

## **RULE 7:10. Post-Trial Proceedings**

### **7:10-1. New Trial**

On defendant's motion, the court may, pursuant to the time limitations of this rule, grant the defendant a new trial if required in the interest of justice. The court may vacate the judgment if already entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial, based on the ground of newly discovered evidence, shall be made within two years after entry of a final judgment. A motion for a new trial on the grounds of fraud or lack of jurisdiction may be made at any time. A motion for a new trial, based on any other grounds, shall be made within twenty days after the entry of judgment of conviction or within such further time as the court fixes during the twenty-day period.

Note: Source-R.R. (1969) 7:4-7. Adopted October 6, 1997 to be effective February 1, 1998; amended June 15, 2007 to be effective September 1, 2007.

### **7:10-2. Post-Conviction Relief**

- **(a) Petition for Relief.** A person convicted of an offense may, pursuant to this rule, file with the municipal court administrator of the municipality in which the conviction took place, a petition for post-conviction relief captioned in the action in which the conviction was entered.
- **(b) Limitations and Exclusiveness.**
  - **(1)** A petition to correct an illegal sentence may be filed at any time.
  - **(2)** A petition based on any other grounds shall not be accepted for filing more than five years after entry of the judgment of conviction or imposition of the sentence sought to be attacked, unless it alleges facts showing that the delay in filing was due to defendant's excusable neglect.
  - **(3)** A petition for post-conviction relief shall be the exclusive means of challenging a judgment of conviction, except as otherwise required by the Constitution of New Jersey, but it is not a substitute for appeal from a conviction or for a motion incident to the proceedings in the trial court, and may not be filed while appellate review or the filing of a motion in the municipal court is available.
- **(c) Grounds.** A petition for post-conviction relief is cognizable if based on any of the following grounds:
  - **(1)** substantial denial in the conviction proceedings of defendant's rights under the Constitution of the United States or the Constitution or laws of New Jersey;
  - **(2)** lack of jurisdiction of the court to impose the judgment rendered on defendant's conviction;
  - **(3)** imposition of sentence in excess of or otherwise not in accordance with the sentence authorized by law; or
  - **(4)** any ground previously available as a basis for collateral attack on a conviction by habeas corpus or any other common law or statutory remedy.
- **(d) Bar of Grounds Not Raised in Prior Proceedings; Exceptions.**
  - **(1)** The defendant is barred from asserting in a proceeding under this rule any grounds for relief not raised in a prior proceeding under this rule, or in the proceedings resulting in the conviction, or in a post-conviction proceeding brought and decided prior to the adoption of R. 3:22-4, or in any appeal taken in any of those proceedings, unless the court on motion or at the hearing finds that:
    - **(A)** the grounds for relief not previously asserted could not reasonably have been raised in any prior proceeding;
    - **(B)** enforcement of the bar would result in fundamental injustice; or
    - **(C)** denial of relief would be contrary to the Constitution of the United States or of New Jersey.

- **(2)** A prior adjudication on the merits of any grounds for relief asserted in the petition is conclusive, whether made in the proceedings resulting in the conviction or any prior post-conviction proceeding, or in any appeal taken from those proceedings.
- **(e) Assignment of Counsel.** A defendant may annex to the petition a sworn statement asserting indigency in the form (Form 5A) prescribed by the Administrative Director of the Courts, which form shall be furnished by the municipal court administrator. If the court finds that the defendant is indigent as herein provided, and that the original conviction involved a consequence of magnitude, it shall order counsel assigned to represent defendant and shall further order a transcript of testimony of any proceeding shown to be necessary in establishing the grounds of relief asserted. Absent a showing of good cause, which shall not include lack of merit of the petition, the court shall not substitute new assigned counsel. If counsel is assigned, the court shall not thereafter substitute new assigned counsel absent a showing of good cause, which shall not, however, include lack of merit of the petition.
- **(f) Procedure.**
  - **(1)** The municipal court administrator 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 to the municipal prosecutor. An attorney filing the petition shall serve a copy on the municipal prosecutor before filing.
  - **(2)** 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 the complaint asserted and the particular relief sought. The petition shall include the following information:
    - **(A)** the date, docket number and contents of the complaint upon which the conviction is based and the municipality where filed;
    - **(B)** the sentence or judgment complained of, the date it was imposed or entered, and the name of the municipal court judge then presiding;
    - **(C)** any appellate proceedings brought from the conviction, with copies of the appellate opinions attached;
    - **(D)** any prior post-conviction relief proceedings relating to the same conviction, including the date and nature of the claim and the date and nature of disposition, and whether an appeal was taken from those proceedings and, if so, the judgment on appeal;
    - **(E)** the name of counsel, if any, representing defendant in any prior proceeding relating to the conviction, and whether counsel was retained or assigned; and
    - **(F)** whether and where defendant is presently confined. A separate memorandum of law may be submitted.
    - **(G)** In addition, the moving papers in support of such an application shall include, if available, records related to the underlying conviction, including, but not limited to, copies of all complaints, applications for assignment of counsel, waiver forms and transcripts of the defendant's first appearance, entry of guilty plea and all other municipal court proceedings related to the conviction sought to be challenged. The petitioner shall account for any unavailable records by way of written documentation from the municipal court administrator or the custodian of records, as the case may be.
  - **(3)** Amendments of the petitions shall be liberally allowed. Assigned counsel may, as a matter of course, serve and file an amended petition within 25 days after assignment. Within 30 days after service of a copy of the petition or amended petition, the municipal prosecutor shall serve and file an answer to the petition or move on ten days' notice for dismissal. If the motion for dismissal is denied, the government's answer shall be filed within fifteen days after entry of the order denying the dismissal.

- **(4)** A defendant in custody shall be present in court if oral testimony is adduced on a material issue of fact within the defendant's personal knowledge. A defendant in custody may otherwise be present in court only in the judge's discretion.
- **(5)** In making a final determination on a petition, either on motion for dismissal or after hearing, the court shall state separately its findings of fact and conclusions of law and shall enter 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.
- **(g) Petition to Obtain Relief from an Enhanced Custodial Term Based on a Prior Conviction**
  - **(1) Venue.** A post-conviction petition to obtain relief from an enhanced custodial term based on a prior conviction shall be brought in the court where the prior conviction was entered.
  - **(2) Time Limitations.** The time limitations for filing petitions for post-conviction relief under this section shall be the same as those set forth in R. 7:10-2(b)(2).
  - **(3) Procedure.** A petition for post-conviction relief sought under this section shall be in writing and shall conform to the requirements of Rule 7:10-2(f). In addition, the moving papers in support of such an application shall include, if available, records related to the underlying conviction, including, but not limited to, copies of all complaints, applications for assignment of counsel, waiver forms and transcripts of the defendant's first appearance, entry of guilty plea and all other municipal court proceedings related to the conviction sought to be challenged . The petitioner shall account for any unavailable records by way of written documentation from the municipal court administrator or the custodian of records, as the case may be.
  - **(4) Appeal.** Appeals from a denial of post-conviction relief from the effect of a prior conviction shall be combined with any appeal from proceedings involving the repeat offense. Appeals by the State may be taken under R. 3:23-2(a).

**Note:** Source - Paragraph (a): R. (1969) 3:22-1; paragraph (b)(1),(2): R. (1969) 3:22-12; paragraph (b)(3): R (1969) 3:22-3; paragraph (c): R. (1969) 7:8-1, 3:22-2; paragraph (d)(1): R. (1969) 3:22-4; paragraph (d)(2): R. (1969) 3:22-5; paragraph (e): R. (1969) 3:22-6(a),(c),(d); paragraph (f)(1): R. (1969) 3:22-7; paragraph (f)(2): R. (1969) 3:22-8; paragraph (f)(3): R. (1969) 3:22-9; paragraph (f)(4): R. (1969) 3:22-10; paragraph (f)(5): R. (1969) 3:22-11. Adopted October 6, 1997 to be effective February 1, 1998; new subparagraph (f)(2)(G) and new paragraph (g) adopted June 15, 2007 to be effective September 1, 2007; paragraph (g)(2) amended July 16, 2009 to be effective September 1, 2009.