

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Amendment
of the
HAWAII RULES OF PENAL PROCEDURE

ORDER AMENDING RULE 40(c)(2) AND FORMS A AND B
OF THE HAWAII RULES OF PENAL PROCEDURE

IT IS HEREBY ORDERED that Rule 40(c)(2) is amended, effective January 1, 2006, as follows (deleted material is bracketed and stricken; new material is double-underscored):

(2) NONCONFORMING PETITION. Where a post-conviction petition deviates from the form annexed to these rules, it shall nevertheless be accepted for filing and shall be treated as a petition under this rule provided that the petition (i) claims illegality of a judgment or illegality of "custody" or "restraint" arising out of a judgment, (ii) is accompanied by the necessary filing fee or by a well-founded [~~motion for waiver of the filing fee~~ or] request to proceed [~~in forma pauperis~~] without paying filing fees, and (iii) meets minimum standards of legibility and regularity.

IT IS FURTHER ORDERED that Forms A and B, appended to the Hawaii Rules of Penal Procedure are amended, effective January 1, 2006, as attached hereto (deleted material is bracketed and stricken; new material is double-underlined).

DATED: Honolulu, Hawaii, September 6, 2005.

Form A

PETITION FOR POST-CONVICTION RELIEF
(Rule 40, HRPP)

Name _____
Prison Number _____
Place of Confinement _____
SPP No. _____ (to be supplied by Clerk of the Court)

_____,)
(full name of petitioner))
Petitioner,)
v.)
STATE OF HAWAII,)
Respondent.)
_____)

PETITION TO VACATE, SET ASIDE, OR CORRECT JUDGMENT
OR TO RELEASE PETITIONER FROM CUSTODY

- (1) This petition must be legibly handprinted 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.]~~ If briefs or arguments or citation of authorities are submitted, they ~~[should be submitted in the form of]~~ must be in a separate memorandum.
- (3) You must submit either the appropriate filing fees, or a Request to Proceed Without Paying Filing Fees (Form B) with this petition. Upon receipt, your petition will be filed ~~[if it is in proper order. No fee is required with this petition].~~ Your Request to Proceed Without Paying Filing Fees (Form B) will be either approved or denied after consideration by the court. If your Request to Proceed Without Paying Filing Fees (Form B) is denied, you will be notified that you must pay the filing fees in order to proceed with your petition and that, if you fail to pay, your petition will be dismissed.
- (4) ~~[If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a petition of this type, you may request permission to proceed in forma pauperis in which event you must execute the declaration (Form B)]~~ The Request to Proceed Without Paying Filing Fees (Form B) must be signed, setting forth information

establishing your inability to pay [~~the costs~~]. If you are in custody and you wish to proceed [~~in forma pauperis~~] without paying filing fees, you must also have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit [~~to your credit in any~~] in your account in the institution.

- (5) [~~Only judgments entered by one court and judge may be challenged in a single petition.~~] You may challenge only one judgment of conviction in this petition. If you seek to challenge judgments entered by different judges or divisions either in the same court or in different courts, you must file separate petitions as to each such judgment.
- (6) [~~Your attention is directed to the fact that you~~] You must include all grounds for relief and all facts supporting [~~such~~] the grounds for relief in [~~the petition you file seeking relief from any judgment of conviction~~] this petition.
- (7) When the petition is fully completed, the original and two copies must be mailed to the Clerk of the Court [~~in which~~] where the conviction was entered and whose address is

~~[to be stamped in by the Clerk]~~

(to be stamped by the Clerk)

- ~~[(8) — Petitions which do not conform to these instructions will be returned with a notation as to the deficiency, and will not be processed or considered until the deficiency is cured.]~~

PETITION TO VACATE, SET ASIDE, OR CORRECT JUDGMENT
OR TO RELEASE PETITIONER FROM CUSTODY

1. Name and location of court [~~which~~] that entered the judgment of conviction [~~under attack~~] that you are challenging in this petition _____

- (a) Case [~~No.~~] Number (for example, Cr. No. ; FCCr. No. ; etc.) _____

- (b) Trial judge _____
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~~] No Contest _____

If you changed your plea, what did you change it to?

(a) Guilty _____

(b) No Contest _____

If you entered a guilty plea to one count of the charge, complaint, information, or indictment, and a not guilty plea or no contest plea to another count of the charge, complaint, information, or indictment, give details:

6. [~~Kind~~] Type 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) [~~Supreme Court No.~~] Appeal Number _____

(b) Result _____

(c) 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?

Yes _____ No _____

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

(a) (1) Name of court _____

(2) Case [~~No.~~] Number (for example, Cr. No. ; FCCr. No. ; etc.) _____

(3) Name of judge _____

(4) Nature of proceeding _____

(5) Grounds raised _____

(6) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No _____

(7) Result _____

(8) Date of result _____

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

(1) Name of court _____

(2) Case [~~No.~~] Number (for example, Cr. No. ; FCCr. No. ; etc.) _____

(3) Name of judge _____

(4) Nature of proceeding _____

(5) Grounds raised _____

(6) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No _____

(7) Result _____

(8) Date of result _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of court _____

(2) Case ~~[No.]~~ Number (for example, Cr. No. ; FCCr. No. ; etc.) _____

(3) Name of judge _____

(4) Nature of proceeding _____

(5) Grounds raised _____

(6) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No _____

(7) Result _____

(8) Date of result _____

(d) Did you appeal~~[, to the Supreme Court of Hawai i,]~~ the ~~[result of]~~ action taken on any petition, application or motion?

(1) First petition, etc.

Yes _____ [(Supreme Court No. _____)] Appeal Number _____

No _____

(2) Second petition, etc.

Yes _____ [(Supreme Court No. _____)] Appeal Number _____

No _____

(3) Third petition, etc.

Yes _____ [(Supreme Court No. _____)] Appeal Number _____

No _____

(e) 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~~] State the facts supporting each ground. If necessary, you may attach pages stating additional grounds and the supporting facts [~~supporting same~~].

CAUTION: If you fail to [~~set forth~~] state all grounds in this petition, you may be [~~barred~~] prohibited 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 these proceedings. [~~Each statement preceded by a letter constitutes a separate ground for~~

~~possible relief.]~~ You may raise any grounds ~~[which you have other than]~~ in addition to those listed. However, **you should raise [in this petition] all [available] grounds** ~~[(relating to this conviction)]~~ ~~[on which you based your allegations that you are being held in custody unlawfully]~~ in this petition.

~~[Do not check any of these listed grounds.]~~ If you select ~~[one or more]~~ any of these grounds for relief, you must ~~[allege]~~ state the supporting facts. The petition will be ~~[returned to you]~~ denied if you merely check ~~[(a) through (j) or any one of the grounds]~~ any of the listed grounds or if you fail to provide supporting facts.

- (a) ~~[Conviction obtained by]~~ A plea of guilty ~~[which]~~ that was unlawfully induced or not made knowingly, intelligently, or voluntarily or with an understanding of the nature of the charge(s) and the consequences of the plea.
- (b) ~~[Conviction obtained by use]~~ Use of a coerced confession.
- (c) ~~[Conviction obtained by use]~~ Use of evidence obtained pursuant to an unconstitutional search and seizure.
- (d) ~~[Conviction obtained by use]~~ Use of evidence obtained pursuant to an unlawful arrest.
- (e) ~~[Conviction obtained by a]~~ A violation of the privilege against self-incrimination.
- (f) ~~[Conviction obtained by the unconstitutional failure]~~ Failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) ~~[Conviction obtained by a violation]~~ Violation of the protection against double jeopardy.
- (h) ~~[Conviction obtained by action of a grand or petit jury which was unconstitutionally]~~ Unconstitutionally selected and impanelled grand or trial jury.
- (i) ~~[Denial of effective]~~ Ineffective assistance of counsel.
- (j) ~~[Denial of right of appeal.]~~ Prosecutorial misconduct.
- (k) Violation of Rule 48 (Right to a speedy trial).
- (l) Lack of jurisdiction of the court that entered the judgment.

A. Ground one: _____

State [S] supporting FACTS [(tell your story briefly without citing cases or law)] (do not cite cases or law):

B. Ground two: _____

State [S] supporting FACTS [(tell your story briefly without citing cases or law)] (do not cite cases or law):

C. Ground three: _____

State [S] supporting FACTS [(tell your story briefly without citing cases or law)] (do not cite cases or law):

[E]D. Ground four: _____

State [S] supporting FACTS [(tell your story ~~briefly~~ without citing cases or law)] (do not cite cases or law):

(ATTACH ADDITIONAL PAGES, IF NEEDED)

13. [If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them] If you are raising any of the grounds in number 12 for the first time, state why. (Attach additional pages, if needed.): _____

14. Do you have any petition or appeal now pending in any court [~~as to~~] concerning the judgment [~~under attack~~] you are challenging in this petition?

Yes _____ If so, give court name[s], court location and case number[s].

No _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the [~~judgments attached herein~~] proceeding that resulted in the judgment being challenged:

(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. Were you sentenced on more than one count of a charge, complaint, information, or [an] indictment[, or on more than one charge or indictment, in the same court and at approximately 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~~] you are challenging in this petition?

Yes _____ No _____

- (a) If so, give the case number and the name and location of the court [~~which~~] that imposed the sentence to be served in the future: _____

- (b) [~~And g~~] Give date and length of the sentence to be served in the future: _____

- (c) Have you filed, or do you contemplate filing any petition [~~attacking~~] challenging the judgment [~~which~~] that imposed the sentence to be served in the future?
Yes _____ No _____

~~[Wherefore, petitioner prays]~~ Petitioner requests that the Court grant all relief to which the petitioner may be entitled in this proceeding.

Signature of Attorney (if any)

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

Signature of Petitioner

FORM B

[IN FORMA PAUPERIS DECLARATION]
REQUEST TO PROCEED WITHOUT PAYING FILING FEES

[Insert appropriate court]

(Petitioner)

v.

State of Hawai i

DECLARATION IN SUPPORT
OF REQUEST
TO PROCEED
[IN FORMA PAUPERIS]
WITHOUT PAYING FILING FEES

I, _____, declare that I am the petitioner in the above entitled case[;] ~~[that in support of my petition to proceed without being required to prepay fees, costs or give security therefor,]~~ I ask to proceed without paying filing fees. In support of my request, I state that, because of my poverty, I am unable to pay the ~~[costs of said proceeding or to give security therefor,]~~ filing fees and 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]~~ or wages per month ~~[which]~~ that you received.

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

a. Business, profession or ~~[form of self-employment]~~ other 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 _____

3. Do you own any cash, or do you have money in a checking or savings account? (Include any funds in prison accounts.)
Yes _____ No _____

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

4. Do you own 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~~] Signed on _____ [~~(date)~~]
(date)

Signature of Petitioner

CERTIFICATE

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

Authorized Officer of Institution