

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)

[Insert appropriate court]

(full name of petitioner)
Petitioner,
vs.
STATE OF HAWAI'I,
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) If briefs or arguments or citation of authorities are submitted, they 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. 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) The Request to Proceed Without Paying Filing Fees (Form B) must be signed, setting forth information establishing your inability to pay. If you are in custody and you wish to proceed 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 in your account in the institution.
- (5) 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) You must include all grounds for relief and all facts supporting the grounds for relief in this petition.
- (7) Unless filed electronically pursuant to the Hawai'i Electronic Filing and Service Rules, when the petition is fully completed, the original and 2 copies must be mailed to the Clerk of the Court where the conviction was entered and whose address is

_____.
(to be stamped by the Clerk)

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

- 1. Name and location of court that entered the judgment of conviction that you are challenging in this petition _____

 (a) Case 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) 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. 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) 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 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 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 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 the action taken on any petition, application or motion?

(1) First petition, etc.

Yes _____ Appeal Number _____

No _____

(2) Second petition, etc.

Yes _____ Appeal Number _____

No _____

(3) Third petition, etc.

Yes _____ 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 every ground on which you claim you are being held unlawfully. State the facts supporting each ground. If necessary, you may attach pages stating additional grounds and the supporting facts.

CAUTION: If you fail to state all grounds in this petition, you may be 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. You may raise any grounds in addition to those listed. However, **you should raise all grounds** relating to this conviction in this petition.

If you select any of these grounds for relief, you must state the supporting facts. The petition will be denied if you merely check any of the listed grounds or if you fail to provide supporting facts.

- (a) A plea of guilty 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) Use of a coerced confession.
- (c) Use of evidence obtained pursuant to an unconstitutional search and seizure.
- (d) Use of evidence obtained pursuant to an unlawful arrest.
- (e) A violation of the privilege against self-incrimination.
- (f) Failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Violation of the protection against double jeopardy.
- (h) Unconstitutionally selected and impanelled grand or trial jury.
- (i) Ineffective assistance of counsel.
- (j) 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 supporting FACTS (do not cite cases or law):

B. Ground two: _____

State supporting FACTS (do not cite cases or law):

C. Ground three: _____

State supporting FACTS (do not cite cases or law):

D. Ground four: _____

State supporting FACTS (do not cite cases or law):

(ATTACH ADDITIONAL PAGES, IF NEEDED)

13. 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 concerning the judgment you are challenging in this petition?

Yes _____ If so, give court name, court location and case number: _____

No _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the 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 indictment?
Yes _____ No _____
- 17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment you are challenging in this petition?
Yes _____ No _____
 - (a) If so, give the case number and the name and location of the court that imposed the sentence to be served in the future: _____

 - (b) Give date and length of the sentence to be served in the future: _____

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

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. Signed on _____.
(date)

Signature of Petitioner