

as it relates to counties of the sixth class which elect to be governed by the provisions of this act.

Section 7. This act shall take effect immediately.

APPROVED—The 25th day of January, A. D. 1966.

WILLIAM W. SCRANTON

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No. 554

AN ACT

HB 1616

Providing for post conviction hearings and establishing the procedure therefor.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title.—This act shall be known and may be cited as the “Post Conviction Hearing Act.”

Section 2. <sup>1</sup> Post Conviction Procedure.—This act establishes a post conviction procedure for providing relief from convictions obtained and sentences imposed without due process of law. The procedure hereby established shall encompass all common law and statutory procedures for the same purpose that exist when this statute takes effect, including habeas corpus and coram nobis. However, nothing in this act limits the availability of remedies in the trial court or on direct appeal.

Section 3. Eligibility for relief.—To be eligible for relief under this act, a person must initiate a proceeding by filing a petition under section 5 and must prove the following:

- (a) That he has been convicted of a crime,
- (b) That he is incarcerated in the Commonwealth of Pennsylvania under a sentence of death or imprisonment, or on parole or probation,
- (c) That his conviction or sentence resulted from one or more of the following reasons:

- (1) The introduction of evidence obtained pursuant to an unlawful arrest;

- (2) The introduction of evidence obtained by an unconstitutional search and seizure;

- (3) The introduction of a coerced confession into evidence;

- (4) The introduction into evidence of a statement obtained in the

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<sup>1</sup> “Post Conviction Procedure” not in original.

absence of counsel at a time when representation is constitutionally required;

(5) The infringement of his privilege against self-incrimination under either Federal or State law;

(6) The denial of his constitutional right to representation by competent counsel;

(7) A plea of guilty unlawfully induced;

(8) The unconstitutional suppression of evidence by the State;

(9) The unconstitutional use by the State of perjured testimony;

(10) The obstruction by State officials of petitioner's right of appeal;

(11) His being twice placed in jeopardy;

(12) The abridgement in any other way of any right guaranteed by the constitution or laws of this State or the constitution or laws of the United States, including a right that was not recognized as existing at the time of the trial if the constitution requires retrospective application of that right; or

(13) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and that would have affected the outcome of the trial if it had been introduced.

(d) That the error resulting in his conviction and sentence has not been finally litigated or waived.

Section 4. When an Issue is Finally Litigated or Waived.—(a) For the purpose of this act, an issue is finally litigated if:

(1) It has been raised in the trial court, the trial court has ruled on the merits of the issue, and the petitioner has knowingly and understandingly failed to appeal the trial court's ruling; or

(2) The Superior Court of the Commonwealth of Pennsylvania has ruled on the merits of the issue and the petitioner has knowingly and understandingly failed to avail himself of further appeals; or

(3) The Supreme Court of the Commonwealth of Pennsylvania has ruled on the merits of the issue.

(b) For the purposes of this act, an issue is waived if:

(1) The petitioner knowingly and understandingly failed to raise it and it could have been raised before the trial, at the trial, on appeal, in a habeas corpus proceeding or any other proceeding actually conducted, or in a prior proceeding actually initiated under this act; and

(2) The petitioner is unable to prove the existence of extraordinary circumstances to justify his failure to raise the issue.

(c) There is a rebuttable presumption that a failure to appeal a ruling or to raise an issue is a knowing and understanding failure.

Section 5. Petition.—Any person who desires to obtain relief under this act may initiate a post conviction proceeding by filing a petition (together with two copies thereof) verified by affidavit, with the clerk of the court in which he was convicted and sentenced which said court is hereby granted jurisdiction to hear and determine same. He may file a petition at any time. A petition shall be in the following forms:

(1) The petition must state that it is a post conviction procedure act petition and must include the name of the petitioner, his place of confinement, an identification of the proceedings in which the petitioner was convicted and the place of conviction, the date of the entry of judgment, the sentence imposed, all facts in support of the alleged error on which the petition is based, the relief desired, and an identification of all previous proceedings that the petitioner has taken to secure relief from his conviction or sentence.

(2) The petition must either include affidavits, records, and other supporting evidence, or state why they are not included.

(3) The petition shall not include argument or citation and discussion of authorities.

(4) All facts within the personal knowledge of the petitioner must be set forth separately from other allegations of fact.

Section 6. Docketing.—Upon receipt of a petition seeking relief under this act, the clerk of the court in which the indictment upon which sentence was imposed shall immediately docket the petition to the same term and number as the original proceedings, and promptly notify the court and serve a copy upon the district attorney and the attorney general. In the event the petitioner's incarceration is by virtue of multiple indictments and sentences, the case shall be docketed to the same term and number as the indictment upon which the first unexpired sentence was imposed, but the court may take judicial notice of all proceedings had upon the multiple indictments.

Section 7. Amendment and Withdrawal of Petition.—The court may grant leave to amend or withdraw the petition at any time. Amendment shall be freely allowed in order to achieve substantial justice. No petition may be dismissed for want of particularity unless the petitioner is first given an opportunity to clarify his petition.

Section 8. Answer.—The district attorney shall respond by answer or motion within twenty days from the day the petition is served upon him, or within such time as the court orders. If the petition does not include records of the proceedings attached therein, the respondent shall file with his answer the records that are material to the questions raised in the petition.

Section 9. Hearings.—If a petition alleges facts that if proven would entitle the petitioner to relief, the court shall grant a hearing which may extend only to the issues raised in the petition or answer. However, the court may deny a hearing if the petitioner's claim is patently frivolous and is without a trace of support either in the record or from other evidence submitted by the petitioner. The court may also deny a hearing on a specific question of fact when a full and fair evidentiary hearing upon that question was held at the original trial or at any later proceeding.

The petitioner shall have a full and fair hearing on his petition. The court shall receive all evidence, which shall be recorded, that is relevant and necessary to support the claims in the petition, including affidavits, depositions, oral testimony, certificate of the trial judge, and relevant and necessary portions of transcripts of prior proceedings.

The petitioner has the right to appear in person at the hearing.

Section 10. Order of the Court and Final Disposition of the Petition.—If the court finds in favor of the petitioner, it shall order appropriate relief and issue any supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that are necessary and proper.

The order finally disposing of the petition shall state grounds on which the case was determined and whether a Federal or a State right was presented and decided. This order constitutes a final judgment for purposes of review.

Section 11. Appeal.—The party aggrieved by an order under section 10 of this act may, within thirty days from the day on which the order is issued, appeal to the court having appellate jurisdiction over the original conviction.

An application for leave to appeal must be accompanied by a record which contains the petition, the district attorney's answer or motion, and the order and statement of the court. In addition, the appellate court, in its discretion or on motion by either party, may order a transcript of the post conviction hearing certified to it as a part of the record.

Section 12. Pauper Petitions.—If the petition alleges that the petitioner is unable to pay the costs of the proceeding, the court may order that the petitioner be permitted to proceed as a poor person and order a transcript of the proceedings delivered to the petitioner. If the petitioner is without counsel and alleges that he is without means to procure counsel, he shall state whether or not he wishes counsel to be appointed to represent him. If appointment of counsel is so requested, the

court shall appoint counsel if satisfied that the petitioner has no means to procure counsel.

Section 13. <sup>1</sup> Repealer.—Those provisions of the act of May 15, 1951 (P. L. 415), entitled “An Act relating to habeas corpus; conferring jurisdiction upon the judges of the courts of common pleas; prescribing venue; defining procedure in all cases; authorizing service to be made upon persons anywhere in the Commonwealth; providing for the imposition of costs; allowing appeals; specifying the appellate court to which appeals may be taken; and repealing inconsistent legislation, including that conferring jurisdiction on courts of quarter sessions,” which relate to prisoners under sentence are hereby repealed.

Section 14. <sup>2</sup> Effective Date.—This act shall take effect March 1, 1966.

APPROVED—The 25th day of January, A. D. 1966.

WILLIAM W. SCRANTON

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No. 555

AN ACT

HB 1773

Amending the act of April 29, 1959 (P. L. 58), entitled “An act consolidating and revising the Vehicle Code, the Tractor Code, the Motor Vehicle Financial Responsibility Act and other acts relating to the ownership, possession and use of vehicles and tractors,” providing for the order of the payment of proceeds of the sale of vehicles or combinations of vehicles or loads thereon in overweight cases.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The penalty clause of section 903, act of April 29, 1959 (P. L. 58), known as “The Vehicle Code,” amended August 13, 1963 (P. L. 761), is amended to read:

Section 903. Weight of Vehicles, Tractors and Loads.—

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Penalty.—Any person operating any vehicle or combination of vehicles, upon any highway, with a gross weight or with weight on any axle or wheel exceeding by more than three (3) percent the maximum weight

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<sup>1</sup> “Repealer” not in original.

<sup>2</sup> “Effective Date” not in original.