



## **APPENDIX A**

### **POST-CONVICTION HABEAS CORPUS FORM**

#### **PETITION FOR WRIT OF HABEAS CORPUS AD SUBJICIENDUM UNDER W. VA. CODE § 53-4A-1**

##### ***Instructions - Read Carefully (Revised October 2005)***

1. This petition must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
2. Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
3. Upon receipt of the required filing fee, your petition will be filed if it is in proper order.
4. If you do not have the necessary funds for fees, transcripts, counsel, and other costs connected with a petition of this type, you may request permission to proceed *in forma pauperis*, by executing the form attached as Appendix B, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money on deposit to your credit in any account in the institution.
5. Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
6. When the petition is fully completed, the original and at least two copies may be mailed to (1) the clerk of the circuit court of the county where you are incarcerated; or (2) the clerk of the circuit court of the county where you were convicted and sentenced. You may also file the petition with the Clerk of the Supreme Court of Appeals. You are advised, however, that the Supreme Court rarely grants relief on petitions originally filed there.
7. Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

**PETITION UNDER W. VA. CODE § 53-4A-1 FOR WRIT OF HABEAS CORPUS**

**STATE OF WEST VIRGINIA**

County

Name

Prisoner No.

Case No.

Place of Confinement

Name of Petitioner (include name under which convicted)

Name of Respondent (authorized person having custody of petitioner)

v.

**PETITION**

1. Name and location of court which entered the judgment of conviction under attack \_\_\_\_\_  
\_\_\_\_\_
2. Date of judgment of conviction \_\_\_\_\_
3. Length of sentence \_\_\_\_\_
4. Nature of offense involved (all counts) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. What was your plea? (Check one)  
(a) Not guilty   
(b) Guilty   
(c) Nolo contendere   
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:  
\_\_\_\_\_  
\_\_\_\_\_
6. If you pleaded not guilty, what kind of trial did you have? (Check one)  
(a) Jury   
(b) Judge Only
7. Did you testify at the trial?  
Yes  No
8. Did you file a direct appeal from the judgment of conviction in the Supreme Court of Appeals?  
Yes  No

9. If you did appeal, answer the following:

(a) Date of filing \_\_\_\_\_

(b) Grounds raised \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) Was the petition granted  or refused  ?

(d) If refused, what was date of refusal? \_\_\_\_\_

(e) If granted, give date and type of result and citation, if known. \_\_\_\_\_

\_\_\_\_\_

10. 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

11. If your answer to 10 was "yes," give the following information:

(a) (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 \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(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 \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes  No

(2) Second petition, etc. Yes  No

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

**CAUTION: In order to proceed in the circuit court, you must state grounds that have NOT been previously and finally adjudicated or waived. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.**

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: \_\_\_\_\_  
\_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Ground two: \_\_\_\_\_  
\_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Ground three: \_\_\_\_\_  
\_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Ground four: \_\_\_\_\_  
\_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. If any of the grounds listed in 12A, B, C, and D 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: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes  No

15. 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 \_\_\_\_\_

\_\_\_\_\_

16. Have you, or an attorney representing you, obtained a transcript of the criminal proceedings which resulted in the conviction under attack?

Yes  No

17. If your answer to 16 was "no," have you submitted an Appellate Transcript Request form for transcripts to the circuit court, a court reporter, or any other tribunal or individual?

Yes  No

18. If your answer to 17 was "yes," attach a copy, if available, of the Appellate Transcript Request form and provide the name of the court or person to whom it was submitted and the date of submission.

(a) Copy of request is attached

(b) Date

(c) Name \_\_\_\_\_

19. 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

20. 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) Give date and length of the above sentence: \_\_\_\_\_

\_\_\_\_\_

(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

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

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_  
(date)

\_\_\_\_\_  
Signature of Petitioner