

RÉSUMÉ DIGEST

ACT 104 (SB 186)

2021 Regular Session

Smith

New law authorizes a petitioner convicted of an offense to seek post conviction relief on the grounds that he is factually innocent. New law does not prohibit a petitioner's first claim of factual innocence that would otherwise be barred from review on the merits by the time limitation or the procedural objections provided in prior law if the claim is contained in an application for post conviction relief filed on or before 12/31/22, and if the petitioner was convicted after a trial completed to verdict. New law further provides that an application for post conviction relief filed pursuant to new law by a petitioner who pled guilty or nolo contendere after 12/31/22 is subject to prior law and new law relative to repetitive applications and time limitations.

New law provides that to assert a claim of factual innocence under new law, a petitioner shall present new, reliable, and noncumulative evidence that would be legally admissible at trial and that was not known or discoverable at or prior to trial and that is either:

- (1) Scientific, forensic, physical, or nontestimonial documentary evidence.
- (2) Testimonial evidence that is corroborated by evidence of a scientific, forensic, or physical nature.

New law provides that to prove entitlement to relief under new law, the petitioner shall present evidence that satisfies all of the criteria provided for in new law and that, when viewed in light of all of the relevant evidence, including the evidence that was admitted at trial and any evidence that may be introduced by the state in any response that it files or at any evidentiary hearing, proves by clear and convincing evidence that, had the new evidence been presented at trial, no rational juror would have found the petitioner guilty beyond a reasonable doubt of either the offense of conviction or of any felony offense that was a responsive verdict to the offense of conviction at the time of the conviction.

New law provides that a recantation of prior sworn testimony may be considered if corroborated by the evidence required by new law, but a recantation of prior sworn testimony cannot form the sole basis for relief pursuant to new law.

New law provides that if the petitioner pled guilty or nolo contendere to the offense of conviction, in addition to satisfying all of the criteria in new law and in any other applicable provision of prior law, the petitioner must show both of the following to prove entitlement to relief:

- (1) That, by reliable evidence, he consistently maintained his innocence until his plea of guilty or nolo contendere.
- (2) That he could not have known of or discovered his evidence of factual innocence prior to pleading guilty or nolo contendere.

New law provides that a grant of post conviction relief pursuant to new law does not prevent the petitioner from being retried for the offense of conviction, for a lesser offense based on the same facts, or for any other offense.

New law provides that if the petitioner waives his right to a jury trial and elects to be tried by a judge, the district judge who granted post conviction relief pursuant to new law will be recused and the case will be allotted to a different judge in accordance with applicable prior law and rules of court.

New law provides that if the district judge denied post conviction relief pursuant to new law and an appellate court later reversed the ruling of the district judge and granted post conviction relief pursuant to new law, and if the petitioner waives his right to a jury trial and elects to be tried by a judge, upon the petitioner's motion the district judge who denied post conviction relief will be recused and the case will be allotted to a different judge in accordance with applicable prior law and rules of court.

New law authorizes the district court, upon motion of the state or the petitioner, to order the testing or examination of any evidence relevant to the offense of conviction in the custody and control of the clerk of court, the state, or the investigating law enforcement agency. New law further provides that if the motion is made by the petitioner, it can be granted only after a contradictory hearing at which the petitioner shall establish that good cause exists for the testing or examination. New law further provides that if the state does not expressly consent to the testing or examination and the motion made pursuant to new law is granted, the district attorney and investigation law enforcement agency cannot be ordered to bear any costs of the testing or examination.

Prior law required that if the petitioner is in custody after sentence for conviction for an offense, relief be granted only on any of the following grounds:

- (1) The conviction was obtained in violation of the U.S. or state constitution.
- (2) The court exceeded its jurisdiction.
- (3) The conviction or sentence subjected him to double jeopardy.
- (4) The limitations on the institution of prosecution had expired.
- (5) The statute creating the offense for which he was convicted and sentenced is unconstitutional.
- (6) The conviction or sentence constitute the ex post facto application of law in violation of the U.S. or state constitution.
- (7) The results of DNA testing performed pursuant to an application granted under prior law proved by clear and convincing evidence that the petitioner is factually innocent of the crime for which he was convicted.

Prior law provided that, unless required in the interest of justice, any claim for relief that was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence will not be considered.

New law retains prior law and adds that another ground for relief is that the petitioner is determined by clear and convincing evidence to be factually innocent under new law.

Prior law provided that no application for post conviction relief will be considered if filed more than two years after the judgment of conviction and sentence have become final under prior law, unless the application alleged, and the petitioner proved or the state admitted, that the facts upon which the claim is predicated were not known to the petitioner.

New law retains prior law and adds that, if the petitioner pled guilty or nolo contendere to the offense of conviction and is seeking relief pursuant to new law relative to claims of factual innocence and five years or more have elapsed since the petitioner pled guilty or nolo contendere to the offense of conviction, he is not eligible for the exception to timeliness provided for by prior law.

Prior law provided that the petitioner is required to prove that he exercised diligence in attempting to discover any post-conviction claims that may exist. "Diligence" for the purposes of prior law is a subjective inquiry that must take into account the circumstances of the petitioner, including the educational background of the petitioner, the petitioner's access to formally trained inmate counsel, the financial resources of the petitioner, the age of the petitioner, the mental abilities of the petitioner, and whether the interests of justice will be served by the consideration of new evidence.

New law retains prior law relative to the petitioner exercise of diligence in attempting to discover any post-conviction claims.

New law makes it mandatory that the subjective inquiry of "diligence" take into account the circumstances of the petitioner.

Prior law provided that no application for post conviction relief will be considered if filed more than two years after the judgment of conviction and sentence have become final under prior law, unless:

- (1) The claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore unknown interpretation of constitutional law and petitioner establishes that this interpretation is retroactively applicable to his case, and the petition is filed within one year of the finality of such ruling.
- (2) The application would already be barred by the provisions of prior law, but the application is filed on or before 10/1/01, and the date on which the application was filed is within three years after the judgment of conviction and sentence has become final.
- (3) The person asserting the claim has been sentenced to death.

New law retains prior law and adds the following circumstances:

- (1) The petitioner qualifies for the exception to timeliness in prior law relative to DNA testing.
- (2) The petitioner qualifies for the exception to timeliness in new law relative to factual innocence.

New law allows the state to affirmatively waive any objection to the timeliness of the application for post conviction relief filed by the petitioner, if the waiver is express and in writing and filed by the state into the district court record.

New law provides that upon joint motion of the petitioner and the district attorney, the district court may deviate from any provision of prior law or new law relative to post conviction relief.

New law provides that, notwithstanding any provision of prior law or new law, the district attorney and the petitioner may, with the approval of the district court, jointly enter into any post conviction plea agreement for the purpose of amending the petitioner's conviction, sentence, or habitual offender status, which agreement must be in writing, filed into the district court record, and agreed to by the district attorney and the petitioner in open court.

New law further provides that the court, prior to accepting the post conviction plea agreement, must address the petitioner personally in open court, inform him of and determine that he understands the rights that he is waiving by entering into the post conviction plea agreement, and determine that the plea is voluntary and is not the result of force or threats, or of promises apart from the post conviction plea agreement itself.

Effective August 1, 2021.

(Amends C.Cr.P. Art. 930.3 and 930.8(A)(1); adds C.Cr.P. Art. 926.2, 926.3, 930.4(G), 930.8(A)(5) and (6) and (D), and 930.10)