

Rule 65C. Post~~c~~-conviction relief.

(a) Scope. This rule governs proceedings in all petitions for post-conviction relief filed under the Post-Conviction Remedies Act, Utah Code ~~Title 78B, Chapter 9~~Title 78B, Chapter 9. The Act sets forth the manner and extent to which a person may challenge the legality of a criminal conviction and sentence after the conviction and sentence have been affirmed in a direct appeal under ~~Article I, Section 12~~Article I, Section 12 of the Utah Constitution, or the time to file such an appeal has expired.

(b) Procedural defenses and merits review. Except as provided in paragraph (h), if the court comments on the merits of a post~~c~~-conviction claim, it ~~shall~~will first clearly and expressly determine whether that claim is independently precluded under ~~Section Utah~~Code section 78B-9-106.

(c) Commencement and venue. The proceeding ~~begins with the~~shall will be commenced ~~by filing of~~ a petition with the ~~clerk of the~~ district court clerk in the county ~~in which~~the where the judgment of conviction was entered. The petition should be filed on forms provided by the court. The court may order a change of venue on its own motion if the petition is filed in the wrong county. The court may order a change of venue on a party's motion ~~of a party~~ for the convenience of the parties or witnesses.

(d) Contents of the petition. The petition ~~shall~~must set forth all claims that the petitioner has in relation to the legality of the conviction or sentence. The petition ~~shall~~must state:

- (1) whether the petitioner is incarcerated and, if so, the place of incarceration;
- (2) the name of the court ~~in which the~~where the petitioner was ~~that convicted and sentenced the petitioner was convicted and sentenced,~~ and the dates ~~of proceeding(s)~~in which the when the conviction and sentence were entered, ~~and~~together with the court's case number for those proceedings, if known by the petitioner;
- (3) in plain and concise terms, all of the facts that form the basis of the petitioner's claim to relief;
- (4) whether the ~~judgment of~~ conviction, the sentence, or the commitment for violation of probation has been reviewed on appeal, and, if so, the case number and title of the appellate proceeding, the issues raised on appeal, and the results of the appeal;

(5) whether the legality of the conviction or sentence has been adjudicated in any prior post~~c~~-conviction or other civil proceeding, and, if so, the case number and title of those proceedings, the issues raised in the petition, and the results of the prior proceedings; and

(6) if the petitioner claims entitlement to relief due to newly discovered evidence, the reasons why the evidence could not have been discovered in time for the claim to be addressed in the trial court, at trial, on the appeal, or in any previous post~~c~~-conviction petition.

(e) Attachments to the petition. If available to the petitioner, the petitioner ~~shall~~must attach to the petition:

(1) affidavits, copies of records, and other evidence in support of the allegations;

(2) a copy of or a citation to any opinion or order issued by an appellate court regarding the direct appeal of the petitioner's case;

(3) a copy of the petition or other pleadings filed by the petitioner in any prior post~~c~~-conviction or other civil proceeding that adjudicated the legality of the conviction or sentence; and

(4) a copy of all relevant orders and memoranda ~~of the court~~issued by the court in any prior postconviction or other civil proceeding that adjudicated the legality of the conviction or sentence.

(f) Memorandum of ~~authorities~~law.

(1) The petitioner ~~shall~~must not ~~set forth~~provide argument or citations or discuss authorities in the petition. ~~The petitioner and need only to set out the facts and other information required by as necessary pursuant to paragraph (d). If a separate memorandum of law is submitted, the trial court will review any facts or grounds for relief in the memorandum as if they were submitted in the petition itself, but these may be set out in a separate memorandum, two copies of which shall be filed with the petition.~~

(2) ~~Length of the memorandum.~~ If a memorandum of law is filed, it may not exceed ~~ust~~be limited to 25 pages or 9,000 words.

(3) The court may permit a party to file an overlength memorandum of law upon a showing of good cause. An overlength memorandum must include a table of contents and a table of authorities with page references.

(g) **Assignment.** ~~When a petition is filed~~On the filing of the petition, the clerk ~~shall~~will promptly assign and deliver it to the judge who sentenced the petitioner. If the judge who sentenced the petitioner is not available, the clerk ~~shall~~will assign the case in the normal course.

(h) Summary dismissal of claims.

(1) The assigned judge ~~shall~~must~~will~~ review the petition along with any attachments, and any filed memorandum of law. ~~if it is apparent to the court that~~ If any claim ~~has been adjudicated in a prior proceeding, or if any claim in the petition~~ appears frivolous on its face, the court ~~shall forthwith~~will issue an order dismissing the claim, stating ~~either that the claim has been adjudicated or~~ that the claim is frivolous on its face. The order ~~shall~~will be sent by mail to the petitioner. Proceedings on the claim ~~shall~~will terminate with the entry of the dismissal order ~~of dismissal~~. The dismissal order ~~of dismissal~~ need not recite findings of fact or conclusions of law. If all the claims have been summarily dismissed under summary dismissal, the court will advise the petitioner that the petitioner has they have the right to appeal the dismissal within thirty (30) days.

(2) A claim is frivolous on its face when, based solely on the allegations and facts contained in the ~~pleadings~~petition, memorandum of law, and attachments, it appears that:

(A) the facts alleged do not support a claim for relief as a matter of law;

(B) the claim has no arguable basis in fact; or

(C) the claim challenges the sentence only and the sentence ~~has~~ expired prior to the filing of the petition.

(3) If a claim is not frivolous on its face but is deficient due to a ~~pleading error or~~ failure to comply with this rule's requirements ~~of this rule~~, the court ~~shall~~will return

a copy of the petition with leave to amend within 21 days. The court may grant one additional 21-day period to amend upon a showing of ~~for~~ good cause ~~shown~~.

(4) The court ~~shall~~ must ~~will~~ not review for summary dismissal the initial post-conviction petition in a case where the petitioner is sentenced to death.

(i) Service of petitions. If, on review of the petition, the court concludes that ~~any~~ all or part of the petition should not be summarily dismissed, the court ~~shall~~ will designate the portions of the petition that are not dismissed and direct the clerk to serve upon the respondent a copy of the petition, attachments, memorandum, and an electronic court record of the underlying criminal case being challenged, including all non-public documents. If an electronic appellate record of the underlying case has not already been created, the clerk will create the record consistent with Rule 11 of the Utah Rules of Appellate Procedure ~~11~~.

(1) If the petition is a challenge to a felony conviction or sentence, the respondent is the state of Utah represented by the Attorney General. Service on the Attorney General ~~shall~~ must be by mail at the following address:

Utah Attorney General's Office

Criminal Appeals

Post-Conviction Section

160 East 300 South, 6th Floor

P.O. Box 140854

Salt Lake City, UT 84114-0854

(2) In all other cases, the respondent is the governmental entity that prosecuted the petitioner.

(j) Appointment of pro bono counsel.

(1) If any portion of the petition is not summarily dismissed, the court may, upon the request of an indigent petitioner, appoint counsel consistent with the provisions of ~~under~~ Utah Code 78B-8-109. ~~on a pro bono basis to represent the petitioner in the post-conviction court or on post-conviction appeal. In determining whether to appoint counsel the court shall consider whether the petition or the appeal contains~~

~~factual allegations that will require an evidentiary hearing and whether the petition involves complicated issues of law or fact that require the assistance of counsel for proper adjudication.~~

~~(2) If counsel is appointed, the court clerk will serve upon appointed counsel a copy of the electronic record of the underlying case under Rule 11 of the consistent with the provisions of Utah Rules of Appellate Procedure 11.~~

(k) Answer or other response. Within ~~sixty (60)~~30 days after service of a copy of the petition upon the respondent, or within such other period of time as the court may allow, the respondent ~~shall~~must answer or otherwise respond to all the claims in the petition that have not been previously dismissed. ~~otherwise respond to the portions of the petition that have not been dismissed and shall~~ The respondent must serve the answer or other response upon the petitioner in accordance with Rule 5(b). Within ~~sixty (60)~~30 days (plus time allowed for service by mail) after service of any motion, ~~to dismiss or for summary judgment,~~ the petitioner may respond by memorandum to the motion. Within thirty (30) days after service of the response, the respondent may file a reply memorandum supporting the motion if the petitioner files an opposition. No further pleadings or amendments will be permitted unless ordered by the court.

(l) Hearings. After the time to file a reply memorandum has passed~~pleadings are closed,~~ the court ~~shall~~will promptly set the matter proceeding for a hearing or otherwise dispose of the case. The court may also order a prehearing conference, but the conference ~~shall~~will not be set so as to delay unreasonably the hearing on the merits of the petition. At the prehearing conference, the court may:

(1) consider the formation and simplification of issues;

(2) require the parties to identify witnesses and documents; and

(3) require the parties to establish the admissibility of evidence expected to be presented at the evidentiary hearing.

(m) Presence of the petitioner at hearings. The petitioner ~~shall~~must be present at the prehearing conference if the petitioner is not represented by counsel. The prehearing conference may be conducted by means of telephone or video conferencing. The

petitioner ~~shall~~must be present before the court at hearings on dispositive issues but need not otherwise be present ~~in court during the proceeding~~. The court may conduct any hearing at the correctional facility where the petitioner is confined.

(n) Discovery; records.

(1) ~~If the court sets the proceeding for an evidentiary hearing, discovery under Rule 26 through 37 will be allowed by the court upon a party's motion of a party and a determination that there is good cause to believe that discovery is necessary to provide a party with evidence that is likely to be admissible at thean evidentiary hearing.~~

~~Discovery under Rules 26 through 37 shall be allowed by the court upon motion of a party and a determination that there is good cause to believe that discovery is necessary to provide a party with evidence that is likely to be admissible at an evidentiary hearing.~~

(2) The court may order either the petitioner or the respondent to obtain any relevant transcript or court records.

(3) All records in the criminal case under review, including the records in a directn appeal ~~of that conviction~~, are deemed part of the trial court record in the petition for post~~c~~-conviction relief. A record from the criminal case retains the security classification that it had in the criminal case.

(o) Orders; stay.

(1) If the court vacates the original conviction or sentence, it ~~shall~~will enter findings of fact and conclusions of law and an appropriate order. If the petitioner is serving a sentence for a felony conviction, the order ~~shall~~will be stayed for ~~five~~7 days. Within the stay period, the respondent ~~shall~~must give written notice to the court and the petitioner that the respondent will pursue a new trial, ~~or pursue new sentencing proceedings, pursue a new sentence,~~ appeal the order, or take no action. After that stay period, Thereafter the stay of the order is governed by these rules and by the Utah Rules of Appellate Procedure.

(2) If the respondent ~~fails to~~ does not provide notice, or gives notice at any time during the stay period that it intends to take no action, the court shall will lift the stay and deliver the order to the petitioner's custodian of the petitioner. ~~that no action will be taken, the stay shall expire and the court shall deliver forthwith to the custodian of the petitioner the order to release the petitioner.~~

(3) If the respondent gives notice that it intends to retry or resentence the petitioner or seek a new sentencing ~~will be retried or resentenced~~, the trial court may enter any supplementary orders as to arraignment, trial, sentencing, custody, bail, discharge, or other matters that may be necessary. ~~and proper.~~

(p) Costs. The court may assign the proceeding's ~~costs of the proceeding~~, as allowed under Rule 54(d), to any party as it deems appropriate. If the petitioner is indigent, the court may direct the costs to be paid by the governmental entity that prosecuted the petitioner. If the petitioner is in the custody of the Department of Corrections, Utah Code ~~Title 78A, Chapter 2, Part 3~~ Title 78A, Chapter 2, Part 3 governs the manner and procedure by which the trial court ~~shall~~ will determine the amount, if any, to charge for fees and costs.

(q) Appeal. Any final judgment or order entered upon the petition may be appealed to and reviewed by the Utah Court of Appeals or the Utah Supreme Court ~~of Utah~~ in accord with the statutes and rules governing appeals to those courts.