

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 3:22 POST CONVICTION RELIEF

3:22-1. Petition for Relief

Any person convicted of a crime may, pursuant to this rule, file with the criminal division manager's office of the county in which the conviction took place a petition for post-conviction relief captioned in the action in which the conviction was entered.

Note: Source -- R.R. 3:10A-1. Amended July 5, 2000 to be effective September 5, 2000.

3:22-2. Grounds

A petition for post-conviction relief is cognizable if based upon any of the following grounds:

(a) Substantial denial in the conviction proceedings of defendant's rights under the Constitution of the United States or the Constitution or laws of the State of New Jersey;

(b) Lack of jurisdiction of the court to impose the judgment rendered upon defendant's conviction;

(c) Imposition of sentence in excess of or otherwise not in accordance with the sentence authorized by law if raised together with other grounds cognizable under paragraph (a), (b), or (d) of this rule. Otherwise a claim alleging the imposition of sentence in excess of or otherwise not in accordance with the sentence authorized by law shall be filed pursuant to R. 3:21-10(b)(5).

(d) Any ground heretofore available as a basis for collateral attack upon a conviction by habeas corpus or any other common-law or statutory remedy.

Note: Source -- R.R. 3:10A-2; paragraph (c) amended July 16, 2009 to be effective September 1, 2009.

3:22-3. Exclusiveness of Remedy; Not Substitute for Appeal or Motion

Except as otherwise required by the Constitution of New Jersey, a petition pursuant to this rule is the exclusive means of challenging a judgment rendered upon conviction of a crime. It is not, however, a substitute for appeal from conviction or for motion incident to the proceedings in the trial court, and may not be filed while such appellate review or motion is pending.

Note: Source -- R.R. 3:10A-3; amended July 16, 2009 to be effective September 1, 2009.

3:22-4. Bar of Grounds Not Raised in Prior Proceedings; Bar of Second or Subsequent Petitions; Exceptions

(a) First Petition for Post-Conviction Relief. Any ground for relief not raised in the proceedings resulting in the conviction, or in a post-conviction proceeding brought and decided prior to the adoption of this rule, or in any appeal taken in any such proceedings is barred from assertion in a proceeding under this rule unless the court on motion or at the hearing finds:

(1) that the ground for relief not previously asserted could not reasonably have been raised in any prior proceeding; or

(2) that enforcement of the bar to preclude claims, including one for ineffective assistance of counsel, would result in fundamental injustice; or

(3) that denial of relief would be contrary to a new rule of constitutional law under either the Constitution of the United States or the State of New Jersey.

A ground could not reasonably have been raised in a prior proceeding only if defendant shows that the factual predicate for that ground could not have been discovered earlier through the exercise of reasonable diligence.

A denial of relief would be contrary to a new rule of constitutional law only if the defendant shows that the claim relies on a new rule of constitutional law, made retroactive to defendant's petition by the United States Supreme Court or the Supreme Court of New Jersey, that was unavailable during the pendency of any prior proceedings.

(b) Second or Subsequent Petition for Post-Conviction Relief. A second or subsequent petition for post-conviction relief shall be dismissed unless:

(1) it is timely under R. 3:22-12(a)(2); and

(2) it alleges on its face either:

(A) that the petition relies on a new rule of constitutional law, made retroactive to defendant's petition by the United States Supreme Court or the Supreme Court of New Jersey, that was unavailable during the pendency of any prior proceedings; or

(B) that the factual predicate for the relief sought could not have been discovered earlier through the exercise of reasonable diligence, and the facts underlying the ground for relief, if proven and viewed in light of the evidence as a whole, would raise a reasonable probability that the relief sought would be granted; or

(C) that the petition alleges a prima facie case of ineffective assistance of counsel that represented the defendant on the first or subsequent application for post-conviction relief.

Note: Source -- R.R. 3:10A-4; caption amended, introductory paragraph amended and designated as paragraph (a), former paragraphs (a), (b), and (c) redesignated as subparagraphs (a)(1), (a)(2), and (a)(3), and new paragraph (b) adopted January 14, 2010 to be effective February 1, 2010.

3:22-5. Bar of Ground Expressly Adjudicated

A prior adjudication upon the merits of any ground for relief is conclusive whether made in the proceedings resulting in the conviction or in any post-conviction proceeding brought pursuant to this rule or prior to the adoption thereof, or in any appeal taken from such proceedings.

Note: Source -- R.R. 3:10A-5.

3:22-6. Indigents; Waiver of Fees; Assignment of Counsel, and Grant of Transcript; Assigned Counsel May Not Withdraw

(a) Waiver of Fees; Assignment on First Petition. At the time of filing of a petition under this Rule, a defendant who wants to be represented by the Office of the Public Defender may annex thereto a sworn statement alleging indigency in the form prescribed by the Administrative Director of the Courts, which form shall be furnished to the defendant by the criminal division manager's office. The criminal division manager's office shall determine whether the defendant is indigent and screen the petition to determine whether the petition is cognizable under R. 3:22-2 and, if so, whether the requirements of R. 3:22-8 have been met. The Criminal Division Manager shall thereafter forthwith submit the same to the Criminal Presiding Judge who, if satisfied therefrom that the defendant is indigent shall order the criminal division manager's office to file the petition without payment of filing fees. At the same time, and without separate petition therefor, if the petition is the first one filed by the defendant attacking the conviction pursuant to this rule, the court shall as of course, unless defendant affirmatively states an intention to proceed pro se, by order assign the matter to the Office of the Public Defender if the defendant's conviction was for an indictable offense, or assign counsel in accordance with R. 3:4-2 if the defendant's conviction was for a non-indictable offense. All orders of assignment pursuant to this section shall contain the name of the judge to whom the case is assigned and shall set a place and date for a case management conference.

If the petition is not cognizable under R. 3:22-2, or if the petition does not meet the requirements of R. 3:22-8, the court shall set forth the reasons that the petition is not cognizable under R. 3:22-2, or fails to meet the requirements of R. 3:22-8.

(b) Assignment of Counsel on Cause Shown. Upon any second or subsequent petition filed pursuant to this Rule attacking the same conviction, the matter shall be assigned to the Office of the Public Defender only upon application therefor and showing of good cause. For purposes of this section, good cause exists only when the

court finds that a substantial issue of fact or law requires assignment of counsel and when a second or subsequent petition alleges on its face a basis to preclude dismissal under R. 3:22-4.

(c) Transcript. After assignment of counsel, or if the indigent defendant proceeds without counsel, the court may grant an application for the transcript of testimony of any proceeding shown to be necessary in establishing the grounds of relief asserted.

(d) Substitution; Withdrawal of Assigned Counsel. The court shall not substitute new assigned counsel at the request of defendant while assigned counsel is serving, except upon a showing of good cause and notice to the Office of the Public Defender. Assigned counsel may not seek to withdraw on the ground of lack of merit of the petition. Counsel should advance all of the legitimate arguments requested by the defendant that the record will support. If defendant insists upon the assertion of any grounds for relief that counsel deems to be without merit, counsel shall list such claims in the petition or amended petition or incorporate them by reference. Pro se briefs can also be submitted.

Note: Source -- R.R. 3:10A-6(a) (b) (c) (d). Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (d) amended July 13, 1994 to be effective January 1, 1995; paragraphs (a), (b), (c) and (d) amended July 16, 2009 to be effective September 1, 2009.

3:22-6A. Notifying Court of Assignment; Filing of Appearance

(1) Within ninety days of receipt of an order of assignment on a filed petition for post-conviction relief, the Public Defender shall provide the court with the name of the attorney assigned to represent the defendant. That attorney shall, within ten days, file an appearance with the judge.

(2) If a direct appeal, including a petition for certification, is pending, the Public Defender shall notify the court, and the petition shall be dismissed without prejudice. If the defendant refiles the petition within 90 days of the date of the judgment on direct appeal, including consideration of a petition for certification, or within five years after the date of the entry pursuant to Rule 3:21-5 of the judgment of conviction being challenged, it shall be considered a first petition for post-conviction relief.

(3) Where the order of assignment sets forth reasons that the petition is not cognizable under R. 3:22-2, or does not contain the requirements of R. 3:22-8, or the Office of the Public Defender determines that such deficiencies exist and so notifies the court, the attorney assigned to represent the defendant shall, within 120 days of assignment, file an amended petition or new application that is cognizable under R. 3:22-2 and which meets the requirements contained in R. 3:22-8, or shall seek other

relief as may be appropriate. In the absence of an amended petition, the court may dismiss the petition without prejudice.

(4) In all other cases in which an attorney is representing the defendant, the attorney shall file an appearance contemporaneously with the filing of a petition for post-conviction relief.

Note: Adopted July 16, 2009 to be effective September 1, 2009; paragraph (2) amended January 14, 2010 to be effective February 1, 2010.

3:22-7. Docketing; Service on Prosecutor; Assignment for Disposition

The criminal division manager shall make an entry of the filing of the petition in the proceedings in which the conviction took place, and, if it is filed pro se, shall forthwith transmit a copy thereof to the prosecutor of the county. If the petition is filed by an attorney, that attorney shall serve a copy thereof on the prosecutor before filing and shall file proof, certification or acknowledgment of service with the petition. The criminal division manager shall promptly notify the Criminal Presiding Judge of the filing of the petition, and the Criminal Presiding Judge shall forthwith refer the matter for disposition to a trial judge.

Note: Source -- R.R. 3:10A-7; amended July 13, 1994 to be effective September 1, 1994; amended July 16, 2009 to be effective September 1, 2009.

3:22-8. Contents of Petition; Verification

The petition shall be verified by defendant and shall set forth with specificity the facts upon which the claim for relief is based, the legal grounds of complaint asserted, and the particular relief sought. The petition shall include the following information: (a) the date, docket number, and content of the indictment or accusation upon which the conviction was based and the county where filed; (b) the date and content of the sentence or judgment complained of and the name of the presiding judge; (c) any appellate proceedings brought from the conviction, attaching a copy of opinions therein; (d) any previous post-conviction proceedings relating to the same conviction, giving date and nature of claim and date and nature of disposition, and concerning any appeal therefrom, together with copies of opinions therein, trial and appellate; (e) whether petitioner was represented by counsel in any of the proceedings aforementioned, naming the counsel in each such proceeding, and stating whether counsel was in each instance retained or assigned; (f) whether and where defendant is presently confined; (g) when a claim of ineffective assistance of counsel is alleged that notice has been provided to the attorney whose performance is being challenged. Argument, citations

and discussion of authorities shall be omitted from the petition, but may be submitted in a separate memorandum of law.

Note: Source -- R.R. 3:10A-8; amended July 21, 2011 to be effective September 1, 2011.

3:22-9. Amendments of Pleadings; Answer by Prosecutor

Amendments of pleadings shall be liberally allowed. For all petitions assigned to the Office of the Public Defender pursuant to R. 3:22-6(a), assigned counsel may as of course serve and file an amended petition within 90 days after assignment. Except as provided in R. 3:22-6A(3), if assigned counsel determines that no amended petition is warranted, counsel must serve and file notice of that determination within 90 days after assignment. For all petitions assigned to the Office of the Public Defender, the prosecutor shall, within 60 days after service of a copy of the amended petition or the notice that no amended petition will be filed, serve and file an answer to the petition or amended petition. For all other petitions for post-conviction relief, within 60 days after service of a copy of the petition or amended petition, the prosecutor shall serve and file an answer thereto. The court may make such other orders with respect to pleadings as it deems appropriate.

Note: Source -- R.R. 3:10A-9; caption and text amended July 16, 2009 to be effective September 1, 2009.

3:22-10. Presence of Defendant at Hearing; Evidentiary Hearing

(a) A defendant in custody may be present in court in the court's discretion. The defendant shall be entitled to be present when oral testimony is adduced. However, the defendant's presence may be waived by counsel upon request of the defendant.

(b) A defendant shall be entitled to an evidentiary hearing only upon the establishment of a prima facie case in support of post-conviction relief, a determination by the court that there are material issues of disputed fact that cannot be resolved by reference to the existing record, and a determination that an evidentiary hearing is necessary to resolve the claims for relief. To establish a prima facie case, defendant must demonstrate a reasonable likelihood that his or her claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits.

(c) Any factual assertion that provides the predicate for a claim of relief must be made by an affidavit or certification pursuant to Rule 1:4-4 and based upon personal knowledge of the declarant before the court may grant an evidentiary hearing.

(d) The scope of an evidentiary hearing shall be limited to the issue of whether the defendant was improperly convicted.

(e) A court shall not grant an evidentiary hearing:

(1) if an evidentiary hearing will not aid the court's analysis of the defendant's entitlement to post-conviction relief;

(2) if the defendant's allegations are too vague, conclusory or speculative; or

(3) for the purpose of permitting a defendant to investigate whether additional claims for relief exist for which defendant has not demonstrated a reasonable likelihood of success as required by R. 3:22-10(b).

Note: Source -- R.R. 3:10A-11; amended July 13, 1994 to be effective September 1, 1994; caption amended, first sentence of former rule deleted, remaining text of former rule retained as introductory language, and new paragraphs (a), (b), (c), and (d) adopted July 16, 2009 to be effective September 1, 2009; introductory paragraph of rule amended and designated as new paragraph (a), former paragraphs (a), (b), and (c) redesignated as paragraphs (b), (c), and (d), and former paragraph (d) amended and redesignated as paragraph (e) January 14, 2010 to be effective February 1, 2010.

3:22-11. Determination; Findings and Conclusions; Judgment; Supplementary Orders

The court shall make its final determination not later than 60 days after the hearing or, if there is no hearing, not later than 60 days after the filing of the last amended petition or answer, with discretion to extend the final determination an additional 30 days, if approved by the Criminal Presiding Judge. In making final determination upon a petition, the court shall state separately its findings of fact and conclusions of law, and shall enter a judgment, which shall include an appropriate order or direction with respect to the judgment or sentence in the conviction proceedings and any appropriate provisions as to arraignment, retrial, custody, bail, discharge, correction of sentence, or as may otherwise be required.

Note: Source -- R.R. 3:10A-12; amended July 16, 2009 to be effective September 1, 2009; amended January 14, 2010 to be effective February 1, 2010.

3:22-12. Limitations

(a) General Time Limitations.

(1) First Petition For Post-Conviction Relief. Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this rule, no petition shall be filed pursuant to this

rule more than 5 years after the date of entry pursuant to Rule 3:21-5 of the judgment of conviction that is being challenged unless:

(A) it alleges facts showing that the delay beyond said time was due to defendant's excusable neglect and that there is a reasonable probability that if the defendant's factual assertions were found to be true enforcement of the time bar would result in a fundamental injustice; or

(B) it alleges a claim for relief as set forth in paragraph (a)(2)(A) or paragraph (a)(2)(B) of this rule and is filed within the one-year period set forth in paragraph (a)(2) of this rule.

(2) Second or Subsequent Petition for Post-Conviction Relief.

Notwithstanding any other provision in this rule, no second or subsequent petition shall be filed more than one year after the latest of:

(A) the date on which the constitutional right asserted was initially recognized by the United States Supreme Court or the Supreme Court of New Jersey, if that right has been newly recognized by either of those Courts and made retroactive by either of those Courts to cases on collateral review; or

(B) the date on which the factual predicate for the relief sought was discovered, if that factual predicate could not have been discovered earlier through the exercise of reasonable diligence; or

(C) the date of the denial of the first or subsequent application for post-conviction relief where ineffective assistance of counsel that represented the defendant on the first or subsequent application for post-conviction relief is being alleged.

(3) Dismissal Without Prejudice When Direct Appeal Is Pending. A petition dismissed without prejudice pursuant to R. 3:22-6A(2) because a direct appeal, including a petition for certification, is pending, shall be treated as a first petition for purposes of these rules if refiled within 90 days of the date of the judgment on direct appeal, including consideration of a petition for certification, or within five years after the date of the entry pursuant to Rule 3:21-5 of the judgment of conviction that is being challenged.

(4) Dismissal Without Prejudice As Not Cognizable or For Insufficient Verification or Contents. A petition dismissed pursuant to R. 3:22-6A(3) without prejudice as not cognizable under R. 3:22-2, or for failing to meet the requirements of R. 3:22-8, shall be treated as a first petition for purposes of these rules if amended and refiled within 90 days after the date of dismissal, or within five years after the date of the entry pursuant to Rule 3:21-5 of the judgment of conviction that is being challenged.

(b) These time limitations shall not be relaxed, except as provided herein.

Note: Source -- R.R. 3:10A-13. Caption added and text designated as paragraph (a), and new paragraph (b) added July 12, 2002 to be effective September 3, 2002; paragraph (a) amended and new paragraph (c) adopted July 16, 2009 to be effective September 1, 2009; former paragraph (a) amended and allocated into subparagraphs (a)(1), (a)(3), and (a)(4), captions adopted for subparagraphs (a)(1), (a)(3), and (a)(4), and new subparagraph (a)(2) caption and text adopted January 14, 2010 to be effective February 1, 2010; paragraph (a)(1) amended, paragraph (b) deleted, and paragraph (c) redesignated paragraph (b) July 28, 2017 to be effective September 1, 2017.

3:22-13. Notice Requirements in Petitions for Post-Conviction Relief

(a) In all petitions for post-conviction relief where the ineffective assistance of counsel is being alleged, a copy of the petition shall be forwarded, as soon as practicable, to the attorney whose performance is being challenged. If the defendant is assigned counsel or otherwise represented by counsel, counsel shall provide the notice. If the defendant is appearing pro se, notice shall be provided by the defendant.

(b) In cases where the attorney whose performance is being challenged is employed by the Office of the Public Defender or by a law firm, those entities shall also receive notice.

Note: Adopted July 21, 2011 to be effective September 1, 2011.