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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 certain 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?**

In 2015 the time to file a timely postconviction petition was extended from 180 days to 365 days under House Bill 663. The new law became effective on March 23, 2015. Under the new law, if you filed a timely direct appeal from your conviction, a petition shall be filed no later than 365 days after the date on which the trial transcript is filed in the court of appeals. If a timely appeal was not filed in your case, your postconviction petition is due 365 days after the date a timely notice of appeal was due to be filed. (Sentencing entry filed + 30 + 365 = 395 total days.) See R.C. 2953.21(A)(2).

Your petition is not considered filed until the clerk of courts for the court of common pleas actually receives it. It does not matter what day it was put in the prison mail mechanism. Leave plenty of time for your petition to be processed through the mail and received by the clerk.

## **What if I missed the deadline?**

R.C. 2953.23(A)(1) permits a trial court to entertain an untimely or successive petition only if (1) the petitioner was unavoidably prevented from discovering the facts on which the petition is predicated, or (2) the United States Supreme Court has recognized a new federal or state right that applies retroactively to the petitioner and the petition asserts a claim based on that new right. R.C. 2953.23(A)(1)(a). If the petitioner is able to satisfy one of these threshold conditions, he or she must then demonstrate that, but for the constitutional error at trial, no reasonable factfinder would have found him or her guilty of the offenses of which he was convicted. R.C. 2953.23(A)(1)(b).

## **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, if necessary, (4) Motion for Expert Assistance. All of the items are included with 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 that counsel failed to call to the witness stand? **Each ground for relief shall not exceed three pages in length.** Criminal Rule 35.

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 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.

### **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.

**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**

Ohio's Post-Conviction Remedy Act, was enacted in 1965 in response to the United States Supreme Court order that states must provide their prisoners with some 'clearly defined method by which they may raise claims of denial of federal rights.' *State v. Calhoun*, 86 Ohio St.3d 279, 1999-Ohio-102, 714 N.E.2d 905, quoting *Young v. Ragen*, 337 U.S. 235, 239 (1949).

Where a claim raised by a petitioner for postconviction relief under R.C. 2953.21 is sufficient on its face to raise an issue that petitioner's conviction is void or voidable on constitutional grounds, and the claim is one which depends upon factual allegations that cannot be determined by examination of the files and records of the case, the petition states a substantive ground for relief. *State v. Kapper*, 5 Ohio St.3d 36, 37, 448 N.E.2d 823 (1983) (reaffirming *State v. Milanovich*, 42 Ohio St.2d 46, 325 N.E.2d 540 (1975)).

#### Ineffective Assistance of Counsel:

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*, 466 U.S. 668, 104 S.Ct. 2052 (1984).

Trial counsel has a duty to conduct a reasonable investigation to determine possible defenses or to make a reasonable decision that a particular investigation is unnecessary. *Strickland*, 466 U.S. at 691, 104 S.Ct. 2052, 80 L.Ed.2d.

Ohio has adopted the *Strickland* test for evaluating counsel's performance. See *State v. Smith*, 17 Ohio St.3d 98, 477 N.E.2d 1128 (1985); *State v. Bradley*, 42 Ohio St.3d 136; 538 N.E.2d 373 (1989); *State v. Herring*, 142 Ohio St.3d 165, 2014-Ohio-5228, 28 N.E.3d 1217.

A claim of ineffective assistance of counsel is waived by a guilty plea, except to the extent that the ineffective assistance of counsel caused the defendant's plea to be less than knowing, intelligent and voluntary. Where a defendant has entered a guilty plea, the defendant can prevail on an ineffective assistance of counsel claim only by demonstrating that there is a reasonable probability that, but for counsel's deficient performance, he would not have pled guilty to the offenses at issue and would have insisted on going to trial. The prejudice inquiry in the context of a guilty plea requires a nuanced analysis of all of the factors surrounding the plea decision, including the benefits associated with a plea, the possible punishments involved, the weight of the evidence against the defendant and any other special circumstances that might support or rebut a defendant's claim that he would have taken his chances at trial. *State v. Moon*, 8th Dist. Cuyahoga No. 101972, 2015-Ohio-1550, ¶27.

Failure to file a motion to suppress does not constitute per se ineffective assistance of counsel. Rather, the failure to file a motion to suppress constitutes ineffective assistance of counsel only when the record demonstrates that the motion would have been successful if made. Even if some evidence in the record supports a motion to suppress, counsel is still considered effective if counsel could reasonably have decided that filing a motion to suppress would have been a futile act. *State v. Moon*, 8th Dist. Cuyahoga No. 101972, 2015-Ohio-1550, ¶28.

Generally, counsel's decision whether to call a witness falls within the rubric of trial strategy and will not be second-guessed by a reviewing court. *State v. Treesh*, 90 Ohio St.3d 460, 490, 2001-Ohio-4, 739 N.E.2d 749.

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*, 64 Ohio St.2d 107, 413 N.E.2d 819 (1980); *State v. Kapper*, 5 Ohio St.3d 36, 448 N.E.2d 823 (Ohio 1983).

#### Untimely Petition under R.C. 2953.23:

R.C. 2953.23(A)(1) permits a trial court to entertain an untimely or successive petition only if (1) the petitioner was unavoidably prevented from discovering the facts on which the petition is predicated, or (2) the United States Supreme Court has recognized a new federal or state right that applies retroactively to the petitioner and the petition asserts a claim based on that new right. If the petitioner is able to satisfy one of these threshold conditions, he or she must then demonstrate that, but for the constitutional error at trial, no reasonable factfinder would have found him or her guilty of the offenses of which he was convicted. R.C. 2953.23(A)(1)(b). *State v. Taylor*, 8th Dist. Cuyahoga No. 102020, 2015 Ohio 1314, ¶¶6-7.

A trial court lacks jurisdiction to entertain an untimely petition for postconviction relief unless a petitioner demonstrates that one of the exceptions in R.C. 2953.23(A) applies. *State v. Lacking*, 10th Dist. Franklin Nos. 14AP-691, 14AP-692, 2015-Ohio-1715, ¶12.

Trial court properly overruled an inmate's motion to correct illegal sentence. The motion was untimely as it was filed beyond the 180-day time limit set forth in R.C. 2953.21, and the inmate failed to meet any of the timeliness exceptions under R.C. 2953.23. *State v. Butler*, 7th Dist. Jefferson No. 11-JE-30, 2012-Ohio-5361.

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*, 138 Ohio App.3d 400, 402, 741 N.E.2d 560, 561 (10<sup>th</sup> Dist. 2000).

Defendant satisfied R.C. 2953.23(A)(1)(a), and thus his postconviction relief petition was not time barred by R.C. 2953.21(A)(2) where, although defendant filed the petition beyond the time authorized by R.C. 2953.21(A)(2) and defendant knew at the conclusion of his trial of the alleged ineffective assistance of his counsel based on his counsel's failure to call alibi witnesses, he was unable to obtain affidavits from the alibi witnesses until later; while defendant could have filed a timely petition with only his own affidavit, absent affidavits from the alibi witnesses, the trial court almost certainly would have denied his claim, and then res judicata would have precluded defendant from re-litigating the issue after obtaining the needed affidavits from his alibi witnesses. *State v. Martin*, 2d Dist. Montgomery No. 20024, 2004-Ohio-73, ¶15.

Inmate's postconviction relief petition was untimely because it was filed 10 years after he filed the trial transcript in his direct appeal and the inmate failed to demonstrate that he was unavoidably prevented from discovering facts relating to his petition or that any new federal or state right retroactively applies to him. *State v. Shepherd*, 8th Dist. Cuyahoga No. 100660, 2014-Ohio-1736, ¶11.

#### Affidavits in Support of Petition

In evaluating the credibility of affidavits in post-conviction proceedings, a court should consider all relevant factors, including: (1) whether the judge reviewing the post-conviction relief petition also presided at the trial; (2) whether multiple affidavits contain nearly identical language, or otherwise appear to have been drafted by the same person; (3) whether the affidavits contain or rely on hearsay; (4) whether the affiants are relatives of the petitioner, or otherwise interested in the success of the petitioner's efforts; and (5) whether the affidavits contradict evidence proffered by the defense at trial. Moreover, a trial court may find sworn testimony in an affidavit to be contradicted by evidence in the record by the same witness, or to be internally inconsistent, thereby weakening the credibility of that testimony. Depending on the entire record, one or more of these or other factors may be sufficient to justify the conclusion that an affidavit asserting information outside the record lacks credibility. Such a decision should be within the discretion of the trial court. *State v. Calhoun*, 86 Ohio St.3d 279, 284, 1999-Ohio-102, 714 N.E.2d 905 (1999).

In reviewing a petition for postconviction relief filed pursuant to R.C. 2953.21, a trial court should give due deference to affidavits sworn to under oath and filed in support of the petition, but may, in the sound exercise of discretion, judge their credibility in determining whether to accept the affidavits as true statements of fact. *State v. Jeffers*, 10th Dist. Franklin No. 10AP-1112, 2011-Ohio-3555, ¶11.

#### No Right to Court Appointed Counsel in Postconviction Proceedings

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*, 60 Ohio St.3d 151, 573 N.E.2d 652 (1991); See, also, *Pennsylvania v. Finley*, 481 U.S. 551 (1987).

#### Res Judicata:

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*, 2 Ohio St.3d 112, 443 N.E.2d 169 (1982).

It is well settled that, "pursuant to res judicata, a defendant cannot raise an issue in a [petition] for postconviction relief if he or she could have raised the issue on direct appeal." *State v. Reynolds*, 79 Ohio St.3d 158, 161, 1997 Ohio 304, 679 N.E.2d 1131 (1997).

To survive preclusion by res judicata, a petitioner must produce new evidence that would render the judgment void or voidable and must also show that he could not have appealed the claim based upon information contained in the original record. *State v. Long*, 5th Dist. Richland No. 15CA3, 2015-Ohio-1657, ¶37.

#### Findings of Fact and Conclusions of Law

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*, 1 Ohio St.3d 217, 438 N.E.2d 910 (1982).

R.C. 2953.21(C) clearly provides that if a court dismisses or denies a timely petition for postconviction relief, the trial court shall issue findings of fact and conclusions of law. *State v. Hostacky*, 8th Dist. Cuyahoga No. 101282, 2015-Ohio-419, ¶9.

In the context of a petition for postconviction relief, the exercise of findings and conclusions are essential in order to prosecute an appeal. Without them, a petitioner knows no more than that he lost and hence is effectively precluded from making a reasoned appeal. In addition, the failure of a trial judge to make the requisite findings

prevents any meaningful judicial review, for it is the findings and the conclusions which an appellate court reviews for error. *State v. Mapson*, 1 Ohio St.3d 217, 219, 438 N.E.2d 910 (1982).

A trial court need not issue findings of fact and conclusions of law when it dismisses an untimely petition for post-conviction relief. *State v. Greene*, 98 Ohio St.3d 116, 2002-Ohio-7042, 781 N.E.2d 155; *State v. Moon*, 8th Dist. Cuyahoga No. 101972, 2015-Ohio-1550.

#### No Delayed Appeal in Postconviction

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*, 11 Ohio St.3d 40, 463 N.E.2d 375 (1984).

Pursuant to App.R. 4(A), an appeal from the denial of postconviction relief must be filed within thirty days of judgment. A delayed appeal pursuant to App.R. 5(A) is not available for the appeal of postconviction relief. *State v. Harvey*, 68 Ohio App. 2d 170, 171, 428 N.E.2d 437 (1980); *State v. Eberle*, 12th Dist. Butler No. CA99-12-210, 2001 Ohio App. LEXIS 258 (Jan. 29, 2001).

### **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

### **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.

### **R.C. 2953.21**

(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, any person who has been convicted of a criminal offense and sentenced to death and who claims that there was a denial or infringement of the person's rights under either of those Constitutions that creates a reasonable probability of an altered verdict, and any person who has been convicted of a criminal offense that is a felony and who is an offender for whom DNA testing that was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the person'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 former 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 person'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 July 6, 2010.

(d) At any time in conjunction with the filing of a petition for postconviction relief under division (A) of this section by a person who has been sentenced to death, or with the litigation of a petition so filed, the court, for good cause shown, may authorize the petitioner in seeking the postconviction relief and the prosecuting attorney of the county served by the court in defending the proceeding, to take depositions and to issue subpoenas and subpoenas duces tecum in accordance with divisions (A)(1)(d), (A)(1)(e), and (C) of this section, and to any other form of discovery as in a civil action that the court in its discretion permits. The court may limit the extent of discovery under this division. In addition to discovery that is relevant to the claim and was available under Criminal Rule 16 through conclusion of the original criminal trial, the court, for good cause shown, may authorize the petitioner or prosecuting attorney to take depositions and issue subpoenas and subpoenas duces tecum in either of the following circumstances:

(i) For any witness who testified at trial or who was disclosed by the state prior to trial, except as otherwise provided in this division, the petitioner or prosecuting attorney shows clear and convincing evidence that the witness is material and that a deposition of the witness or the issuing of a subpoena or subpoena duces tecum is of assistance in order to substantiate or refute the petitioner’s claim that there is a reasonable probability of an altered verdict. This division does not apply if the witness was unavailable for trial or would not voluntarily be interviewed by the defendant or prosecuting attorney.

(ii) For any witness with respect to whom division (A)(1) (d)(i) of this section does not apply, the petitioner or prosecuting attorney shows good cause that the witness is material and that a deposition of the witness or the issuing of a subpoena or subpoena duces tecum is of assistance in order to substantiate or refute the petitioner’s claim that there is a reasonable probability of an altered verdict.

(e) If a person who has been sentenced to death and who files a petition for postconviction relief under division (A) of this section requests postconviction discovery as described in division (A)(1)(d) of this section or if the prosecuting attorney of the county served by the court requests postconviction discovery as described in that division, within ten days after the docketing of the request, or within any other time that the court sets for good cause shown, the prosecuting attorney shall respond by answer or motion to the petitioner’s request or the petitioner shall respond by answer or motion to the prosecuting attorney’s request, whichever is applicable.

(f) If a person who has been sentenced to death and who files a petition for postconviction relief under division (A) of this section requests postconviction discovery as described in division (A)(1)(d) of this section or if the prosecuting attorney of the county served by the court requests postconviction discovery as described in that division, upon motion by the petitioner, the prosecuting attorney, or the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from oppression or undue burden or expense, including but not limited to the orders described in divisions (A)(1)(g)(i) to (viii) of this section. The court also may make any such order if, in its discretion, it determines that the discovery sought would be irrelevant to the claims made in the petition; and if the court makes any such order on that basis, it shall explain in the order the reasons why the discovery would be irrelevant.

(g) If a petitioner, prosecuting attorney, or person from whom discovery is sought makes a motion for an order under division (A)(1)(f) of this section and the order is denied in whole or in part, the court, on terms and conditions as are just, may order that any party or person provide or permit discovery as described in division (A)(1)(d) of this section. The provisions of Civil Rule 37(A)(4) apply to the award of expenses incurred in relation to the motion, except that in no case shall a court require a petitioner who is indigent to pay expenses under those provisions.

Before any person moves for an order under division (A)(1) (f) of this section, that person shall make a reasonable effort to resolve the matter through discussion with the petitioner or prosecuting attorney seeking discovery. A motion for an order under division (A)(1)(f) of this section shall be accompanied by a statement reciting the effort made to resolve the matter in accordance with this paragraph.

The orders that may be made under division (A)(1)(f) of this section include, but are not limited to, any of the following:

- (i) That the discovery not be had;
  - (ii) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
  - (iii) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
  - (iv) That certain matters not be inquired into or that the scope of the discovery be limited to certain matters;
  - (v) That discovery be conducted with no one present except persons designated by the court;
  - (vi) That a deposition after being sealed be opened only by order of the court;
  - (vii) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
  - (viii) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court
- (h) Any postconviction discovery authorized under division (A)(1)(d) of this section shall be completed not later than eighteen months after the start of the discovery proceedings unless, for good cause shown, the court extends that period for completing the discovery.
- (i) Nothing in division (A)(1)(d) of this section authorizes, or shall be construed as authorizing, the relitigation, or discovery in support of relitigation, of any matter barred by the doctrine of res judicata.
- (j) Division (A)(1) of this section does not apply to any person who has been convicted of a criminal offense and sentenced to death and who has unsuccessfully raised the same claims in a petition for postconviction relief.

(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 three hundred sixty-five 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 three hundred sixty-five 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.

(6) Notwithstanding any law or court rule to the contrary, there is no limit on the number of pages in, or on the length of, a petition filed under division (A) of this section by a person who has been sentenced to death. If any court rule specifies a limit on the number of pages in, or on the length of, a petition filed under division (A) of this section or on a prosecuting attorney's response to such a petition by answer or motion and a person who has been sentenced to death files a petition that exceeds the limit specified for the petition, the prosecuting attorney may respond by an answer or motion that exceeds the limit specified for the response.

(B) The clerk of the court in which the petition for postconviction relief and, if applicable, a request for postconviction discovery described in division (A)(1)(d) of this section is filed shall docket the petition and the request and bring them promptly to the attention of the court. The clerk of the court in which the petition for postconviction relief and, if applicable, a request for postconviction discovery described in division (A)(1)(d) of this section is filed immediately shall forward a copy of the petition and a copy of the request if filed by the petitioner to the prosecuting attorney of the county served by the court. If the request for postconviction discovery is filed by the prosecuting attorney, the clerk of the court immediately shall forward a copy of the request to the petitioner or the petitioner's counsel.

(C) If a person who has been sentenced to death and who files a petition for postconviction relief under division (A) of this section requests a deposition or the prosecuting attorney in the case requests a deposition, and if the court grants the request under division (A)(1)(d) of this section, the court shall notify the petitioner or the petitioner's counsel and the prosecuting attorney. The deposition shall be conducted pursuant to divisions (B), (D), and (E) of Criminal

Rule 15. Notwithstanding division (C) of Criminal Rule 15, the petitioner is not entitled to attend the deposition. The prosecuting attorney shall be permitted to attend and participate in any deposition.

(D) 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. If the petition was filed by a person who has been sentenced to death, the findings of fact and conclusions of law shall state specifically the reasons for the dismissal of the petition and of each claim it contains.

(E) 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. Division (A)(6) of this section applies with respect to the prosecuting attorney's response. 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.

(F) 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.

(G) A petitioner who files a petition under division (A) of this section may amend the petition as follows:

(1) If the petition was filed by a person who has been sentenced to death, at any time that is not later than one hundred eighty days after the petition is filed, the petitioner may amend the petition with or without leave or prejudice to the proceedings.

(2) If division (G)(1) of this section does not apply, 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.

(3) The petitioner may amend the petition with leave of court at any time after the expiration of the applicable period specified in division (G)(1) or (2) of this section.

(H) 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 the petition was filed by a person who has been sentenced to death, the findings of fact and conclusions of law shall state specifically the reasons for the denial of relief on the petition and of each claim it contains. 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 (F) 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. If the petitioner has been sentenced to death, the findings of fact and conclusions of law shall state specifically the reasons for the finding of grounds for granting the relief, with respect to each claim contained in the petition. 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 (F) 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.

(I) 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.

(J)(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 (J)(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 (J)(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 (J) 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 (J)(2) of this section.

(K) 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.

#### **R.C. 2953.22**

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.

### **R.C. 2953.23 (Delayed Petitions)**

(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 offender for whom DNA testing was performed under sections 2953.71 to 2953.81 of the Revised Code or under former 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.

If a petition filed pursuant to section 2953.21 of the Revised Code by a person who has been sentenced to death is denied and the person appeals the judgment, notwithstanding any law or court rule to the contrary, there is no limit on the number of pages in, or on the length of, a notice of appeal or briefs related to an appeal filed by the person. If any court rule specifies a

limit on the number of pages in, or on the length of, a notice of appeal or briefs described in this division or on a prosecuting attorney's response or briefs with respect to such an appeal and a person who has been sentenced to death files a notice of appeal or briefs that exceed the limit specified for the petition, the prosecuting attorney may file a response or briefs that exceed the limit specified for the answer or briefs.

#443591 v1 - CP - PCP Pro Se Packet

Revised 4-18-17

# 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 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*, 563 U.S. 170, 131 S.Ct. 1388 (2011).
- 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, \_\_\_\_\_, petitions this Court for postconviction relief pursuant to R.C. 2953.21 to vacate his conviction on the basis that it is void or voidable under the United States Constitution or the Ohio Constitution. Petitioner sets forth below operative facts to establish substantive grounds for relief. R.C. 2953.21(C).

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  
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:

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9b. Short statement of facts supporting the claim:

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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.)

**[Here put any additional claims – see directions below.]**

**PRAYER FOR RELIEF**

Petitioner requests the following relief:

- A. That this Court declare Petitioner’s judgment of conviction to be void or voidable and grant him a new trial;
- B. If this Court is not inclined to grant Petitioner relief based on the matters raised in this petition and supported by the attached exhibits, then Petitioner requests that this Court grant Petitioner leave to pursue discovery to more fully develop the factual basis demonstrating the constitutional violations that render Petitioner’s conviction and sentence void or voidable;
- C. That this Court grant any further relief to which Petitioner might be entitled.

Respectfully submitted,

Your name  
SIGNATURE

Prison number  
INSTITUTION NUMBER

Name of the institution where you are incarcerated  
INSTITUTION

Address of the institution where you are incarcerated  
ADDRESS

DEFENDANT-APPELLANT, PRO SE

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **PETITION TO VACATE AND SET ASIDE JUDGMENT OF CONVICTION OR SENTENCE** was forwarded by regular U.S. Mail to Fill in the name of the prosecuting attorney, Prosecuting Attorney, at fill in the address of the prosecuting attorney, on this 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

**CLAIM NUMBER** \_\_

[List any additional claim individually. Use the same format used in the first claim for all other claims. Remember 3 page limit for each constitutional claim]

*Write the number "10" here between the parentheses. If you have another claim after this, write the number "11" between the parentheses 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



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 \_\_\_\_\_, 201\_\_, 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  
SIGNATURE

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

Have this  
signed by a  
notary  
public

Sworn to and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_,  
201\_\_.

\_\_\_\_\_  
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  
SIGNATURE

Your prison number  
INSTITUTION 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  
SIGNATURE

Your prison number  
INSTITUTION 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, at Fill in the address of the prosecuting attorney, on this 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  
SIGNATURE

Your prison number  
INSTITUTION 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  
SIGNATURE

Your prison number  
INSTITUTION 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 EXPERT ASSISTANCE** was forwarded by regular U.S. Mail to Fill in the name of the prosecuting attorney, Prosecuting Attorney, at fill in the address of the prosecuting attorney, on this 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 to vacate Petitioner’s conviction on the basis that it is void or voidable under the United States Constitution or the Ohio Constitution. Petitioner sets forth below operative facts to establish substantive grounds for relief. R.C. 2953.21(C).

1. Petitioner was indicted for \_\_\_\_\_
2. Petitioner was convicted of \_\_\_\_\_  
in a judgment entered on \_\_\_\_\_
3.  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:

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9b. Short statement of facts supporting the claim:

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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.)

**Prayer for Relief.**

Petitioner requests the following relief:

- A. That this Court declare Petitioner's judgment of conviction to be void or voidable and grant him a new trial;
- B. If this Court is not inclined to grant Petitioner relief based on the matters raised in this petition and supported by the attached exhibits, then Petitioner requests that this Court grant Petitioner leave to pursue discovery to more fully develop the factual basis demonstrating the constitutional violations that render Petitioner's conviction and sentence void or voidable;
- C. That this Court grant any further relief to which Petitioner might be entitled.

Respectfully submitted,

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
INSTITUTION NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS/P.O. BOX NUMBER

\_\_\_\_\_  
CITY, STATE & ZIP CODE

DEFENDANT-APPELLANT, PRO SE

**CERTIFICATE OF SERVICE**

A copy of the foregoing **PETITION TO VACATE AND SET ASIDE JUDGMENT OF CONVICTION OR SENTENCE** was forwarded by regular U.S. Mail to \_\_\_\_\_, Prosecuting Attorney, at \_\_\_\_\_, on this \_\_\_ day of \_\_\_\_\_ 201\_\_.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME AND NUMBER

DEFENDANT-PETITIONER, PRO SE

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY, OHIO

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

**AFFIDAVIT OF INDIGENCY**

I, \_\_\_\_\_, do hereby solemnly swear that I have presently this  
\_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, 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.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
INSTITUTION NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS/P.O. BOX NUMBER

\_\_\_\_\_  
CITY, STATE & ZIP CODE

DEFENDANT-PETITIONER, PRO SE

Sworn to and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_,  
201\_\_\_\_.

\_\_\_\_\_  
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,

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
INSTITUTION NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS/P.O. BOX NUMBER

\_\_\_\_\_  
CITY, STATE & ZIP CODE

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. Even the intelligent and educated layman has small and sometimes no skill in the science of law. *Powell v. Ala.*, 287 U.S. 45, 69, 53 S.Ct. 55 (1932). 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,

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
INSTITUTION NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS/P.O. BOX NUMBER

\_\_\_\_\_  
CITY, STATE & ZIP CODE

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 \_\_\_\_\_, Prosecuting Attorney, at \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_ 201\_\_.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME AND NUMBER

DEFENDANT-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,

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
INSTITUTION NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS/P.O. BOX NUMBER

\_\_\_\_\_  
CITY, STATE & ZIP CODE

DEFENDANT-APPELLANT, PRO SE

**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,

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
INSTITUTION NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS/P.O. BOX NUMBER

\_\_\_\_\_  
CITY, STATE & ZIP CODE

DEFENDANT-APPELLANT, 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 \_\_\_\_\_, Prosecuting Attorney, at \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_ 201\_\_.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME AND NUMBER

DEFENDANT-PETITIONER, PRO SE