

KNOW YOUR RIGHTS: ALABAMA STATE POST-CONVICTION HABEAS PROCEDURE

Negotiating Alabama’s criminal justice system after your conviction can be a confusing and challenging experience. While we cannot represent you or provide legal advice or referrals to other lawyers, we hope this document will provide you with some general information that may be helpful. The law is always evolving. The date at the bottom of this page indicates when this information sheet was last updated.

What is a writ of habeas corpus?

Habeas corpus is a procedure for challenging the legality of a person’s restraint or detention by a state authority. A post-conviction habeas corpus petition challenges a criminal conviction or sentence because it is illegal or unconstitutional. In Alabama, Rule 32 of the Alabama Rules of Criminal Procedure governs state post-conviction challenges to a conviction or sentence.

Who can petition for a post-conviction writ of habeas corpus in Alabama?

“[A]ny defendant who has been convicted of a criminal offense” may petition the Alabama state courts for a post-conviction writ of habeas corpus.¹ Alabama law requires that the convicted person who seeks a post-conviction writ of habeas corpus – the “petitioner” – must be imprisoned or actually restrained of his or her liberty in order for a writ of habeas corpus to issue.² While any restraint that precludes freedom from action is sufficient, and actual confinement in jail or prison is not necessary, a person who is on parole is not considered sufficiently restrained of his or her liberty to be entitled to a writ of habeas corpus under Alabama law.³

How is a post-conviction habeas corpus proceeding different than the “direct appeal” in a criminal case?

In Alabama, a defendant who is convicted of a criminal offense after a trial in district or circuit court may appeal the judgment of conviction to the Court of Criminal Appeals and the Supreme Court of Alabama. This appeal – sometimes referred to as a “direct appeal” – is generally limited to a review of the trial record for errors committed during the pre-trial and trial proceedings. Thus, the direct appeal is generally limited to issues that are “in the record.” By

¹ Ala. R. Crim. P. 32.1.

² *Palmer v. State*, 54 So. 271, 272 (Ala. 1910) (“An actual or physical restraint, and not a mere moral one, is necessary to warrant interference by habeas corpus; but any restraint which precludes freedom from action is sufficient, and actual confinement in jail is not necessary.”).

³ *Williams v. State*, 155 So. 2d 322, 323 (Ala. Ct. App. 1963) (habeas corpus is not a remedy available to parolees not otherwise detained).

contrast, a habeas corpus proceeding focuses on claims that are based on facts that are “outside the record” and therefore could not have been raised on direct appeal.

What kind of issues can be raised in a habeas corpus petition?

Rule 32.1 of the Alabama Rules of Criminal Procedure defines the kind of issues that can be considered in a post-conviction habeas corpus proceeding in Alabama. Specifically, a petitioner can seek habeas corpus relief on a ground that:

- (1) the Alabama and/or Federal Constitution requires a new trial, a new sentence, or other relief;
- (2) the trial court was without jurisdiction to render judgment or to impose sentence;
- (3) the sentence imposed exceeds the maximum sentence authorized by law or is otherwise not authorized by law;
- (4) the petitioner is being held in custody after his or her sentence has expired; or
- (5) newly discovered material facts exist which establish that the petitioner is innocent of the crime for which he or she was convicted or should not have received the sentence that he or she received.

Examples of issues that are commonly raised in state habeas proceedings include the following:

- (1) trial or appellate counsel rendered ineffective assistance of counsel;⁴
- (2) the State failed to disclose exculpatory or impeachment evidence;⁵

⁴ See *Strickland v. Washington*, 466 U.S. 668 (1984) (to establish violation of Sixth Amendment right to effective assistance of counsel, defendant must show that counsel’s performance was deficient and that deficient performance prejudiced the defense to deprive defendant of a fair trial). Rule 32.2(d) provides that ineffective-assistance-of-counsel claims “must be raised as soon as practicable, either at trial, on direct appeal, or in the first Rule 32 petition, whichever is applicable.” Ala. R. Crim. P. 32.2(d).

⁵ See *Brady v. Maryland*, 373 U.S. 83 (1963) (prosecution’s non-disclosure of favorable, “material” evidence to the defense violates due process); *Giglio v. United States*, 405 U.S. 150 (1972) (prosecution’s non-disclosure of “material” impeachment evidence related to prosecution witnesses may violate due process). The Alabama courts have recognized that Brady claims are cognizable in Rule 32 postconviction proceedings. See *Martin v. State*, 839 So. 2d 665, 667-81 (Ala. Crim. App. 2001) (granting Rule 32 petition and reversing conviction for multiple *Brady* violations); *Hamilton v. State*, 677 So. 2d 1254, 1259-61 (Ala. Crim. App. 1995) (granting habeas relief for *Brady* violation); *Jefferson v. State*, 645 So. 2d 313, 314-17 (Ala. Crim. App. 1994) (same).

It should be noted that the Alabama Court of Criminal Appeals has held that when a *Brady* claim is first presented in a Rule 32 petition (instead of on direct appeal), the petitioner can prevail on the claim only if it involves “newly discovered evidence” as defined under Rule 32.1(e). See

- (3) the State presented perjured testimony⁶
- (4) juror misconduct;⁷
- (5) the defendant was incompetent to stand trial;⁸
- (6) the court lacked jurisdiction to render judgment or enter sentence;⁹ and
- (7) innocence.¹⁰

However, even if an issue is of the *kind* that could be raised in an Alabama state habeas proceeding, the habeas court's consideration of the issue may be precluded for various procedural reasons, which are discussed further in response to the next question.¹¹

Payne v. State, 791 So. 2d 383, 397-98 (Ala. Crim. App. 1999); *accord Perkins v. State*, ___ So. 3d ___, 2012 WL 5381345 (Ala. Crim. App. Nov. 2, 2012). Thus, Alabama law requires a Rule 32 petitioner raising a *Brady* claim to plead and prove the five statutory "prerequisites" for relief on a claim based on "newly discovered evidence" set forth in Rule 32.1(e), including that "[t]he facts establish that petitioner is innocent of the crime for which petitioner was convicted or should not have received the sentence that petitioner received." Ala. R. Crim. P. 32.1(e)(5).

⁶ See, e.g., *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (knowing use of materially false evidence by the State violates due process); *Perkins v. State*, ___ So. 3d ___, 2012 WL 5381345, *7 (Ala. Crim. App. 2012) (addressing allegations raised in a Rule 32 petition that the State knowingly used false testimony).

⁷ See, e.g., *Ex parte Burgess*, 21 So. 3d 746, 750-55 (Ala. 2008) (remanding for hearing on juror misconduct claims in Rule 32 proceedings); *Ex parte Dobyne*, 805 So. 2d 763, 767-74 (Ala. 2001) (addressing merits of juror misconduct claim raised in Rule 32 petition); *Ex parte Pierce*, 851 So. 2d 606, 612-17 (Ala. 2000) (remanding for a hearing on whether Rule 32 petitioner's claim that the Sheriff, a witness for the prosecution, had improper contact with the jurors).

⁸ See, e.g., *Glass v. State*, 912 So. 2d 285 (Ala. Crim. App. 2004) (competency claim raised for first time in third Rule 32 petition was not "successive" because substantive due process claims are not subject to procedural bars).

⁹ Ala. R. Crim. P. 32.1(b). See also *Pride v. State*, 10 So. 3d 622 (Ala. Crim. App. 2008) (remanding to allow Rule 32 petitioner to present evidence to support his claim that trial court lacked jurisdiction to render judgment or impose sentence because neither the jury venire nor the petit jury were sworn).

¹⁰ Ala. R. Crim. P. 32.1(e). See also *Ex parte Ward*, 89 So. 3d 720, 724-28 (Ala. 2011) (remanding for further proceedings petitioner's claim that forensic reports discovered post-trial required vacation of his conviction, because the claim raised "newly discovered material facts" related to petitioner's guilt or innocence and satisfied the other criteria set forth in Rule 32.1(e)).

¹¹ See, e.g., *DeBruce v. State*, 890 So.2d 1068, 1074-77 (Ala. Crim. App. 2003) (claims of juror misconduct are cognizable in a Rule 32 petition, but petitioner must show that claim could not be

When is a habeas petitioner precluded from being able to obtain relief on a particular ground?

Rule 32.2 of the Alabama Rules of Criminal Procedure – titled “Preclusion of Grounds” – precludes a court from granting a habeas petitioner relief if the ground was one which:

- (1) was raised or addressed at trial;¹²
- (2) could have been raised at trial but was not;¹³
- (3) was raised or addressed on appeal or in any previous collateral (i.e., habeas corpus) proceeding;¹⁴ or
- (4) could have been raised on appeal but was not.¹⁵

Generally, a claim “could have been raised” at trial or on appeal if the factual basis for the claim was developed at trial and is apparent from a review of the trial record. If the factual basis is apparent from the trial record and the petitioner failed to raise the claim at these earlier stages, a habeas petitioner will generally be precluded from obtaining review of the claim if it is raised for the first time in post-conviction habeas corpus proceedings.

In addition, even if the factual basis for the claim was not developed at trial and is not apparent from a review of the trial record, Alabama courts may conclude that a claim “could have been raised” at trial or on appeal if the petitioner fails to plead specific facts in the Rule 32 petition asserting that the factual basis for the claim was not known to the petitioner or his counsel at the time of the earlier trial and appellate proceedings.¹⁶

raised at trial or on appeal, and thus is not subject to procedural default under Rules 32.2(a)(3) and (a)(5)); *Ex parte Pierce*, 851 So. 2d 606, 615 (Ala. 2000) (in order to raise a *Brady* claim in a Rule 32 petition, petitioner must plead facts “indicating that his claim could not have been raised at trial or on direct appeal” to avoid being procedurally barred).

¹² Ala. R. Crim. P. 32.2(a)(2).

¹³ Ala. R. Crim. P. 32.2(a)(3). Notwithstanding this ground for preclusion, a claim regarding the lack of the court’s *jurisdiction* to render judgment or impose a sentence can be raised at any time. *See Ferguson v. State*, 565 So.2d 1172, 1173 (Ala. Crim. App. 1990) (sentence in excess of term authorized by law is void and may be brought as a basis for postconviction relief even if the issue could have been but was not raised at trial or on appeal).

¹⁴ Ala. R. Crim. P. 32.2(a)(4).

¹⁵ Ala. R. Crim. P. 32.2(a)(5). Again, notwithstanding this ground for preclusion, a claim regarding the lack of the court’s *jurisdiction* to render judgment or impose a sentence can be raised at any time. *See Ferguson v. State*, 565 So.2d 1172, 1173 (Ala. Crim. App. 1990).

¹⁶ *See, e.g., Williams v. State*, 782 So. 2d 811 (Ala. Crim. App. 2000) (capital appellant’s *Brady* claim raised in Rule 32 petition was procedurally barred because it did not assert a basis in newly discovered evidence and could have been raised at trial and on direct appeal).

Finally, claims that *were* raised at trial or on appeal may be barred from post-conviction review under Rule 32.2(a)(2) or Rule 32.2(a)(4).¹⁷

Can ineffective assistance of counsel claims be raised in a Rule 32 petition?

Yes. Ineffective assistance of counsel claims are generally appropriately raised for the first time in an initial Rule 32 petition.¹⁸ Claims of ineffective assistance of counsel require the petitioner to show both “deficient performance” – that is, that it was objectively unreasonable when judged against prevailing professional norms -- and “prejudice” -- that is, that there is a reasonable probability that the outcome would have been different. Because evidence that supports these allegations is generally not contained in the trial record, it is necessary to present such evidence in a post-trial proceeding. However, if the claim could have been raised at trial or on direct appeal, the claim may be barred.¹⁹

¹⁷ Such claims can, however, be raised in subsequent federal habeas corpus proceedings. See our “Federal Habeas Corpus Procedure” for information about raising claims in federal habeas corpus proceedings that have been “exhausted” in state court.

¹⁸ See *Ex parte Ingram*, 675 So. 2d 863 (Ala. 1996) (per curiam). It should be noted, however, that under Rule 32.2(d), “[a]ny claim that counsel was ineffective must be raised as soon as practicable, either at trial, on direct appeal, or in the first Rule 32 petition, whichever is applicable.” Ala. R. Crim. P. 32.2(d). When a defendant is represented by the same attorney at trial and on direct appeal, Alabama law recognizes that it is not “practicable” for the attorney to allege an ineffective-assistance-of-counsel claim against him or herself during those proceedings, and thus the claim may be raised for the first time in a Rule 32 petition and is not barred by Rules 32.2(3) and (5). See *Ex parte Lucas*, 865 So. 2d 418, 420 (Ala. 2002); *Tarver v. State*, 724 So. 2d 59 (Ala. Crim. App. 1998); *Ex parte Besselaar*, 600 So. 2d 978 (Ala. 1992). Moreover, even when a defendant is represented by new counsel on appeal who did not represent the defendant at trial, if “[an ineffective-assistance-of-counsel] claim cannot reasonably be presented in a new trial motion filed within 30 days allowed by Rule 24.1(b), Ala. R. Crim. P., the proper method for presenting that claim” is in a Rule 32 petition. See *Ex parte Ingram*, 675 So. 2d 863, 866 (Ala. 1996). Alabama law also recognizes that where a defendant pled guilty on the advice of counsel, a claim challenging counsel’s representation is properly raised in a Rule 32 petition. *Ex parte Jenkins*, 586 So. 2d 176, 177 (Ala. 1991) (petitioner’s claim that trial counsel was ineffective in failing to investigate prior convictions and determine whether those convictions could be admitted for purpose of enhancing sentence was properly reviewable in habeas corpus proceedings because it could not have been raised on direct appeal).

¹⁹ See footnote 33.

Is there a deadline for filing a state post-conviction petition for writ of habeas corpus in Alabama?

Yes. Rule 32.2(c) of the Alabama Code of Criminal Procedure sets out the applicable statute of limitations for filing a state post-conviction petition in Alabama.²⁰ The deadline depends on whether the conviction was appealed or not and, if it was appealed, whether a petition for certiorari was filed in the Alabama Supreme Court. As will become clear below, calculating this extremely important deadline is a complicated matter.

As a general rule, the statute of limitations for filing a Rule 32 petition is one year from the date when the conviction became “final” in state court. Pursuant to Rule 41 of the Alabama Rules of Appellate Procedure, the date that the conviction became “final” is (1) the date that the certificate of judgment issues (if the conviction was appealed) or (2) the date on which the time to take an appeal lapses (if no appeal was taken).

If the conviction *was not appealed* to the Alabama Court of Criminal Appeals, the Rule 32 petition must be filed within one year after the time for filing an appeal expired.

If the conviction *was appealed* to the Alabama Court of Criminal Appeals, the Rule 32 petition must be filed within one year of the issuance of the “certificate of judgment” by the Alabama Court of Criminal Appeals. When the certificate of judgment issues will in turn depend on whether a petition for certiorari to the Alabama Supreme Court was filed or not.

If a petition for certiorari to the Alabama Supreme Court was filed, the timely filing of the petition for certiorari stays the issuance of the certificate of judgment by the Alabama Court of Criminal Appeals. In that case, the certificate of judgment issues on:

- (1) if the Alabama Supreme Court denies certiorari (as is usually the case): on the date that the Alabama Supreme Court denies certiorari;
- (2) if the Alabama Supreme Court grants certiorari and an application for rehearing is filed: on the date when rehearing is denied; or
- (3) if the Alabama Supreme Court grants certiorari and an application for rehearing is not filed: on the date when the time for filing a rehearing application expires.²¹

It is important to note that the filing of a petition for certiorari to the *United States Supreme Court* – as opposed to the filing of a petition for certiorari to the Alabama Supreme Court -- has no effect on the calculation of the deadline for filing a Rule 32 petition.²² Thus, the

²⁰ Ala. R. Crim. P. 32.2 (describing this amendment in a court comment).

²¹ *Thomas v. State*, 893 So. 2d 563, 565 (Ala. Crim. App. 2002) (certificate of judgment should have issued and effectively did issue upon denial of certiorari petition by the Alabama Supreme Court).

²² *See Siebert v. State*, 778 So. 2d 842, 848 (Ala. Crim. App. 1999) (concluding that circuit court correctly ruled that petitioner’s conviction became final, for purposes of calculating the deadline to file a Rule 32 petition, on the date that the Alabama Court of Criminal Appeals issued the

only date relevant to determining the state statute of limitations is the date on which the conviction became final in the Alabama state courts, which is calculated as explained above.

Rule 41 specifies that the certificate of judgment is not due to issue until several days after the conviction itself becomes final.²³ However, because of the potential for delay or other notice problems, the safe practice is to begin counting the one year on the date that the Alabama Supreme Court issues its final ruling – whether it is a denial of certiorari or a denial of rehearing. Indeed, Rule 41 provides that if the Alabama Supreme Court denies rehearing without substantially modifying its decision, the certificate of judgment will issue immediately.

Where the petitioner’s claim is based on facts that the petitioner could not have been discovered earlier – for example, where the prosecution suppressed evidence, making it impossible to raise the claim until the evidence came to light – the deadline for raising the claim in a Rule 32 petition is either six months after the discovery of this evidence or one year after issuance of the certificate of judgment (as described above), whichever is later.²⁴

Can a person who pled guilty file a habeas petition to challenge the validity of the guilty plea?

Yes. While the entry of a guilty plea generally waives claims of constitutional violations that occurred prior to entry of the plea,²⁵ a person who pled guilty may challenge the validity of the plea itself in a Rule 32 petition.²⁶ A guilty plea is not valid if it was not knowingly, intelligently, and voluntarily made.²⁷

certificate of judgment, and rejecting petitioner’s argument that the conviction did not become “final” under the United States Supreme Court denied certiorari).

²³ Ala. R. App. P. 41 (certificate of judgment issues 18 days after entry of judgment, denial of rehearing by court of appeals, or denial of rehearing by Alabama Supreme Court where court substantially modifies the original decision of the court, but issues immediately upon other Supreme Court rehearing denials).

²⁴ Ala. R. Crim. P. 32.2(c).

²⁵ *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (entry of valid guilty plea waives right to “raise independent claims relating to the deprivation of constitutional rights that occurred prior to entry of the plea”).

²⁶ *Cantu v. State*, 660 So.2d 1026 (Ala. 1994) (validity of guilty plea may be challenged by a petition for habeas corpus).

²⁷ *Godinez v. Moran*, 509 U.S. 389, 401 n.12 (1993) (plea invalid if defendant did not “understand the significance and consequences” of the plea); *Henderson v. Morgan*, 426 U.S. 637, 645-46 n.13 (1976) (plea invalid if defendant did not have “adequate notice of the nature of the charge against him, or [did not] in fact underst[and] the charge); *Boykin v. Alabama*, 395 U.S. 238, 243-44 (1969) (defendant must be informed of the constitutional rights waived by entry of plea).

If I am unable to afford an attorney, do I have a right to appointment of counsel in state post-conviction habeas corpus proceedings in Alabama?

If a court does not summarily dismiss a petition for habeas corpus and determines that counsel is necessary to assert a petitioner's rights, it must appoint counsel.²⁸ In other words, while a petitioner does not have a right to counsel for the purpose of *filing* a petition, a court may determine that counsel must be appointed for *future proceedings* following the submission of a petition if the court does not summarily dismiss that petition.

What information must be included in a state habeas petition in Alabama?

The Alabama Rules of Criminal Procedure require that the petitioner complete and file a "Form for Use in State Court for Petitions for Relief From Conviction or Sentence Imposed in State Court." By fully completing this form, the petitioner will provide all of the information that must be included in a state habeas petition in Alabama. A copy of the form is included with this material.²⁹ Among other information, the form must include:

- the date of the court judgment which the petitioner is challenging;
- the manner in which the petitioner's rights were violated; and
- detailed information about previous challenges to the judgment other than direct appeals.

If any affidavits, records, or other documentary evidence supporting the petition are available, they should be attached to the petition. The petition must also identify any previous proceedings that the petitioner has brought to obtain relief from the conviction. If the petitioner has filed previous habeas petitions, the claims that were raised in the prior petitions must be identified. The petition itself cannot contain argument and citations of authority, but those may be set forth in a brief in support of the petition. Finally, the petitioner or some other person acting on the petitioner's behalf must "verify" the petition by stating under oath that the allegations in the petition are true to the petitioner's knowledge and then signing the verification statement in the petition in the presence of a notary public.³⁰

How much information is necessary to explain how the petitioner's rights were violated?

Rule 32.6(b) requires that the petition contain "a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds."³¹ For each individual constitutional claim that is alleged in the petition, the petitioner must set forth (1) the *specific facts* that support the allegation that the petitioner's constitutional rights were violated and (2) the specific legal basis for the claim, such as the constitutional amendment (for example, the Sixth Amendment), the nature of the constitutional right (for example, the right to effective assistance of counsel), and any caselaw that supports the claim

²⁸ Ala. R. Crim. P. 32.7(c).

²⁹ The form may also be found on the internet at this address:
http://judicial.alabama.gov/library/rules/CR32_appx.pdf.

³⁰ Ala. Code 1975 § 15-21-24.

³¹ Ala. R. Crim. P. 32.6(b).

(for example, *Strickland v. Washington*, 466 U.S. 668 (1984)). Rule 32.7(d) provides for the summary disposition of a Rule 32 petition “[i]f the court determines that the petition is not sufficiently specific.”

Where should the habeas corpus petition be filed?

Rule 32 petitions for post-conviction relief should be filed in the court in which the petitioner was convicted.³²

Should anything else be filed with the habeas petition?

Yes. Rule 32.6(a) requires that the petition be accompanied by either a filing fee or, if the petitioner is indigent, a motion to proceed *in forma pauperis*, an *in forma pauperis* declaration, and an account certificate from the warden or other appropriate prison official showing that the petitioner has insufficient funds to pay the filing fee.

How should the habeas petition be filed?

Under Alabama rules, it is not adequate to fax, email, or mail the petition on the day it is due; instead, the petition must be received and stamped “filed” by the circuit court on or before the day it is due.

What happens after the petition is filed?

After the petition is filed, the State has 30 days to answer or move to dismiss a petition, though the court may allow more time.³³ The State may plead grounds of preclusion and, if it does, the petitioner bears the burden of disproving these grounds’ existence by a preponderance of the evidence.³⁴ The State is required to identify those grounds that it believes apply to petitioner’s case so that petitioner has sufficient notice to attempt to rebut those arguments.³⁵

The petitioner should file a response to the State’s answer and any motions to dismiss as soon as possible after receiving them. In this response, the petitioner should argue why the claims in the petition should not be dismissed, again using specific facts and supporting caselaw. In addition, the petitioner should argue that the claims should not be dismissed before the petitioner has an opportunity to prove them at an evidentiary hearing.

When must a court grant an evidentiary hearing?

A court may dismiss a petition – or allow a petitioner to amend it – if it determines that the petition is insufficiently specific, is precluded, fails to state a claim, or that no material issue of fact or law exists that would entitle petitioner to relief and that further proceedings would serve no purpose.³⁶ Otherwise, the court shall set a date for a hearing on the petition.³⁷

³² Ala. R. Crim. P. 32.5.

³³ Ala. R. Crim. P. 32.7(a).

³⁴ Ala. R. Crim. P. 32.3.

³⁵ *Ex parte Rice*, 565 So. 2d 606, 608 (Ala. 1990) (State must identify specific grounds of preclusion upon which it relies in moving to dismiss).

³⁶ Ala. R. Crim. P. 32.7.

These guidelines create three conditions that must be met before an evidentiary hearing must be granted: First, the claim must not be precluded by the “preclusion of grounds;” second, the claim must be facially meritorious, i.e., it must describe a situation that, if proven, would entitle the petitioner to relief; and third, additional evidence must be needed, i.e., a hearing is necessary to allow the petitioner to prove the facts the petitioner alleges.

In practice, Alabama courts rarely grant evidentiary hearings for post-conviction habeas petitions. Many obstacles stand in the way of an evidentiary hearing, including the narrow scope of Alabama’s post-conviction habeas remedy, the many grounds on which a claim may be precluded, and the high standard of specificity of pleadings.

What happens at the hearing?

Unless the court summarily dismisses the petition, an evidentiary hearing shall be held to determine disputed issues of material fact, at which the petitioner may subpoena material witnesses on his behalf.³⁸ In its discretion, the court may also receive evidence by affidavits, written interrogatories, or depositions in the place of an evidentiary hearing.³⁹ After reviewing the pleadings and evidence, the judge must enter written findings of fact relating to each material issue of fact.⁴⁰

How does the judge decide whether to grant habeas corpus relief?

The burden is on the petitioner to prove that a violation of his constitutional rights occurred.⁴¹ The judge must weigh the evidence and the credibility of the witnesses called to testify.

Can the trial court’s decision denying habeas corpus relief be appealed?

Yes. The denial of a habeas petition can be appealed to the Court of Criminal Appeals.⁴² A petitioner who wishes to appeal the denial of a habeas petition must file a notice of appeal with the clerk of the trial court within 42 days of the date of the order denying relief.⁴³ After the circuit court clerk has certified the record for appeal, the petitioner has 28 days to file the

³⁷ *Id.*

³⁸ Ala. R. Crim. P. 32.9(a).

³⁹ *Id.*

⁴⁰ Ala. R. Crim. P. 32.9(d).

⁴¹ Ala. R. Crim. P. 32.3.

⁴² Ala. R. Crim. P. 32.10.

⁴³ Ala. R. App. P. 4(a)(1).

principal brief with the Court of Criminal Appeals.⁴⁴ The reply brief is due 14 days after the State files its brief.⁴⁵

The Court of Criminal Appeals will only reverse a trial court's denial of a Rule 32 petition if the trial court abused its discretion.⁴⁶ However, an appellate court will review pure questions of law as though they were appearing before it for the first time.⁴⁷

The Alabama Supreme Court has discretion to review appeals from a Court of Criminal Appeals decision to deny relief to a post-conviction habeas petitioner.⁴⁸ In other words it *may*, but need not, review an unsuccessful petitioner's writ of certiorari challenging the appellate court's denial of relief. In practice, the Alabama Supreme Court rarely reviews such writs of certiorari in non-death penalty cases.

⁴⁴ Ala. R. App. P. 31(a).

⁴⁵ Ala. R. App. P. 31.

⁴⁶ *Hunt v. State*, 940 So. 2d 1041, 1049 (Ala. Crim. App. 2005).

⁴⁷ *Id.*

⁴⁸ Ala. R. App. P. 39 (“Certiorari review is not a matter of right, but of judicial discretion.”).

PETITION FOR RELIEF FROM CONVICTION
OR SENTENCE (Pursuant to Rule 32, Alabama
Rules of Criminal Procedure)

IN THE _____ COURT OF _____, ALABAMA

_____ v. _____

Petitioner (Full Name) _____ Respondent _____
[Indicate either the
"State" or, if filed in mu-
nicipal court, the name
of the "Municipality"]

Prison Number _____ Place of Confinement _____
County of Conviction _____

NOTICE: BEFORE COMPLETING THIS FORM,
READ CAREFULLY THE ACCOMPANYING INSTRUCTIONS.

1. Name and location (city and county) of court which entered the judgment of conviction or sentence 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) Guilty _____
(b) Not Guilty _____
(c) Not Guilty by reason of mental disease or defect _____
(d) Not Guilty and not guilty by reason of mental disease or defect _____
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. Kind of trial: (Check one)
(a) Jury _____ (b) Judge only _____
7. Did you testify at the trial?
Yes _____ No _____
8. Did you appeal from the judgment of conviction?
Yes _____ No _____
9. If you did appeal, answer the following:
(a) As to the state court to which you first appealed, give the following information:
(1) Name of court _____

(2) Result _____

(3) Date of result _____

- (b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:
(1) Name of court _____

(2) Result _____

(3) Date of result _____

 - (c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:
(1) Name of court _____

(2) Result _____

(3) Date of result _____

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 Question 10 was "yes," then give the following information in regard to the first such petition, application, or motion you filed:
(a) (1) Name of court _____
(2) Nature of proceeding _____
(3) Grounds raised _____

(attach additional sheets if necessary)
(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 _____

(attach additional sheets if necessary)
(4) Did you receive an evidentiary hearing on your petition, application, or motion?
Yes _____ No _____
(5) Result _____
(6) Date of result _____

GROUPS OF PETITION

(c) As to any third petition, application, or motion, give the same information (attach additional sheets giving the same information for any subsequent petitions, applications, or motions):

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(attach additional sheets if necessary)

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

(5) Result _____

(6) Date of result _____

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

(1) First petition, etc. Yes ___ No ___

(2) Second petition, etc. Yes ___ No ___

(3) Third petition, etc. Yes ___ No ___

ATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.

(e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not:

12. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

— A. *The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.*

For your information, the following is a list of the most frequently raised claims of constitutional violation:

(1) 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.

(2) Conviction obtained by use of coerced confession.

(3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(5) Conviction obtained by a violation of the privilege against self-incrimination.

(6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(7) Conviction obtained by a violation of the protection against double jeopardy.

(8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(9) Denial of effective assistance of counsel. This list is not a complete listing of all possible constitutional violations.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.

— B. *The court was without jurisdiction to render the judgment or to impose the sentence.*

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

— C. *The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.*

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of

paper list each and every fact you feel supports this claim. Be specific and give details.

— D. *Petitioner is being held in custody after his sentence has expired.*

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

— E. *Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:*

The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and

The facts are not merely cumulative to other facts that were known; and

The facts do not merely amount to impeachment evidence; and

If the facts had been known at the time of trial or sentencing, the result would probably have been different; and

The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

— F. *The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.*

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

13. **IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:**

"Successive Petitions. The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes _____ No _____

B. If you checked "Yes," give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court _____

(b) Result _____

(c) Date of result _____

(attach additional sheets if necessary)

C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labelled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice."

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 at the following stages of the case that resulted in the judgment under attack:

(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 adverse ruling in a post-conviction proceeding _____

16. 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 _____

17. 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 sentence 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 _____

18. What date is this petition being mailed?

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

PETITIONER'S VERIFICATION UNDER OATH
SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct. Executed on

(Date)

Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the _____ day of _____, 19____.

Notary Public

OR *

ATTORNEY'S VERIFICATION UNDER OATH
SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that, upon information and belief, the foregoing is true and correct. Executed on _____

(Date)

Signature of Petitioner's
Attorney

SWORN TO AND SUBSCRIBED before me this the _____ day of _____, 19____.

Notary Public

Name and address of attorney representing petitioner in this proceeding (if any)

* If petitioner is represented by counsel, Rule 32.6(a) permits either petitioner or counsel to verify the petition.

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

(Petitioner)

v.

(Respondent(s))

DECLARATION IN SUPPORT OF REQUEST
TO PROCEED IN FORMA PAUPERIS

I, _____, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes No
a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.

b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession, or other form of self-employment?

Yes No

b. Rent payments, interest, or dividends?

Yes No

c. Pensions, annuities, or life insurance payments?

Yes No

d. Gifts or inheritances?

Yes No

e. Any other sources?

Yes No

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

3. Do you own cash, or do you have money in a checking or savings account?

Yes No

(Include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes No

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.
Executed on _____

(date)

Signature of Petitioner

Certificate

I hereby certify that the petitioner herein has the sum of \$_____ on account to his credit at the _____ institution where he is confined. I further certify that petitioner likewise has the foregoing securities to his credit according to the records of said _____ institution:

DATE

AUTHORIZED OFFICER OF
INSTITUTION

Rule 32