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Postconviction Pro Se Packet

What is postconviction?

The postconviction statutes provide a way to attack a conviction when a defendant claims a denial of a constitutional right that could void the defendant's conviction. If the denial of the constitutional right is clear from the court files, transcript, and trial exhibits, the issue should be raised in your direct appeal and cannot be raised in a postconviction petition. Postconviction claims are based solely on evidence *not* found in the record. An example of a postconviction claim would be that your attorney did not present evidence or a witness which could have proved that you were innocent.

To get postconviction relief, you must have the evidence to prove the claimed constitutional violations. You must provide evidence, usually in the form of affidavits, showing that you are entitled to postconviction relief. The trial judge will not order a hearing unless the postconviction petition, the supporting affidavits, and the court file and records demonstrate substantial grounds for relief. Statements or affidavits made by the defendant, family members, or friends typically are not enough to get a hearing because courts usually view them as being biased.

When should I file?

Under the rules, if you or your attorney filed a timely appeal from your conviction, you have 180 days from the date your trial transcript was filed with the court of appeals to file a postconviction petition. The clerk of courts must receive the petition by that date, so make sure you allow plenty of time for mailing. If a timely appeal was not filed in your case, your postconviction petition is due 180 days after the date a timely notice of appeal was due. That date is 30 days after the day the judgment entry sentencing you was filed.

Your petition is not considered filed until the clerk of courts for the court of common pleas *actually receives it*. The mailbox rule does not apply. Leave plenty of time for your petition to be processed through the mail and received by the clerk.

What should I include?

This packet contains the forms that you will need to file for postconviction relief under Ohio's postconviction statutes, R.C. 2953.21 and 2953.23. The forms are: (1) Petition for Postconviction Relief; (2) Affidavit of Indigency; (3) Motion for Appointment of Counsel; and (4) Motion for Expert Assistance. All of the items listed below have example forms at the back of this packet.

The petition itself must include constitutional claims that were not raised at trial or in your appeal. For example, you can allege that your trial attorney failed to provide the effective assistance of counsel. Ineffective assistance of trial counsel is a ground for postconviction relief; however, you must provide the court with substantial evidence of counsel's ineffectiveness. What information did you provide to your attorney that he or she failed to investigate? Who were the defense witnesses who counsel failed to call to the witness stand?

You must support your allegations with evidence. For example, if your trial attorney did not present a witness that could have provided an alibi, you could have that person write an affidavit saying what they would have said if they had testified at your trial. To the best of your knowledge, explain why your attorney failed to call these witnesses to the stand.

Where should I file?

You need to file your petition with the county clerk's office in the county where you were convicted. This address can be found in your prison orientation packet.

What are my chances of success?

A postconviction petition is very difficult to win. The trial judge who presided over your case will decide your petition. Postconviction is often a very slow process, sometimes taking a year or more to get a hearing or ruling. Also, a successful postconviction petition generally does not wipe out the underlying case. You must still answer the charges contained in the original indictment.

What should I do next?

The trial court will decide whether you have presented enough evidence to have a hearing where you can present your evidence. If the trial court determines you have not presented enough evidence, the court will issue findings explaining why it is denying your petition. You can appeal this decision, but you must do so within 30 days after the court's decision - there are no delayed appeals in postconviction proceedings. If the trial court determines you have presented sufficient evidence to have a hearing, you should be ready to present your evidence to the trial court and argue why it should grant you a new trial. The court will send you notice either way.

THE FOLLOWING IS A SHORT LIST OF CASES AND CONSTITUTIONAL PROVISIONS THAT ARE RELEVANT TO MANY, BUT NOT ALL, POSTCONVICTION ACTIONS. YOU SHOULD NOT USE THIS LIST AS YOUR ONLY LEGAL RESEARCH. YOU SHOULD VISIT THE INSTITUTION LAW LIBRARY TO DETERMINE WHICH CASES, STATUTES, PROCEDURAL RULES, AND CONSTITUTIONAL PROVISIONS APPLY TO YOUR CASE.

CASE LAW

A state must provide its prisoners with a clearly defined method of challenging their criminal convictions when those challenges are based on the denial of federal constitutional rights. *Young v. Ragen* (1949), 337 U.S. 235.

When a claim in a postconviction petition is sufficient on its face to raise an issue that the petitioner's conviction is void or voidable on constitutional grounds, and the claim depends on factual allegations that cannot be determined by examining the court record and files, the petition states a substantive ground for relief. *State v. Milanovich* (1975), 42 Ohio St.2d 46

To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that the deficient performance caused prejudice. Prejudice is shown when there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Strickland v. Washington* (1984), 466 U.S. 668. See, also, *United States v. Cronin* (1984), 466 U.S. 648.

Ohio has adopted the *Strickland* test for evaluating counsel's performance. See *State v. Smith* (1985), 17 Ohio St.3d 98; *State v. Bradley* (1989), 42 Ohio St.3d 136. See, also, *State v. Lytle* (1976), 48 Ohio St.2d 391; *State v. Hester* (1976), 45 Ohio St.2d 71.

When a postconviction petition is filed untimely and does not meet the exceptions for a delay that are found in R.C. 2953.23(A), the court lacks jurisdiction to entertain the merits of the petition or hold an evidentiary hearing. *State v. Bird* (2000), 138 Ohio App.3d 400.

An indigent defendant does not have a right to court-appointed counsel in postconviction proceedings. But if the trial court, after examining the pro se petition, determines that an evidentiary hearing is necessary, the court shall notify the public defender, who will then determine whether the petitioner's claims have arguable merit. *State v. Crowder* (1991), 60 Ohio St.3d 151. See, also, *Pennsylvania v. Finley* (1987), 481 U.S. 551.

The postconviction petitioner who is asserting a claim of ineffective assistance of trial counsel bears the burden of submitting evidentiary documents, with the petition, to establish that counsel was not competent and that the petitioner was prejudiced by counsel's incompetence. *State v. Jackson* (1980), 64 Ohio St.2d 107. See, also, *State v. Kapper* (1983), 5 Ohio St.3d 36.

A trial court shall pay due deference to the sworn affidavits that support a postconviction petition, but has the discretion to judge the credibility of those affidavits when deciding whether to hold an evidentiary hearing. *State v. Calhoun* (1999), 86 Ohio St.3d 279.

Res judicata is a proper basis for dismissing a postconviction petition when the petitioner is represented by new counsel on direct appeal, but fails to raise in that direct appeal the issue of ineffective assistance of trial counsel, and that issue can be determined without looking at evidence from outside the court record. *State v. Cole* (1982), 2 Ohio St.3d 112.

A petitioner in postconviction proceedings has a due process right to respond to a dispositive motion filed by the State. *State v. Pless* (1993), Ohio St.3d 197.

Because postconviction proceedings are civil in nature, there is no provision for a delayed appeal, under App.R. 5(A), following the denial of postconviction relief in the trial court. *State v. Nichols* (1984), 11 Ohio St.3d 40

A judgment denying postconviction relief must include findings of fact and conclusions of law, and a judgment entry that is filed without findings and conclusions is incomplete. That incomplete judgment entry does not trigger the running of the time period for filing an appeal. *State v. Mapson* (1982), 1 Ohio St.3d 217.

CONSTITUTIONAL PROVISIONS

Fourth Amendment, U.S. Constitution; Section 14, Article I, Ohio Constitution

Search and Seizure
Warrant

Fifth Amendment, U.S. Constitution; Section 10, Article I, Ohio Constitution

Double Jeopardy
Self Incrimination
Indictment by Grand Jury

Fifth and Fourteenth Amendments, U.S. Constitution; Section 16, Article I, Ohio Constitution

Due Process

Sixth Amendment, U.S. Constitution; Section 5, Article I, Ohio Constitution

Right to Jury Trial

Sixth Amendment, U.S. Constitution; Section 10, Article I, Ohio Constitution

Compulsory Process
Confrontation of Adverse Witnesses
Informed of the Nature of the Charges
Right to Effective Assistance of Counsel
Right to Speedy and Public Trial

Eighth Amendment, U.S. Constitution; Section 9, Article I, Ohio Constitution

Excessive Bail or Fines
Cruel and Unusual Punishment

Furthermore, your petition must comply with Criminal Rule 35, which states:

(A) A petition for post-conviction relief pursuant to section 2953.21 of the Revised Code shall contain a case history, statement of facts, and separately identified grounds for relief. Each ground for relief shall not exceed three pages in length. A petition may be accompanied by an attachment of exhibits or other supporting materials. A trial court may extend the page limits provided in this rule, request further briefing on any ground for relief presented, or direct the petitioner to file a supplemental petition in the recommended form.

(B) The clerk of court immediately shall send a copy of the petition to the prosecuting attorney. Upon order of the trial court, the clerk of court shall duplicate all or any part of the record that the trial court requires.

(C) The trial court shall file its ruling upon a petition for post-conviction relief, including findings of fact and conclusions of law if required by law, not later than one hundred eighty days after the petition is filed.

This rule is explained more in the forms below.

2953.21 Post conviction relief petition.

(A)(1)(a) Any person who has been convicted of a criminal offense or adjudicated a delinquent child and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States, and any person who has been convicted of a criminal offense that is a felony, who is an inmate, and for whom DNA testing that was performed under sections 2953.71 to 2953.81 of the Revised Code or under section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code provided results that establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death, may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. The petitioner may file a supporting affidavit and other documentary evidence in support of the claim for relief.

(b) As used in division (A)(1)(a) of this section, "actual innocence" means that, had the results of the DNA testing conducted under sections 2953.71 to 2953.81 of the Revised Code or under section 2953.82 of the Revised Code been presented at trial, and had those results been analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted, or, if the person was sentenced to death, no reasonable factfinder would have found the petitioner guilty of the aggravating circumstance or circumstances the petitioner was found guilty of committing and that is or are the basis of that sentence of death.

(c) As used in divisions (A)(1)(a) and (b) of this section, "former section 2953.82 of the Revised Code" means section 2953.82 of the Revised Code as it existed prior to the effective date of this amendment.

(2) Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division (A)(1) of this section shall be filed no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the supreme court. If no appeal is taken, except as otherwise provided in section 2953.23 of the Revised Code, the petition shall be filed no later than one hundred eighty days after the expiration of the time for filing the appeal.

(3) In a petition filed under division (A) of this section, a person who has been sentenced to death may ask the court to render void or voidable the judgment with respect to the conviction of aggravated murder or the specification of an aggravating circumstance or the sentence of death.

(4) A petitioner shall state in the original or amended petition filed under division (A) of this section all grounds for relief claimed by the petitioner. Except as provided in section 2953.23 of the Revised Code, any ground for relief that is not so stated in the petition is waived.

(5) If the petitioner in a petition filed under division (A) of this section was convicted of or pleaded guilty to a felony, the petition may include a claim that the petitioner was denied the equal protection of the laws in violation of the Ohio Constitution or the United States Constitution because the sentence imposed upon the petitioner for the felony was part of a consistent pattern of disparity in sentencing by the judge who imposed the sentence, with regard to the petitioner's race, gender, ethnic background, or religion. If the supreme court adopts a rule requiring a court of common pleas to maintain information with regard to an offender's race, gender, ethnic background, or religion, the supporting evidence for the petition shall include, but shall not be limited to, a copy of that type of information relative to the petitioner's sentence and copies of that type of information relative to sentences that the same judge imposed upon other persons.

(B) The clerk of the court in which the petition is filed shall docket the petition and bring it promptly to the attention of the court. The clerk of the court in which the petition is filed immediately shall forward a copy of the petition to the prosecuting attorney of that county.

(C) The court shall consider a petition that is timely filed under division (A)(2) of this section even if a direct appeal of the judgment is pending. Before granting a hearing on a petition filed under division (A) of this section, the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider, in addition to the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript. The court reporter's transcript, if ordered and certified by the court, shall be taxed as court costs. If the court dismisses the petition, it shall make and file findings of fact and conclusions of law with respect to such dismissal.

(D) Within ten days after the docketing of the petition, or within any further time that the court may fix for good cause shown, the prosecuting attorney shall respond by answer or motion. Within twenty days from the date the issues are raised, either party may move for summary judgment. The right to summary judgment shall appear on the face of the record.

(E) Unless the petition and the files and records of the case show the petitioner is not entitled to relief, the court shall proceed to a prompt hearing on the issues even if a direct appeal of the case is pending. If the court notifies the parties that it has found grounds for granting relief, either party may request an appellate court in which a direct appeal of the judgment is pending to remand the pending case to the court.

(F) At any time before the answer or motion is filed, the petitioner may amend the petition with or without leave or prejudice to the proceedings. The petitioner may amend the petition with leave of court at any time thereafter.

(G) If the court does not find grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall enter judgment denying relief on the petition. If no direct appeal of the case is pending and the court finds grounds for relief or if a pending direct appeal of the case has been remanded to the court pursuant to a request made pursuant to division (E) of this section and the court finds grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall enter a judgment that vacates and sets aside the judgment in question, and, in the case of a petitioner who is a prisoner in custody, shall discharge or resentence the petitioner or grant a new trial as the court determines appropriate. The court also may make supplementary orders to the relief granted, concerning such matters as arraignment, retrial, custody, and bail. If the trial court's order granting the petition is reversed on appeal and if the direct appeal of the case has been remanded from an appellate court pursuant to a request under division (E) of this section, the appellate court reversing the order granting the petition shall notify the appellate court in which the direct appeal of the case was pending at the time of the remand of the reversal and remand of the trial court's order. Upon the reversal and remand of the trial court's order granting the petition, regardless of whether notice is sent or received, the direct appeal of the case that was remanded is reinstated.

(H) Upon the filing of a petition pursuant to division (A) of this section by a person sentenced to death, only the supreme court may stay execution of the sentence of death.

(I)(1) If a person sentenced to death intends to file a petition under this section, the court shall appoint counsel to represent the person upon a finding that the person is indigent and that the person either accepts the appointment of counsel or is unable to make a competent decision whether to accept or reject the appointment of counsel. The court may decline to appoint counsel for the person only upon a finding, after a hearing if necessary, that the person rejects the appointment of counsel and understands the legal consequences of that decision or upon a finding that the person is not indigent.

(2) The court shall not appoint as counsel under division (I)(1) of this section an attorney who represented the petitioner at trial in the case to which the petition relates unless the person and the attorney expressly request the appointment. The court shall appoint as counsel under division (I)(1) of this section only an attorney who is certified under Rule 20 of the Rules of Superintendence for the Courts of Ohio to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed. The ineffectiveness or incompetence of counsel during proceedings under this section does not constitute grounds for relief in a proceeding under this section, in an appeal of any action under this section, or in an application to reopen a direct appeal.

(3) Division (I) of this section does not preclude attorneys who represent the state of Ohio from invoking the provisions of 28 U.S.C. 154 with respect to capital cases that were pending in federal habeas corpus proceedings prior to July 1, 1996, insofar as the petitioners in those cases were represented in proceedings under this section by one or more counsel appointed by the court under this section or section 120.06, 120.16, 120.26, or 120.33 of the Revised Code and those appointed counsel meet the requirements of division (I)(2) of this section.

(J) Subject to the appeal of a sentence for a felony that is authorized by section 2953.08 of the Revised Code, the remedy set forth in this section is the exclusive remedy by which a person may bring a collateral challenge to the validity of a conviction or sentence in a criminal case or to the validity of an adjudication of a child as a delinquent child for the commission of an act that would be a criminal offense if committed by an adult or the validity of a related order of disposition.

2953.22 Post conviction relief hearing.

If a hearing is granted pursuant to section 2953.21 of the Revised Code, the petitioner shall be permitted to attend the hearing. Testimony of the prisoner or other witnesses may be offered by deposition.

If the petitioner is in a state correctional institution, he may be returned for the hearing upon the warrant of the court of common pleas of the county where the hearing is to be held. The approval of the governor on the warrant shall not be required. The warrant shall be directed to the sheriff of the county in which the hearing is to be held. When a copy of the warrant is presented to the warden or other head of a state correctional institution, he shall deliver the convict to the sheriff, who shall convey him to the county. For removing and returning the convict, the sheriff shall receive the fees allowed for conveying convicts to the correctional institution.

2953.23 Post conviction relief petition - time for filing.

(A) Whether a hearing is or is not held on a petition filed pursuant to section 2953.21 of the Revised Code, a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of that section or a second petition or successive petitions for similar relief on behalf of a petitioner unless division (A)(1) or (2) of this section applies:

(1) Both of the following apply:

(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right.

(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted or, if the claim challenges a sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

(2) The petitioner was convicted of a felony, the petitioner is an inmate for whom DNA testing was performed under sections 2953.71 to 2953.81 of the Revised Code or under section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code, and the results of the DNA testing establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death.

As used in this division, "actual innocence" has the same meaning as in division (A)(1)(b) of section 2953.21 of the Revised Code, and "former section 2953.82 of the Revised Code" has the same meaning as in division (A)(1)(c) of section 2953.21 of the Revised Code.

(B) An order awarding or denying relief sought in a petition filed pursuant to section 2953.21 of the Revised Code is a final judgment and may be appealed pursuant to Chapter 2953. of the Revised Code.

INSTRUCTIONS

STEP ONE: FILL OUT THE FORMS

The forms are self-explanatory. If you need assistance, contact Legal Services or your institutional law library. Also, read thoroughly the information contained in the notice enclosed with this packet. *Pay particular attention to the filing deadlines.* Here are some additional tips:

THE PETITION:

- It is absolutely essential that you support your postconviction claims with substantial evidence. For example, if you are claiming that your attorney was ineffective because he or she failed to contact your witnesses, you must attach to your petition affidavits from those witnesses corroborating your claim. *If you fail to support your claims with substantial evidence, there is virtually no chance that the court will grant you a hearing.* All affidavits, including your own, must be notarized.
- Due to a recent decision of the United States Supreme Court, you need to provide the trial court with as much supportive and documentary evidence as possible. You also need to assert that the trial judge should appoint counsel to represent you and should grant you an evidentiary hearing. The recent Supreme Court decision demonstrates the importance of presenting your evidence, making your arguments, and creating a record in state court. You might not have an opportunity to present evidence or expand the record, later, in federal court. See *Cullen v. Pinholster* (2011), ___ U.S. ___, 131 S.Ct. 1388, 179 L.Ed.2d 557.
- If you do not know your case number, kite the record office.
- Do not use fancy legal terms and phrases; state your claims clearly and simply.

AFFIDAVIT OF INDIGENCY

- Your affidavit of indigency must be notarized. See your unit staff for notary service. *Do not sign the affidavit until you see the notary; it must be signed in the notary's presence.*

MOTION FOR APPOINTMENT OF COUNSEL

- This motion should always be filed with a petition for postconviction relief. If the judge decides to hold an evidentiary hearing in your case, the court may (but is not required to) appoint counsel to represent you. Alternatively, the court may notify this office and request that we review the merits of your claims to determine whether or not we will represent you. In any event, it is important to understand that you may be represented by an attorney, but only if: (1) the court appoints counsel, or (2) this office reviews your claims and determines that the claims have arguable merit. *You have no constitutional right to counsel in postconviction proceedings.*

MOTION FOR EXPERT ASSISTANCE

- The use of this motion is optional. You should use this motion only if you need expert assistance in proving your claims. *Do not file the motion if it is not necessary.*

STEP TWO: MAKE COPIES

When the forms are completed, make three (3) copies of each form.

STEP THREE: MAIL THE FORMS

Mail the forms as follows:

TO THE CLERK OF COURTS:

- Mail all four original forms, plus two (2) copies of the petition, one (1) copy of the affidavit of indigency, one (1) copy of the motion for appointment of counsel, and one (1) copy of the motion for expert assistance, if you are filing one.
- Mark one copy of each document “time-stamp and return.” **Do not** mark the original forms.
- **Do not** mail anything directly to the judge.
- If you do not know the mailing address of the clerk of courts, you may obtain it from your institutional library.

TO THE PROSECUTOR:

- Mail one (1) copy of the motion for appointment of counsel and one (1) copy of the motion for expert assistance, if you are filing one.
- You do not need to send the prosecutor a copy of the petition. By law, the clerk is required to serve a copy on the prosecutor. (That is the reason you are sending an extra copy of the petition to the clerk.)
- If you do not know the prosecutor’s mailing address, you can find it in your prison orientation packet.

IN THE COURT OF COMMON PLEAS
NAME OF THE COUNTY WHERE YOU WERE CONVICTED COUNTY, OHIO

STATE OF OHIO, :
Plaintiff-Respondent, :
v. : Case No. (YOUR TRIAL COURT CASE
NUMBER)
YOUR NAME, :
Defendant-Petitioner. : **EVIDENTIARY HEARING REQUESTED**

**PETITION TO VACATE OR SET ASIDE JUDGMENT OF
CONVICTION OR SENTENCE**

Petitioner, YOUR NAME, petitions this Court for postconviction relief pursuant to
R.C. 2953.21, for the following reasons:

1. Petitioner was indicted for THE NAME OF THE CRIME YOU WERE
CHARGED WITH

2. Petitioner was convicted of THE NAME OF THE CRIME YOU WERE
FOUND GUILTY OF OR PLEADED GUILTY TO

in a judgment entered on THE DATE THE JUDGE CONVICTED YOU, THIS CAN
BE FOUND IN YOUR SENTENCING ENTRY

3. [Place an X in the box next to the statement below that applies to your
case.]

[] Petitioner was tried by a jury.

[] Petitioner was tried by a judge, without a jury.

[] Petitioner entered a plea of "guilty."

[] Petitioner entered a plea of "no contest."

4. Petitioner was given a sentence of HOW LONG YOU WERE

SENTENCED TO SERVE IN PRISON

5. Petitioner (did) (did not) [circle one] appeal from the judgment of conviction to the Court of Appeals. [Complete the following, if an appeal was taken.] The Court of Appeals (has) (has not) [circle one] rendered a decision.

6. Petitioner (did) (did not) [circle one] appeal the decision of the Court of Appeals to the Ohio Supreme Court.

7. Petitioner suffered a denial or infringement of Petitioner's rights sufficient to render the judgment of conviction void or voidable under the Ohio Constitution and/or the Constitution of the United States.

8. The constitutional errors that entitle Petitioner to relief are not included in the record and could not have been raised on appeal.

CLAIM NUMBER ONE

9a. Statement of constitutional claim: YOU MUST ALLEGE A
CONSTITUTIONAL ERROR (EXAMPLE: YOU WERE DEPRIVED OF YOUR SIXTH
AMENDMENT RIGHT TO COUNSEL BECAUSE YOUR TRIAL COUNSEL WAS
INEFFECTIVE)

9b. Short statement of facts supporting the claim: SUMMARIZE THE
EVIDENCE PRESENTED AT YOUR TRIAL

9c. The following evidence and/or affidavits are attached to support the claim:

LIST THE AFFIDAVITS OR OTHER EVIDENCE THAT YOU ARE ATTACHING TO
THE PETITION THAT SUPPORT YOUR CLAIM

9d. Evidence supporting this claim is not attached because Petitioner needs the assistance of an attorney, investigator, psychologist and/or DO NOT FILL THIS IN UNLESS YOU HAVE A SPECIFIC REQUEST to produce the evidence. (See Petitioner's Motions for Expert Assistance and for Appointment of Counsel, filed with this petition.)

SAMPLE

CLAIM NUMBER TWO - CONTINUE TO NUMBER YOUR CLAIMS ON THE FOLLOWING PAGES

[Use copies of this page to list any additional constitutional claims. List each claim individually. Use the same format used in the first claim for all other claims.]

Write the number "10" here between the parentheses. If you have another claim after this, write the number "11" between the parentheses for the for the next claim, and so on. You are numbering these paragraphs sequentially.

()a. Statement of constitutional claim: _____

()b. Short statement of facts supporting the claim: _____

()c. The following evidence and/or affidavits are attached to support the claim: _____

()d. Evidence supporting this claim is not attached because Petitioner needs the assistance of an attorney, investigator, psychologist and/or _____ to produce the evidence. (See Petitioner's Motions for Expert Assistance and for Appointment of Counsel, filed with this petition.)

SAMPLE

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests:

- A. That Petitioner be granted an evidentiary hearing on the above claim(s);
- B. That Petitioner’s conviction be vacated or set aside; and/or
- C. That Petitioner be granted such other relief as the court deems appropriate.

Respectfully submitted,

YOUR NAME AND PRISON NUMBER
NAME AND NUMBER

NAME OF THE INSTITUTION WHERE YOU ARE INCARCERATED
INSTITUTION

ADDRESS OF THE INSTITUTION WHERE YOU ARE INCARCERATED
ADDRESS

CITY, STATE & ZIP

DEFENDANT-APPELLANT, PRO SE

SAMPLE

IN THE COURT OF COMMON PLEAS
NAME OF THE COUNTY WHERE YOU WERE CONVICTED COUNTY, OHIO

STATE OF OHIO, :
Plaintiff-Respondent, :
v. : Case No. (YOUR TRIAL COURT CASE
NUMBER)

YOUR NAME, :
Defendant-Petitioner. :

AFFIDAVIT OF INDIGENCY

I, YOUR NAME, do hereby solemnly swear that I have presently this _____ day
of _____, 20____, no means of financial support and no assets of any
value and, therefore, cannot afford to pay for any legal services, fees or costs in the
above-styled case.

YOUR NAME AND PRISON NUMBER
NAME AND NUMBER

NAME OF THE INSTITUTION WHERE
YOU ARE INCARCERATED
INSTITUTION

ADDRESS OF THE INSTITUTION WHERE
YOU ARE INCARCERATED
ADDRESS

Have this
signed by a
notary
public

CITY, STATE & ZIP
DEFENDANT-APPELLANT, PRO SE

Sworn to and subscribed in my presence this _____ day of
_____, 20_____.

NOTARY PUBLIC

IN THE COURT OF COMMON PLEAS
NAME OF THE COUNTY WHERE YOU WERE CONVICTED COUNTY, OHIO

STATE OF OHIO, :
 :
Plaintiff-Respondent, :
 :
v. : Case No. (YOUR TRIAL COURT CASE
 : NUMBER)

YOUR NAME, :
 :
Defendant-Petitioner. :

MOTION FOR APPOINTMENT OF COUNSEL

Petitioner moves this Court for an order appointing counsel to represent Petitioner on the Petition for Post-Conviction Relief. A memorandum in support is attached.

Respectfully submitted,

YOUR NAME AND PRISON NUMBER
NAME AND NUMBER

NAME OF THE INSTITUTION WHERE
YOU ARE INCARCERATED
INSTITUTION

ADDRESS OF THE INSTITUTION WHERE
YOU ARE INCARCERATED
ADDRESS

CITY, STATE & ZIP

DEFENDANT-APPELLANT, PRO SE

MEMORANDUM IN SUPPORT

Petitioner lacks the skill or knowledge to adequately pursue Petitioner’s rights without the assistance of counsel. Counsel is essential to insure that Petitioner’s rights are fully litigated and all issues reviewed. Pursuant to R.C. 2953.21, Petitioner has only one opportunity to present his claims for post-conviction relief. Counsel is required to protect Petitioner’s constitutional rights. As attested by the Affidavit of Indigency filed with the petition, Petitioner is without funds to hire an attorney.

The following special circumstances about Petitioner and/or Petitioner’s case further support this request: TELL THE COURT WHY YOU NEED AN ATTORNEY. EXAMPLE: YOU DON'T HAVE THE RESOURCES TO GET IN TOUCH WITH WITNESSES OR IT IS A REALLY COMPLICATED ISSUE

WHEREFORE, Petitioner respectfully requests that counsel be appointed.

Respectfully submitted,

YOUR NAME AND PRISON NUMBER
NAME AND NUMBER

NAME OF THE INSTITUTION WHERE YOU ARE INCARCERATED
INSTITUTION

ADDRESS OF THE INSTITUTION WHERE YOU ARE INCARCERATED
ADDRESS

CITY, STATE & ZIP

DEFENDANT-APPELLANT, PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL was forwarded by regular U.S. mail to FILL IN THE NAME OF THE PROSECUTING ATTORNEY, Prosecuting Attorney FILL IN THE ADDRESS OF THE PROSECUTING ATTORNEY on FILL IN THE DATE THAT YOU ARE MAILING THIS MOTION.

SIGN YOUR NAME
SIGNATURE

YOUR NAME AND INMATE NUMBER
NAME AND NUMBER

DEFENDANT-PETITIONER, PRO SE

SAMPLE

IN THE COURT OF COMMON PLEAS
NAME OF THE COUNTY WHERE YOU WERE CONVICTED COUNTY, OHIO

STATE OF OHIO, :
Plaintiff-Respondent, :
v. : Case No. (YOUR TRIAL COURT CASE
NUMBER)

YOUR NAME, :
Defendant-Petitioner. :

MOTION FOR EXPERT ASSISTANCE

Petitioner moves this Court for an order granting funds to pay the cost/fees of
a(n) NAME THE TYPE OF EXPERT YOU ARE ASKING FOR. EXAMPLE:
BALLISTICS EXPERT. The NAME THE TYPE OF EXPERT YOU ARE ASKING FOR.
EXAMPLE: BALLISTICS EXPERT is necessary to help present Petitioner's post-
conviction case and insure that the issues in this matter are fully and fairly litigated.

A memorandum in support is attached.

Respectfully submitted,

YOUR NAME AND PRISON NUMBER
NAME AND NUMBER

NAME OF THE INSTITUTION WHERE
YOU ARE INCARCERATED
INSTITUTION

ADDRESS OF THE INSTITUTION WHERE
YOU ARE INCARCERATED
ADDRESS

CITY, STATE & ZIP

DEFENDANT-APPELLANT, PRO SE

MEMORANDUM IN SUPPORT

Petitioner is incarcerated at NAME OF THE INSTITUTION WHERE YOU ARE INCARCERATED and is without funds to hire a(n) NAME THE TYPE OF EXPERT YOU ARE ASKING FOR. EXAMPLE: BALLISTICS EXPERT. Petitioner needs the assistance of a(n) NAME THE TYPE OF EXPERT YOU ARE ASKING FOR. EXAMPLE: BALLISTICS EXPERT to fully and fairly litigate Petitioner's post-conviction claims. Specifically, Petitioner requires a(n) NAME THE TYPE OF EXPERT YOU ARE ASKING FOR. EXAMPLE: BALLISTICS EXPERT to establish the following facts

TELL THE COURT WHAT YOU WANT THE EXPERT TO DO. EXAMPLE: A BALLISTICS EXPERT TO EXAMINE THE GUN FOUND TO SHOW IT WASN'T THE GUN USED TO KILL THE PERSON.

to support Petitioner's claim that: TELL THE COURT WHICH CLAIM YOU LISTED IN YOUR PETITION THIS EVIDENCE WOULD SUPPORT. EXAMPLE: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR NOT HIRING A BALLISTICS EXPERT.

Without the assistance of a(n) NAME THE TYPE OF EXPERT YOU ARE ASKING FOR, Petitioner cannot receive a fair review of the issues presented, thus denying Petitioner's state and federal constitutional rights.

WHEREFORE, Petitioner respectfully requests an order granting funds to pay a(n) NAME THE TYPE OF EXPERT YOU ARE ASKING FOR to assist Petitioner in the preparation and presentation of the post-conviction claims.

Respectfully submitted,

YOUR NAME AND PRISON NUMBER
NAME AND NUMBER

NAME OF THE INSTITUTION WHERE YOU ARE INCARCERATED
INSTITUTION

ADDRESS OF THE INSTITUTION WHERE YOU ARE INCARCERATED
ADDRESS

CITY, STATE & ZIP

DEFENDANT-APPELLANT, PRO SE

SAMPLE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR EXPERT ASSISTANCE was forwarded by regular U.S. mail to FILL IN THE NAME OF THE PROSECUTING ATTORNEY, Prosecuting Attorney FILL IN THE ADDRESS OF THE PROSECUTING ATTORNEY on FILL IN THE DATE THAT YOU ARE MAILING THIS MOTION.

SIGN YOUR NAME
SIGNATURE

YOUR NAME AND INMATE NUMBER
NAME AND NUMBER

DEFENDANT-PETITIONER, PRO SE

SAMPLE

IN THE COURT OF COMMON PLEAS

_____ COUNTY, OHIO

STATE OF OHIO, :

Plaintiff-Respondent, :

v. : Case No. _____

_____, :

Defendant-Petitioner. : **EVIDENTIARY HEARING REQUESTED**

**PETITION TO VACATE OR SET ASIDE JUDGMENT OF
CONVICTION OR SENTENCE**

Petitioner, _____, petitions this Court for postconviction relief pursuant to R.C. 2953.21, for the following reasons:

1. Petitioner was indicted for _____

2. Petitioner was convicted of _____

in a judgment entered on _____

3. [Place an X in the box next to the statement below that applies to your case.]

[] Petitioner was tried by a jury.

[] Petitioner was tried by a judge, without a jury.

[] Petitioner entered a plea of "guilty."

[] Petitioner entered a plea of "no contest."

4. Petitioner was given a sentence of _____

5. Petitioner (did) (did not) [circle one] appeal from the judgment of conviction to the Court of Appeals. [Complete the following, if an appeal was taken.]

The Court of Appeals (has) (has not) [circle one] rendered a decision.

6. Petitioner (did) (did not) [circle one] appeal the decision of the Court of Appeals to the Ohio Supreme Court.

7. Petitioner suffered a denial or infringement of Petitioner's rights sufficient to render the judgment of conviction void or voidable under the Ohio Constitution and/or the Constitution of the United States.

8. The constitutional errors that entitle Petitioner to relief are not included in the record and could not have been raised on appeal.

CLAIM NUMBER ONE

9a. Statement of constitutional claim: _____

9b. Short statement of facts supporting the claim: _____

9c. The following evidence and/or affidavits are attached to support the claim:

9d. Evidence supporting this claim is not attached because Petitioner needs the assistance of an attorney, investigator, psychologist and/or _____ to produce the evidence. (See Petitioner's Motions for Expert Assistance and for Appointment of Counsel, filed with this petition.)

CLAIM NUMBER _____

[Use copies of this page to list any additional constitutional claims. List each claim individually. Use the same format used in the first claim for all other claims. Continue to number all paragraphs consecutively, beginning with Paragraph 10 for Claim Number Two.]

()a. Statement of constitutional claim: _____

()b. Short statement of facts supporting the claim: _____

()c. The following evidence and/or affidavits are attached to support the claim:

()d. Evidence supporting this claim is not attached because Petitioner needs the assistance of an attorney, investigator, psychologist and/or _____ to produce the evidence. (See Petitioner's Motions for Expert Assistance and for Appointment of Counsel, filed with this petition.)

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests:

- A. That Petitioner be granted an evidentiary hearing on the above claim(s);
- B. That Petitioner's conviction be vacated or set aside; and/or
- C. That Petitioner be granted such other relief as the court deems appropriate.

Respectfully submitted,

DEFENDANT-PETITIONER, *pro se*

INSTITUTION NUMBER

INSTITUTION

ADDRESS/P.O. BOX NUMBER

CITY, STATE & ZIP CODE

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

STATE OF OHIO, :
 :
 Plaintiff-Respondent, :
 :
 vs. : Case No. _____
 :
 _____, :
 :
 Defendant-Petitioner. :

AFFIDAVIT OF INDIGENCY

I, _____, do hereby solemnly swear that I have presently this _____ day of _____, 20____, no means of financial support and no assets of any value and, therefore, cannot afford to pay for any legal services, fees or costs in the above-styled case.

DEFENDANT-PETITIONER, *pro se*

INSTITUTION NUMBER

INSTITUTION

ADDRESS/P.O. BOX NUMBER

CITY, STATE & ZIP CODE

Sworn to and subscribed in my presence this _____ day of _____, 20____.

NOTARY PUBLIC

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

STATE OF OHIO, :
 :
 Plaintiff-Respondent, :
 :
 v. : Case No. _____
 :
 _____, :
 :
 Defendant-Petitioner. :

MOTION FOR APPOINTMENT OF COUNSEL

Petitioner moves this Court for an order appointing counsel to represent Petitioner on the Petition for Postconviction Relief. A memorandum in support is attached.

Respectfully submitted,

PETITIONER, *pro se*

INSTITUTION NUMBER

INSTITUTION

ADDRESS/P.O. BOX NUMBER

CITY, STATE & ZIP CODE

MEMORANDUM IN SUPPORT

Petitioner lacks the skill or knowledge to adequately pursue Petitioner's rights without the assistance of counsel. Counsel is essential to insure that Petitioner's rights are fully litigated and all issues reviewed. Pursuant to R.C. 2953.21, Petitioner has only one opportunity to present his claims for post-conviction relief. Counsel is required to protect Petitioner's constitutional rights. As attested by the Affidavit of Indigency filed with the petition, Petitioner is without funds to hire an attorney.

The following special circumstances about Petitioner and/or Petitioner's case further support this request: _____

WHEREFORE, Petitioner respectfully requests that counsel be appointed.

Respectfully, submitted,

PETITIONER, *pro se*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL was forwarded by regular U.S. mail to the office of the _____ County Prosecutor, [address] _____

on this _____ day of _____, 20 _____.

PETITIONER, *pro se*

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

STATE OF OHIO, :
 :
 Plaintiff-Respondent, :
 :
 v. : Case No. _____
 :
 _____, :
 :
 Defendant-Petitioner. :

MOTION FOR EXPERT ASSISTANCE

Petitioner moves this Court for an order granting funds to pay the cost/fees of a(n) _____. The _____ is necessary to help present Petitioner's postconviction case and insure that the issues in this matter are fully and fairly litigated.

A memorandum in support is attached.

Respectfully submitted,

PETITIONER, *pro se*

INSTITUTION NUMBER

INSTITUTION

ADDRESS/P.O. BOX NUMBER

CITY, STATE & ZIP CODE

MEMORANDUM IN SUPPORT

Petitioner is incarcerated at _____
and is without funds to hire a(n) _____. Petitioner needs the
assistance of a(n) _____ to fully and fairly litigate Petitioner's
postconviction claims. Specifically, Petitioner requires a(n) _____
to establish the following facts _____

to support Petitioner's claim that: _____

Without the assistance of a(n) _____, Petitioner cannot receive
a fair review of the issues presented, thus denying Petitioner's state and federal
constitutional rights.

WHEREFORE, Petitioner respectfully requests an order granting funds to pay
a(n) _____ to assist Petitioner in the preparation and presentation of
the postconviction claims.

Respectfully, submitted,

PETITIONER, *pro se*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR EXPERT ASSISTANCE was forwarded by regular U.S. mail to the office of the _____ County Prosecutor, [address] _____

on this ____ day of _____, 20 ____.

PETITIONER, *pro se*