice retroactive application of the changed legal standard.

(II) The ground set forth in this paragraph (f) may not be asserted if, prior to filing for relief pursuant to this paragraph (f), a person has not sought appeal of a conviction within the time prescribed therefor or if a judgment of conviction has been affirmed upon appeal.

(g) Any grounds otherwise properly the basis for collateral attack upon a criminal judgment; or

(h) That the sentence imposed has been fully served or that there has been unlawful revocation of parole, probation, or conditional release.

(1.5) An application for postconviction review in a class 1 felony case where a sentence of death has been imposed shall be limited to claims of newly discovered evidence and ineffective assistance of counsel; except that, for any sentence of death imposed on or after the date upon which the Colorado supreme court adopts rules implementing the unitary system of review established by part 2 of article 12 of title 16, C.R.S., any application for postconviction review in such case shall be governed by the provisions of part 2 of article 12 of title 16, C.R.S.

(2)(a) Except as otherwise required by paragraph (b) of this subsection (2), procedures to be followed in implementation of the right to postconviction remedy shall be as prescribed by rule of the supreme court of the state of Colorado.

(b) In any class 1 felony case where a sentence of death has been imposed, the district court shall expeditiously consider an application for postconviction remedy. It is the general assembly's intent that the district court give priority to cases in which a sentence of death has been imposed.

(3)(a) Except as otherwise provided in paragraph (b) of this subsection (3), an appeal of any order by the district court granting or denying postconviction relief in a case in which a sentence of death has been imposed shall be to the Colorado supreme court as provided by section 13-4-102(1)(h), C.R.S. The procedures to be followed in the implementation of such review shall be in accordance with any rules adopted by the Colorado supreme court in response to the legislative intent expressed in section 16-12-101.5(1), C.R.S.

(b) In any class 1 felony case in which a sentence of death is imposed on or after the date upon which the Colorado supreme court adopts rules implementing the unitary system of review established under part 2 of article 12 of title 16, C.R.S., the procedures for appealing any order by the district court granting or denying postconviction relief and review by the Colorado supreme court of such order shall be governed by the provisions of part 2 of article 12 of title 16, C.R.S., and by such rules adopted by the supreme court.

§ 18-1-411. Postconviction testing of DNA--definitions

As used in this section and in sections 18-1-412 to 18-1-416, unless the context otherwise requires:

(1) "Actual innocence" means clear and convincing evidence such that no reasonable juror would have convicted the defendant.

(2) "Actual or constructive possession" means the biological evidence is maintained or stored on the premises of the law enforcement agency or at another location or facility under the custody or control of the law enforcement agency, including pursuant to an agreement or contract with the law enforcement agency and a third-party service provider, in Colorado or elsewhere.

(3) "DNA" means deoxyribonucleic acid.

(4) "Incarcerated" means physically housed in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a county jail following a felony conviction, or in a juvenile facility following adjudication for an offense that would have been a felony if committed by an adult, or under parole supervision.

§ 18-1-412. Procedure for application for DNA testing--appointment of counsel

(1) An incarcerated person may apply to the district court in the district where the conviction was secured for DNA testing concerning the conviction and sentence the person is currently serving.

(2) A motion filed pursuant to this section shall include specific facts sufficient to support a prima facie showing that post-conviction relief is warranted under the criteria set forth in section 18-1-413. The motion shall include the results of all prior DNA tests, regardless of whether a test was performed by the defense or the prosecution.

(3) If the motion, files, and record of the case show to the satisfaction of the court that the petitioner is not entitled to relief based on the criteria specified in section 18-1-413, the court shall deny the motion without a hearing and without appointment of counsel. The court may deny a second or subsequent motion requesting relief pursuant to this section.

(4) If the court does not deny the petitioner's motion for testing, the court shall appoint counsel if the court determines the petitioner is indigent and has requested counsel. The court shall forward a copy of the motion for DNA testing to the district attorney.

(5) Counsel for the defendant may request the court to set the matter for a hearing, if, upon investigation of the petitioner's motion for testing, counsel believes sufficient grounds exist to support an order for DNA testing. If the petitioner represents himself or herself, the court may set the matter for a hearing upon his or her request.

(6) Following a request for a hearing, the court shall allow the district attorney a reasonable amount of time, but not less than thirty days, to respond to the motion and any supplement filed by the petitioner's counsel and to prepare for the hearing.

(7) A court shall not order DNA testing without a hearing, except upon written stipulation of the district attorney.

(8) The court shall deny a motion for production of transcripts unless the petitioner makes a prima facie showing that a transcript will be necessary at a hearing conducted pursuant to this section.

§ 18-1-413. Content of application for DNA testing

(1) A court shall not order DNA testing unless the petitioner demonstrates by a preponderance of the evidence that:

(a) Favorable results of the DNA testing will demonstrate the petitioner's actual innocence;

(b) A law enforcement agency collected biological evidence pertaining to the offense and retains actual or constructive possession of the evidence that allows for reliable DNA testing;

(c)(I) Conclusive DNA results were not available prior to the petitioner's conviction; and

(II) The petitioner did not secure DNA testing prior to his or her conviction because DNA testing was not reasonably available or for reasons that constitute justifiable excuse, ineffective assistance of counsel, or excusable neglect; and

(d) The petitioner consents to provide a biological sample for DNA testing.

§ 18-1-414. Preservation of evidence

(1) A petitioner shall not be entitled to relief based solely on an allegation that a law enforcement agency failed to preserve biological evidence.

(2) A court granting a motion for hearing pursuant to section 18-1-412 shall order the appropriate law enforcement agency to preserve existing biological evidence for DNA testing.

(3) Notwithstanding the provisions of subsection (2) of this section, this section does not create a duty to preserve biological evidence nor does it create a liability on the part of a law enforcement agency for failing to preserve biological evidence.

§ 18-1-415. Testing--payment

All testing shall be performed at a law enforcement facility, and the petitioner shall pay for the testing. If the petitioner is indigent and represented by either the public defender or alternative defense counsel, and with the approval of the public defender or the alternative defense counsel, the costs of the testing shall be paid from their budget.

§ 18-1-416. Results of the DNA test

(1) Notwithstanding any law or rule of procedure that bars a motion for post-conviction review as untimely, a petitioner may use the results of a DNA test ordered pursuant to section 18-1-413 as the grounds for filing a motion for post-conviction review under section 18-1-410 and the Colorado rules of criminal procedure.

(2) The testing laboratory shall make the results of a DNA test ordered pursuant to section 18-1-413 available to the combined DNA index system and to any Colorado, federal, or other law enforcement DNA databases.

§ 18-1-417. Ineffective assistance of counsel claims--waiver of confidentiality

(1) Notwithstanding any other provision of law, whenever a defendant alleges ineffective assistance of counsel, the defendant automatically waives any confidentiality, including attorney-client and work-product privileges, between counsel and defendant, and between the defendant or counsel and any expert witness retained or appointed in connection with the representation, but only with respect to the information that is related to the defendant's claim of ineffective assistance. After the defendant alleges ineffective assistance of counsel, the allegedly ineffective counsel and an expert witness may discuss with, may disclose any aspect of the representation that is related to the defendant's claim of ineffective assistance to, and may produce documents related to such representation that are related to the defendant's claim of ineffective assistance to the prosecution without the need for an order by the court that confidentiality has been waived.

(2) If the allegedly ineffective counsel or an expert witness has released his or her file or a portion

thereof to defendant or defendant's current counsel, defendant or current counsel shall permit the prosecution to inspect and copy any or all portions of the file that are related to the defendant's claim of ineffective assistance upon request of the prosecution.

Current through the First Regular Session of the Sixty-Sixth General Assembly (2007)
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