

No. 1995-32 (SS1)

AN ACT

SB 81

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for postconviction relief; and providing for unitary review in death penalty cases.

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

Section 1. Sections 9542, 9543, 9544, 9545 and 9546 of Title 42 of the Pennsylvania Consolidated Statutes are amended to read:

§ 9542. Scope of subchapter.

This subchapter provides for an action by which persons convicted of crimes they did not commit [or] *and persons* serving [unlawful] *illegal* sentences may obtain collateral relief [and for an action by which persons can raise claims which are properly a basis for Federal habeas corpus relief]. The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis. This subchapter is not intended to limit the availability of remedies in the trial court or on direct appeal from the judgment of sentence, nor is this subchapter intended to provide a means for raising issues waived in prior proceedings. *Except as specifically provided otherwise, all provisions of this subchapter shall apply to capital and noncapital cases.*

§ 9543. Eligibility for relief.

(a) General rule.—To be eligible for relief under this subchapter, [a person] *the petitioner* must plead and prove by a preponderance of the evidence all of the following:

(1) That the [person] *petitioner* has been convicted of a crime under the laws of this Commonwealth and is:

(i) currently serving a sentence of imprisonment, probation or parole for the crime;

(ii) awaiting execution of a sentence of death for the crime; or

(iii) serving a sentence which must expire before the person may commence serving the disputed sentence.

(2) That the conviction or sentence resulted from one or more of the following:

(i) A violation of the Constitution [of Pennsylvania or laws] of this Commonwealth or the Constitution *or laws* of the United States which, in the circumstances of the particular case, so undermined the truth-

determining process that no reliable adjudication of guilt or innocence could have taken place.

(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused **[an individual] the petitioner to plead guilty and the petitioner is innocent.**

(iv) The improper obstruction by **[Commonwealth] government** officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

[(v) A violation of the provisions of the Constitution, law or treaties of the United States which would require the granting of Federal habeas corpus relief to a State prisoner.]

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

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

(3) That the allegation of error has not been **[previously litigated and one of the following applies:**

(i) **The allegation of error has not been waived.**

(ii) **If the allegation of error has been waived, the alleged error has resulted in the conviction or affirmance of sentence of an innocent individual.**

(iii) **If the allegation of error has been waived, the waiver of the allegation of error during pretrial, trial, post-trial or direct appeal proceedings does not constitute a State procedural default barring Federal habeas corpus relief.] previously litigated or waived.**

(4) That the failure to litigate the issue prior to or during trial, **during unitary review** or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel.

(b) Exception.—Even if the petitioner **[meets] has met** the requirements of subsection (a), the petition shall be dismissed if it appears **at any time** that, because of delay in filing the petition, the Commonwealth has been prejudiced either in its ability to respond to the petition or in its ability to re-try the petitioner. **A petition may be dismissed due to delay in the filing by the petitioner only after a hearing upon a motion to dismiss.** This subsection does not apply if the petitioner shows that the petition is based on grounds of which the petitioner could not have **[had knowledge] discovered** by the exercise of reasonable diligence before the delay became prejudicial to the Commonwealth.

§ 9544. Previous litigation and waiver.

(a) Previous litigation.—For **[the purpose] purposes** of this subchapter, an issue has been previously 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 did not appeal;]

(2) the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue; or

(3) it has been raised and decided in a proceeding collaterally attacking the conviction or sentence.

(b) Issues waived.—For [the] purposes of this subchapter, an issue is waived if the petitioner *could have raised it but* failed to [raise it and if it could have been raised] *do so* before [the] trial, at [the] trial, *during unitary review*, on appeal[,] or in a [habeas corpus] *prior state postconviction* proceeding [or other proceeding actually conducted or in a prior proceeding actually initiated under this subchapter].

§ 9545. Jurisdiction and proceedings.

(a) Original jurisdiction.—Original jurisdiction over a proceeding under this subchapter shall be in the court [in which the conviction was obtained.] *of common pleas. No court shall have authority to entertain a request for any form of relief in anticipation of the filing of a petition under this subchapter.*

[(b) Rules governing proceedings.—The Supreme Court may, by general rule, prescribe procedures to implement the action established under this subchapter but shall not expand, contract or modify the grounds for relief set forth in this subchapter.]

(b) Time for filing petition.—

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

(3) For purposes of this subchapter, a judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.

(4) For purposes of this subchapter, "government officials" shall not include defense counsel, whether appointed or retained.

(c) Stay of execution.—

(1) No court shall have the authority to issue a stay of execution in any case except as allowed under this subchapter.

(2) Except for first petitions filed under this subchapter by defendants whose sentences have been affirmed on direct appeal by the Supreme Court of Pennsylvania between January 1, 1994, and January 1, 1996, no stay may be issued unless a petition for postconviction relief which meets all the requirements of this subchapter has been filed and is pending and the petitioner makes a strong showing of likelihood of success on the merits.

(3) If a stay of execution is granted, all limitations periods set forth under sections 9574 (relating to answer to petition), 9575 (relating to disposition without evidentiary hearing) and 9576 (relating to evidentiary hearing) shall apply to the litigation of the petition.

(d) Evidentiary hearing.—

(1) Where a petitioner requests an evidentiary hearing, the petition shall include a signed certification as to each intended witness stating the witness's name, address, date of birth and substance of testimony and shall include any documents material to that witness's testimony. Failure to substantially comply with the requirements of this paragraph shall render the proposed witness's testimony inadmissible.

(2) No discovery, at any stage of proceedings under this subchapter, shall be permitted except upon leave of court with a showing of exceptional circumstances.

(3) When a claim for relief is based on an allegation of ineffective assistance of counsel as a ground for relief, any privilege concerning counsel's representation as to that issue shall be automatically terminated.

§ 9546. Relief and order.

(a) General rule.—If the court [finds] *rules* in favor of the petitioner, it shall order appropriate relief and issue supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence or other matters that are necessary and proper.

[(b) Grounds to be stated.—The order finally disposing of the petition shall state grounds on which the case was determined.

(c) Status of order.—The order constitutes a final judgment for purposes of review.]

(d) Review of order in death penalty cases.—[A final court] *An* order under this subchapter *granting the petitioner final relief* in a case in which the death penalty has been imposed shall be directly appealable [only] *by the Commonwealth* to the Supreme Court pursuant to its rules. *An order under this subchapter denying a petitioner final relief in a case in which the*

death penalty has been imposed shall be reviewable only by petition for allowance of appeal to the Supreme Court.

Section 2. Chapter 95 of Title 42 is amended by adding a subchapter to read:

**SUBCHAPTER D
UNITARY REVIEW IN DEATH PENALTY CASES**

Sec.

- 9570. Short title of subchapter.
- 9571. Scope of subchapter.
- 9572. Representation of counsel.
- 9573. Time for petition; contents of petition.
- 9574. Answer to petition.
- 9575. Disposition without evidentiary hearing.
- 9576. Evidentiary hearing.
- 9577. Disposition and appeal.
- 9578. Subsequent petitions.
- 9579. Certification.

§ 9570. Short title of subchapter.

This subchapter shall be known and may be cited as the Capital Unitary Review Act.

§ 9571. Scope of subchapter.

(a) Capital unitary review.—This subchapter establishes the sole means of challenging proceedings that resulted in a sentence of death. The unitary review proceeding provided by this subchapter shall replace postappeal collateral review of death penalty cases with preappeal collateral review.

(b) Appointment of collateral counsel.—Under the action provided in this subchapter, a person sentenced to death shall be immediately entitled to new counsel for purposes of collateral review. The collateral proceeding shall occur in the trial court after the imposition of sentence and before appeal. The petitioner may raise any claim that could not have been raised previously, including claims of ineffective assistance of counsel.

(c) Capital appeal.—Direct appeal shall occur after the trial court has concluded collateral review. Claims raised on direct appeal shall be limited to those claims that were preserved at trial and that may be resolved on the basis of the record created up to and including sentencing. Collateral appeal shall occur simultaneously with direct appeal. Claims raised on collateral appeal shall be limited to claims that were preserved in the collateral proceeding in the trial court and to any other claim that could not have been raised previously, including claims of ineffective assistance of counsel on direct appeal.

(d) Limitation on subsequent petitions.—No further review shall be available except as provided in this subchapter.

(e) Capital case in which death penalty not imposed.—This subchapter does not apply to capital cases in which the death penalty was not imposed.

§ 9572. Representation of counsel.

(a) Collateral counsel.—Immediately after the formal imposition of sentence on all charges or within 30 days of the verdict of the death penalty, whichever occurs later, the court shall appoint new counsel for the purposes of collateral review, unless:

(1) the petitioner has elected to proceed pro se and the court finds, after a colloquy on the record, that the petitioner’s election is knowing, intelligent and voluntary; or

(2) the petitioner retains counsel for the unitary review proceeding.

(b) Prior attorney.—No petitioner may be represented on collateral review, either in the trial court or on appeal, by an attorney, whether retained or appointed, who has represented the petitioner at any other stage of the proceedings, including direct appeal, unless the court finds, after a colloquy on the record, that the petitioner has knowingly, intelligently and voluntarily waived his right to challenge the effectiveness of that attorney’s representation.

(c) Standards for appointment of counsel.—The Supreme Court shall adopt standards for the appointment of counsel in capital cases. These standards shall apply for the appointment of trial counsel, collateral review counsel and appellate counsel. When adopting the standards, the Supreme Court shall consider, where practicable, the following criteria:

(1) Counsel is admitted to practice in Pennsylvania.

(2) Counsel is an experienced and active trial practitioner with at least five years’ litigation experience in the field of criminal law.

(3) Counsel has prior experience as counsel in a specified number of trials or other relevant proceedings.

(4) Counsel is familiar with the practice and procedure of the appropriate courts, including Federal courts of the jurisdiction.

(5) Counsel has demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

(6) Local practice for the appointment of counsel in capital cases.

Absent standards established under this subsection, the court may appoint such counsel as it deems qualified, in accordance with any local rules or practices. The existence or applicability of or failure to comply with such standards shall not provide a basis for relief.

§ 9573. Time for petition; contents of petition.

(a) Filing date.—Any petition under this subchapter shall be filed within 120 days of the date the trial transcript is filed with the court. The court may, for good cause shown, grant extensions of time totaling no more than 90 days.

(b) Subsequent or untimely claims.—Any claim raised after the time specified in subsection (a) shall be dismissed unless it satisfies section 9578 (relating to subsequent petitions).

(c) Evidentiary hearing.—Where the petitioner requests an evidentiary hearing, the petition shall include a signed certification as to each intended witness stating the witness's name, address, date of birth and substance of testimony and shall include any documents material to that witness's testimony. Failure to substantially comply with the requirements of this subsection shall render the proposed witness's testimony inadmissible.

(d) Discovery.—Discovery shall be permitted, and no reasonable discovery request of the petitioner shall be denied except upon demonstration of exceptional circumstances justifying denial of the discovery requests.

(e) Claim for relief.—When a claim for relief is based on an allegation of ineffective assistance of counsel as a ground for relief, any privilege concerning counsel's representation as to that issue shall be automatically terminated.

§ 9574. Answer to petition.

The Commonwealth may file a written answer to the petition within 120 days of the filing and service of the petition. For good cause shown, the court may grant an extension of time of up to 90 days. Failure to file an answer shall not constitute an admission of any facts alleged in the petition.

§ 9575. Disposition without evidentiary hearing.

(a) Evidentiary hearing.—No more than 20 days after the Commonwealth answers the petition or, if no answer is filed, 20 days after the deadline for answering, the court shall determine whether or not an evidentiary hearing is warranted. An evidentiary hearing shall not be warranted unless controverted, previously unresolved factual issues material to petitioner's conviction or sentence exist.

(b) Written order.—Failure of the court to issue a written order within the period prescribed under subsection (a) shall constitute a determination that an evidentiary hearing is warranted on any controverted, previously unresolved factual issues material to petitioner's conviction or sentence.

(c) Disposing of petition.—If the determination is made that no evidentiary hearing is warranted, the court shall, no later than 90 days from the date of that determination, dispose of the petition, after oral argument if requested, and any postsentence motions filed under the Pennsylvania Rules of Criminal Procedure.

§ 9576. Evidentiary hearing.

(a) Order.—If the court determines that an evidentiary hearing is warranted, the court shall enter an order no more than 20 days after the Commonwealth answers the petition or, if no answer is filed, 20 days after the deadline for answering, setting a date for the hearing.

(b) Date.—The hearing shall be scheduled to occur not less than ten days and not more than 45 days from the date of the order setting the hearing. The court may, for good cause shown, grant leave to continue the hearing.

(c) Disposing of petition.—Not later than 90 days after the evidentiary hearing, the court shall dispose of the petition and any postsentence motions filed under the Pennsylvania Rules of Criminal Procedure.

§ 9577. Disposition and appeal.

(a) Capital unitary review.—Review by the Supreme Court under section 9711(h) (relating to review of death sentence) shall comprise direct appeal and collateral appeal. The common pleas court order disposing of the petition under this subchapter shall constitute the final judgment for purposes of this review.

(b) Briefs for petitioner.—Unless the petitioner has waived the right to new counsel on collateral review, separate briefs shall be filed for direct appeal and collateral appeal. The time for filing the collateral appeal brief shall begin to run from service of the petitioner’s brief on direct appeal.

(c) Brief for the Commonwealth.—The Commonwealth shall file a brief in response to the petitioner’s direct and collateral appeal briefs. The time for filing the Commonwealth’s brief shall begin to run from service of the petitioner’s brief on collateral appeal.

§ 9578. Subsequent petitions.

(a) Further review.—No further review shall be available unless a petition is filed under Subchapter B (relating to post conviction relief) alleging that:

(1) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution of the United States or laws of the United States or the Constitution of Pennsylvania or laws of this Commonwealth;

(2) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained in the exercise of due diligence; or

(3) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(b) Exception petition.—Any petition invoking an exception provided in subsection (a) shall be filed within 60 days of the date the claim could have been presented.

§ 9579. Certification.

(a) General rule.—By presenting to the court, whether by signing, filing, submitting or later advocating, a pleading, written motion or other papers regarding a petition for collateral relief, an attorney or unrepresented party is certifying that, to the best of the person’s knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the following:

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims and other legal contentions in it are warranted by existing law or by a nonfrivolous argument for extension, modification or reversal of existing law or the establishment of new law; and

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation.

(b) Sanctions.—If, after notice and a reasonable opportunity to respond, the court determines that this section has been violated, the court may impose an appropriate sanction on the attorneys, law firms or parties that have violated this section.

Section 3. This act shall apply as follows:

(1) The amendment of 42 Pa.C.S. §§ 9542, 9543, 9544, 9545 and 9546 shall apply to petitions filed after the effective date of this act; however, a petitioner whose judgment has become final on or before the effective date of this act shall be deemed to have filed a timely petition under 42 Pa.C.S. Ch. 95 Subch. B if the petitioner's first petition is filed within one year of the effective date of this act.

(2) The addition of 42 Pa.C.S. Ch. 95 Subch. D shall apply in all cases in which the death penalty is imposed on or after January 1, 1996.

Section 4. This act shall take effect in 60 days.

APPROVED—The 17th day of November, A.D. 1995.

THOMAS J. RIDGE