

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

**INFORMATION AND INSTRUCTIONS
PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2254 (PERSONS IN STATE CUSTODY)**

- 1) The attached form is to assist you in preparing a petition for habeas corpus relief pursuant to 28 U.S.C. § 2254. In order for your petition to be considered by the district court, it must be typewritten or legibly handwritten. All questions must be answered concisely in the appropriate spaces on the form. The petition must be signed and include a declaration under penalty of perjury. You are cautioned that any false statement of material fact may serve as basis for prosecution and conviction for perjury. You should, therefore, exercise care to assure that all answers are true, correct and complete.
- 2) Extra pages are not permitted, except that up to two additional pages (8½" x 11") may be attached if necessary to complete your answers to question 16. A copy of an appellate court opinion or order specifically concerning your conviction may also be attached.
- 3) You must provide the court with an original and a copy of the habeas corpus application. You also must provide the court with a copy of the application to be served on respondent. You should keep an additional copy of the application for your own records. All copies of the application must be identical to the original.
- 4) The law governing applications for a writ of habeas corpus pursuant to 28 U.S.C. §2254 has changed dramatically. You should consult the statutory changes in 28 U.S.C. §§2244, 2253, and 2254, *as amended by*, Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, §§101-106, 110 Stat. 1214 (April 24, 1996).
- 5) You must exhaust all available state judicial remedies before filing your petition. In your petition, you should raise all available grounds for relief. If you fail to do so, you may be barred from presenting additional grounds at a later date. The court will dismiss a claim in a second or successive petition that was presented in a prior petition. If you bring a second or successive petition, the court will also dismiss your petition even if the claim was not presented in the prior petition unless:
 - (a) you show that the claim relies on a new rule of retroactive constitutional law that was previously unavailable; or
 - (b) the facts of your claim could not have been discovered previously and the facts would be sufficient to establish clear and convincing evidence that but for the constitutional error, no reasonable fact finder would have found the petitioner guilty.

Before you may bring a second or successive petition, you must move the Tenth Circuit Court of Appeals for an order authorizing the district court to consider the petition.

- 6) You must file your petition within one year of the latest of:
 - (a) the date on which your judgment became final by the conclusion of direct review or the expiration of the time for seeking such review; or
 - (b) the date on which the impediment to filing an application created by state action in violation of the constitution or laws of the United States is removed, if the applicant was prevented from filing by

such state action; or

- (c) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (d) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

However, the time during the pendency of a properly filed application for post-conviction relief or other collateral review regarding the relevant claim or judgment shall not be counted towards the above limitation period. For example, a petitioner's direct appeal is finally decided on April 30, 1996. The statute of limitations would require the petitioner to file a federal habeas action by April 30, 1997. However, if petitioner properly filed a post-conviction application on May 30, 1996, the statute of limitations would be delayed; thus, only one month would be counted towards the statute of limitations. Assuming the post-conviction application was decided on November 30, 1996, the statute of limitations would require the petitioner to file his federal habeas corpus action 11 months from November 30, 1996 or October 30, 1997.

- (7) The following list of the most frequently raised grounds for relief in post-conviction proceedings is furnished for your information only. This list is not complete and you may raise any other grounds for relief you may have:
 - (a) denial of effective assistance of counsel, except for the ineffectiveness of counsel during state or federal collateral post-conviction proceedings;
 - (b) denial of right of appeal;
 - (c) conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with the understanding of the nature of the charge or the consequences of the plea;
 - (d) conviction obtained by use of coerced confession;
 - (e) conviction obtained by use of evidence obtained pursuant to an unlawful search and seizure;
 - (f) conviction obtained by use of evidence obtained pursuant to an unlawful arrest;
 - (g) conviction obtained by a violation of the privilege against self-incrimination;
 - (h) conviction obtained by the unconstitutional failure of the prosecution to disclose evidence favorable to the defendant;
 - (I) conviction obtained by a violation of the protection against double jeopardy;
 - (j) conviction obtained by the action of a grand or petit jury which was unconstitutionally selected and impaneled;
 - (k) conviction was obtained by the knowing use of perjured testimony;
 - (l) denial of compulsory process to obtain witnesses favorable to the defendant;
 - (m) sentence imposed is cruel and unusual punishment;
 - (n) conviction obtained by the use of evidence obtained pursuant to an unlawful lineup or identification procedure;
 - (o) denial of speedy trial;

- (p) conviction was obtained as a result of a plea of guilty or trial while the defendant was mentally incompetent.
- 8) On a single petition you may challenge the judgments of only one court. If you seek to challenge several judgments entered by different judges or divisions either in the same or different districts, you must file separate petitions as to each judgment in the appropriate district.
- 9) When your petition is completed, it should be mailed with two copies and filing fee or motion for leave to proceed *in forma pauperis* to the following address:

CLERK OF COURT
 UNITED STATES DISTRICT COURT
 333 West Fourth Room 411
 Tulsa, OK 74103-3819

- 10) You must either pay the full \$5.00 filing fee or file a motion for leave to proceed *in forma pauperis* and supporting affidavit. The affidavit must identify all your assets and state that you are unable to pay such fees or give security therefor. The affidavit must also include a "Statement of Institutional Accounts," signed by an authorized prison official.

Should a prisoner who has been granted pauper status in district court desire to appeal a decision by the district court, he/she may proceed *in forma pauperis* on appeal without further authorization. HOWEVER, if a prisoner has either paid the \$5.00 filing fee or been denied pauper status in district court, he/she must seek leave to proceed *in forma pauperis* on appeal by filing the proper motion and supporting affidavit in the district court. If the district court denies the motion for leave to proceed *in forma pauperis* on appeal, the prisoner will be responsible for payment of the \$105.00 filing fee in full in order to proceed with the appeal.

- 11) You must furnish an original and one copy of all motions, pleadings, correspondence or other documents (except the original petition which requires an original and two copies) submitted to the court for filing and consideration. In addition, you must furnish the opposing party or his attorney with a copy of all such documents submitted to the court. Each original document (except the original petition) must include a certificate stating the date a copy of the document was mailed to the opposing party or his attorney and the address to which it was mailed. Any pleading or other document received which fails to include a certificate of service may be disregarded by the court or returned.

A certificate of service may be in the following form:

I hereby certify that a copy of the foregoing pleading/
 document was mailed to _____
 (opposing party or counsel)
 at _____
 (address)
 on _____, 199__.

 (Original signature)

- 12) The United States Magistrate, the Clerk of Court, and deputy clerks are officers of the court and are prohibited from giving legal advice. Questions of this nature should be directed to an attorney.

Name, Prisoner ID #
SSN: _____

Address

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

_____, Petitioner
(Full Name)

Case No. _____
(To be supplied
by the Clerk)

v.

_____, Respondent
(Name of Warden, Superintendent,
Jailor or authorized person having
custody of petitioner)

**PETITION FOR A WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. §2254 BY A
PERSON IN STATE CUSTODY**

NOTE: If petitioner is attacking a judgment which imposed a sentence to be served in the **future**, petitioner must fill in the name of the state where the judgment of conviction was entered. If the petitioner has a sentence to be served in the **future** under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.

CONVICTION UNDER ATTACK

- 1) Name and location of the court which entered the judgment of conviction under attack _____
- 2) Date judgment of conviction was entered _____
- 3) Case number _____
- 4) Length and terms of sentence _____

5) Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion? Yes **Ú á** No **Ú á**

6) Nature of the offense involved (all counts) _____

7) What was your plea? (check one)

a) Not Guilty **Ú á** b) Guilty **Ú á** c) Nolo Contendere **Ú á**

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____

8) If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement: _____

9) Kind of trial (check one)

a) Jury Trial **Ú á** b) Judge without a Jury **Ú á**

10) Did you testify at trial (if any)? Yes **Ú á** No **Ú á**

Direct Appeal

11) Did you appeal the judgment of conviction? Yes **Ú á** No **Ú á**

12) If you did appeal, state the name and location of the court where the appeal was filed, the result, the case number and the date of the court's decision (or attach a copy of the court's opinion or order) _____

13) If you did not appeal, explain briefly why you did not _____

a) Did you seek permission to file a late appeal? Yes **Ú á** No **Ú á**.

Post-conviction Proceedings

14) Other than a Direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes No

15) If your answer to 14 was "Yes", give the following information:

a) First petition, application or motion.

1) Name of court _____

2) Nature of proceeding _____

3) Grounds raised:

4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No

5) Result _____

6) Date of result _____

7) Did you appeal the result to the highest state court having jurisdiction? Yes No . If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order)

8) If you did not appeal, briefly explain why you did not _____

b) As to any second petition, application or motion.

1) Name of court _____

2) Nature of proceeding _____

3) Grounds raised:

4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No

5) Result _____

6) Date of result _____

7) Did you appeal the result to the highest state court having jurisdiction? Yes No . If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order)

8) If you did not appeal, briefly explain why you did not _____

c) As to any third petition, application or motion.

1) Name of court _____

2) Nature of proceeding _____

3) Grounds raised:

4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No

5) Result _____

6) Date of result _____

7) Did you appeal the result to the highest state court having jurisdiction? Yes No . If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order)

8) If you did not appeal, briefly explain why you did not _____



- 16) State **concisely** every ground on which you claim that you are being unlawfully held. Summarize **briefly** the **facts** supporting each ground. If necessary, you may attach up to two extra pages stating additional grounds or supporting facts. You should raise in this petition all available grounds for relief which relate to the conviction under attack.

CAUTION

Before proceeding in a federal court, you are required to exhaust the remedies available to you in the state courts as to each ground on which you request action by the federal court.

A)(1) **Ground One:** _____

(2) Supporting facts: _____

(3) Statement of Exhaustion of State Remedies as to Ground One: _____

Direct Appeal

(a) If you appealed from the judgment of conviction did you raise this issue? Yes No .

(b) If you did not raise this issue in your Direct appeal, explain briefly why you did not _____

Post Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes No .

(d) If your answer to (c) is "Yes", state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

(e) Did you receive an evidentiary hearing on your motion or petition? Yes No .

(f) Did you appeal from the denial of your motion or petition? Yes No .

(g) If your answer to (f) is "Yes", state whether this issue was raised in the appeal, Yes No , and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order) _____

(h) If your answer to questions (e), (f) or (g) is "No", briefly explain

Other Remedies

(I) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue _____

B)(1) **Ground Two:** _____

(2) Supporting facts : _____

(3) Statement of Exhaustion of State Remedies as to Ground Two: _____

Direct Appeal

(a) If you appealed from the judgment of conviction did you raise this issue? Yes No .

(b) If you did not raise this issue in your Direct appeal, explain briefly why you did not _____

Post conviction Proceedings

c) Did you raise this issue by means of a post-conviction motion or

petition for habeas corpus in a state trial court? Yes No .

(d) If your answer to (c) is "Yes", state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

(e) Did you receive an evidentiary hearing on your motion or petition? Yes No .

(f) Did you appeal from the denial of your motion or petition? Yes No .

(g) If your answer to (f) is "Yes", state whether this issue was raised in the appeal, Yes No , and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

(h) If your answer to questions (e), (f) or (g) is "No", briefly explain

Other Remedies

(I) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue _____

C)(1) **Ground Three:** _____

(2) Supporting facts : _____

(3) Statement of Exhaustion of State Remedies as to Ground Three: _____

Direct Appeal

(a) If you appealed from the judgment of conviction did you raise this issue? Yes No .

(b) If you did not raise this issue in your Direct appeal, explain briefly why you did not _____

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes No .

(d) If your answer to (c) is "Yes", state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

(e) Did you receive an evidentiary hearing on your motion or petition? Yes No .

(f) Did you appeal from the denial of our motion or petition? Yes No .

(g) If your answer to (f) is "Yes", state whether this issue was raised in the appeal, Yes No , and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

(h) If your answer to questions (e), (f) or (g) is "No", briefly explain

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue _____

- 17) Have all grounds for relief raised in this petition been presented to the highest state court having jurisdiction? Yes No .
- 18) If you have answered "No" to question 17, state which grounds have not been so presented and briefly give your reason(s) for not presenting them _____

- 19) If any of the grounds listed in this petition, were not previously presented in any other court, state or federal, state **briefly** what grounds were not so presented, and give your reasons for not presenting them _____

- 20) Have you previously filed any type of petition, application or motion in a federal court regarding the conviction under attack? Yes No If "Yes", state the location of the court, the type of proceeding, the issues raised, the result and the date of the court's decision for each petition, application or motion filed _____

- 21) Do you have any petition, application, motion or appeal now pending in any court, either state or federal, regarding the conviction under attack? Yes No .
- 22) Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
- (a) At preliminary hearing _____

 - (b) At arraignment and plea _____

 - (c) At trial _____

 - (d) At sentencing _____

 - (e) On appeal _____

 - (f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding

23) Were you sentenced on more than one count of an indictment or on more than one indictment, in the same court and at the same time? Yes No .

24) Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack ? Yes No .

(a) If so, give name and location of court which imposed sentence to be served in the future _____

(b) And give date and length of service to be served in the future _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes No .

SECOND OR SUCCESSIVE APPLICATIONS

This court is required to dismiss any claim presented in a second or successive petition that the federal court of appeals has authorized to be filed unless the applicant shows that each claim satisfies the requirements of 28 U.S.C. §2244, as amended by Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No 104-132, §106, 110 Stat. 1214 (April 24, 1996).

25) If you are raising a claim which you have not presented in prior application have you obtained an order from the United States Court of Appeals for the Tenth Circuit authorizing this district court to consider the application? Yes No . (Please attach a copy of the order)

Wherefore, petitioner prays that the court grant him such relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

Original Signature of Petitioner

(Attorney's full address and telephone number)

NOTE: DECLARATION NEXT PAGE

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares (or certifies, verifies, or states) under penalty of perjury that he is the plaintiff in the above action, that he has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. §1746. 18 U.S.C. §1621.

Executed at _____ on _____.
(Location) (Date)

Original Signature