

Chapter 1 : BOPPRE TO CHALLENGE APPEAL LIMITS

The 8th U-S Circuit Court of Appeals last April denied Boppre's request to make continued post-conviction relief challenges in federal court, a ruling he says in his filing this week in Scotts Bluff County District Court that he plans to challenge in the Nebraska Supreme Court.

A post conviction remedy can mean the due process procedure of asking for reconsideration of a sentence after all other appeal procedures have been unsuccessfully exhausted. A post conviction remedy can also mean the right to an automatic direct appeal, which is a right available to any person convicted of a crime in the state of Wisconsin, and which must be filed within the specified time limits imposed by law. Lastly, it can mean the legal procedure available upon conviction or sentencing in which a defendant challenges the conviction or the sentence to the trial court. The two prior convictions were from another state. The Court of Appeals agreed with Attorney Wood that the two prior convictions should not be considered under Wisconsin law. The Court of Appeals reversed the conviction for a third offense, and her client was charged with a first offense OWI. A third drunk driving offense is a misdemeanor under Wisconsin law subject to mandatory fines and jail time. In Wisconsin, courts often sentence a convicted third offense with a greater sentence than provided by the sentencing guidelines. A first drunk driving offense is not a crime under Wisconsin law but it does carry mandatory fines. Challenging Prior Convictions Challenging prior convictions is not limited to drunk driving cases. For example, a second offense possession of controlled substance case is a felony in Wisconsin. If the prior offense was uncounseled, that conviction is subject to a collateral attack. Collateral Attacks On Prior Convictions A collateral attack of a prior conviction is not an appeal of that conviction; it is simply a mechanism for defense attorneys to use to prevent the prior conviction from enhancing the penalties the clients faces in the current case. For example, if a person is charged with fifth offense OWI a felony , and the client did not have an attorney or waived counsel in his fourth offense case, he should be sentenced as a fourth offense misdemeanor, as opposed to a fifth offense felon. The conviction for fourth offense OWI will remain on his record, but it cannot be used for sentencing purposes if it is properly challenged. Acting Quickly Can Make A Difference Direct appeals to the Wisconsin Court of Appeals are automatic as a right, which serves to eliminate a step from the appellate process: However, it does not eliminate the time restrictions, and appeals must be filed within the statutory time period [see Appeals]. Time is a critical factor in any post-conviction action, and any challenges that may be available should be made immediately. Experience An automatic right to appeal also does not eliminate the strict guidelines that must be followed by an appeal to the appellate court. Those guidelines include terminology, the paper on which the appeal is filed, and even the margins. Attorneys who file many appeals are very familiar with those guidelines and able to file the appeal quickly and correctly. Honest Opinion When your time is limited, when your options are quickly being exhausted, and when you feel as though you have no place left to run and the walls are crumbling at your feet, you do not have time for hopes and wishes seated in dreams; you need brief, professional, accurate analysis of your case. Attorney Tracey Wood will provide you with an honest straightforward analysis of your case. Those attorneys have exemplified sound strategic and intellectually creative approaches to appellate cases and won post conviction challenges that the trial attorney lost. You can also submit your case online or email the attorneys. Only an attorney can counsel you on your specific case. Even if your researching drunk driving laws or sex crime laws in Wisconsin, Lawyer Tracey Wood can assist you.

Chapter 2 : Law Firm Growth Strategy Solves 3 Key Challenges | Thomson Reuters Legal

Criminal Litigation & Legal Issues in Criminal Procedure is designed to incorporate the substantive law of criminal Post-Conviction Challenges Continued. Related.

Herring, Carson City, for appellant. We sua sponte ordered appellant to file supplemental authorities speaking to the issue of whether an order denying a post-conviction motion to withdraw a guilty plea is an appealable determination. For the reasons set forth below, we conclude that such an order is appealable, and affirm. In exchange, the state agreed to dismiss a second and more serious charge of unlawful transportation of explosives, and agreed not to seek enhanced punishment of appellant under the habitual criminal statute. Appellant filed but later withdrew a notice of appeal from the judgment of conviction. On June 8, , about four months after entry of the judgment of conviction, appellant filed a motion to withdraw his plea pursuant to NRS That statute permits a trial court to order a plea withdrawn after conviction upon a showing of "manifest injustice. He also claimed he was innocent of the bomb threat offense, and could so establish by certain "newly-discovered evidence" if his plea was withdrawn and he was permitted to proceed to trial. Hargrove argued that the allegations of his petition, and his expected testimony at an evidentiary hearing, would be sufficient to establish a "manifest injustice" and entitle him to relief under NRS We must first decide whether an order denying a post-conviction motion to withdraw a guilty plea is an appealable order. Except in certain special proceedings, appeals in criminal cases are governed by NRS The statute makes no specific provision for appeals from orders denying post-conviction motions to withdraw. In response to our order for supplemental briefing of the appealability question, appellant contends that a post-conviction order denying a motion to withdraw a guilty plea is an order "refusing a new trial" within the meaning of NRS We find this argument persuasive. Both a motion for a new trial and a motion to withdraw a guilty plea may be made after conviction. Both motions serve an identical function, since both argue that the predicate of guilt, whether it be plea or verdict, is suspect or defective and must be set aside. In both cases, denial of the motion generally results in continued incarceration under the judgment of conviction; granting the motion results in a setting aside of the predicate of guilt and generally entails further proceedings on the charges originally filed. A defendant whose guilt is predicated upon a plea may make a similar post-conviction challenge by means of a motion to withdraw, but under the literal wording of NRS The ability to appeal in these two types of cases unquestionably evidences a legislative judgment that post-conviction challenges to guilty pleas should be subject to appellate review. To further this legislative judgment, and because of the functional similarity of motions for a new trial and motions to withdraw a guilty plea, we conclude that an order denying a post-conviction motion to withdraw a plea of guilty is appealable as an order "refusing a new trial" within the meaning of NRS We now turn to the merits of this appeal. In his motion to withdraw and his supplemental points and authorities, appellant advanced numerous allegations in support of his claim that his plea should be set aside to correct a "manifest injustice. Appellant now argues that it was error to deny the motion without an evidentiary hearing, and that his motion sufficiently demonstrated a "manifest injustice. As such, to the extent that it advanced merely "naked" allegations, the motion did not entitle appellant to an evidentiary hearing. To the extent that the motion and supplemental authorities raised allegations supported by factual claims, particularly the allegation of ineffective counsel, we note that the factual claims were belied by the record, especially the transcript of the change of plea canvass. A defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record. We conclude that the district court correctly denied the motion without an evidentiary hearing. We also note that the motion to withdraw was without merit in any event. The record in this case shows a knowing and voluntary plea. United States, U. District Court, 85 Nev. The record of the plea canvass shows that appellant essentially entered a guilty plea under the concept espoused in *North Carolina v. As such, his claim of innocence is essentially academic. We have examined the remaining arguments raised in the petition and have determined that they are without merit. The district court correctly denied the motion to withdraw. NRAP 34 f 1.*

Chapter 3 : Post conviction - Wikipedia

Post Conviction Remedies & Challenges in Wisconsin Tracey Wood & Associates Wisconsin Criminal Defense Lawyers. The term "post conviction remedies" is used to describe three distinctly different due process points of time during the criminal trial, conviction, sentencing, and appeal process.

Tennessee Rules of Post-Conviction Procedure. Scope and Authority of Rules A Purpose. These rules supplement the remedies and procedures set forth in the Post-Conviction Procedure Act hereinafter the "Act" , Tenn. These rules are adopted pursuant to Tenn. A petition for post-conviction relief is an application to the court, filed by or on behalf of a person convicted of and sentenced for the commission of a criminal offense, that seeks to have the conviction or sentence set aside or an appeal granted on the ground or grounds that the conviction or the sentence or the denial of an appeal violated the state or federal constitution. A pro se petition is one filed by a petitioner without the benefit of counsel. An answer is a response filed by the state to the petition for post-conviction relief that admits or denies every claim in the petition and which raises affirmative and specific statutory defenses. C Motion to Reopen. A motion to reopen is a request filed by or on behalf of a person whose original petition for post-conviction relief has been finally ruled upon, to reopen the post-conviction proceeding to consider a new claim of constitutional error pursuant to Tenn. A rebuttable presumption of waiver arises if a ground for relief was not raised before a court of competent jurisdiction in which it could have been raised. Waiver does not occur if the claim for relief is based upon a constitutional right not recognized at the time of the prior proceeding and if either the state or federal constitution requires retroactive application of the right. A claim for relief is previously determined if a court of competent jurisdiction has ruled on the merits of the claim after a full and fair hearing at which petitioner is afforded the opportunity to call witnesses and present evidence. A post-conviction proceeding is a proceeding filed and adjudicated in accordance with these rules of post-conviction procedure. Papers required or permitted to be filed by the rules of post-conviction procedure, when filed by an attorney or a pro se petitioner who is not incarcerated, are filed when received by the clerk of court. If papers required or permitted to be filed by these rules are prepared by or on behalf of a pro se petitioner incarcerated in a correctional facility and are not received by the clerk of the court until after the time fixed for filing, filing shall be timely if the papers were delivered to the appropriate individual at the correctional facility within the time fixed for filing. This provision shall also apply to service of papers by pro se petitioners pursuant to these rules. Should timeliness of filing or service become an issue, the burden is on the pro se petitioner to establish compliance with this provision. A colorable claim is a claim, in a petition for post-conviction relief, that, if taken as true, in the light most favorable to petitioner, would entitle petitioner to relief under the Post-Conviction Procedure Act. The Tennessee Rules of Evidence apply in post-conviction proceedings except as otherwise provided by these rules. B Rules Not Applicable. Neither the Tennessee Rules of Civil Procedure nor the Tennessee Rules of Criminal Procedure apply to post-conviction proceedings except as specifically provided by these rules. A post-conviction proceeding is commenced by filing a petition as defined in Section 2 in the court in which petitioner was convicted or sentenced, if the court was a court of record, or, if the conviction or sentence was not in a court of record, by filing a petition as defined in Section 2 in the court of record having criminal jurisdiction in which the conviction occurred or the sentence was imposed. B Time for Commencing. A petition for post-conviction relief must be filed within the statute of limitations set forth in Tenn. C Filing the Petition. A petition shall be filed in accordance with Section 2 G of these rules. No filing fee shall be a prerequisite for the filing of a petition for post-conviction relief. E Place of Filing. A petition shall be filed in the court in which the conviction was obtained or in which the sentence was imposed. If the conviction was not obtained in a court of record, the petition shall be filed in a court of record having criminal jurisdiction in the county in which the conviction occurred or the sentence was imposed. Nature of Pleadings A Nature of Pleadings. The pleading in a post-conviction case shall consist of a petition or a motion to reopen and a responsive motion or answer. B Number of Petitions. Each petitioner shall be entitled to file only one petition for each conviction or sentence incurred. C Limitation of Petitions. Each petition shall be limited to claims

arising from the judgment or judgments entered in a single trial or proceeding. A petitioner who desires to obtain relief from judgments entered in more than one trial or proceeding must file separate petitions for each trial or proceeding. D Form of Petition or Motion to Reopen. The petition for post-conviction relief shall be substantially in the form set forth in the appendix. Likewise, a motion to reopen a post-conviction proceeding shall be substantially in the form set forth in the appendix. E Contents of Petition. The petition shall contain: F Effect of Failure to Comply with Rule. A petition may be dismissed without a hearing if it: The answer shall admit or deny each and every allegation set forth in the petition. The state shall file a motion to dismiss which includes the facts relied upon to support the motion to raise as a defense that: H Time for Filing Answer or Motion. The answer or motion to dismiss shall be filed no more than thirty 30 days after the filing of the amended petition or written notice that no amendment will be filed as required by Tenn. I Effect of Failure to Comply with Rule. Upon receiving a petition for post-conviction relief, the clerk shall file the original document and process it pursuant to Tenn. Should the presiding judge fail to assign a judge, and no judge is designated by the Chief Justice, the judge who presided at the original trial shall hear the petition. The order shall state specifically the facts which support dismissal including whether the petition is barred by the statute of limitation, was filed in a court without jurisdiction, or whether the petition fails to specify the grounds for relief, the facts supporting those grounds, or fails to establish that the claim s have not been waived or previously determined. The order shall comply with the requirements of sections 6 B 2 and 3 above. If a colorable claim has not been stated, the court shall dismiss the petition by order setting forth the findings of fact and conclusions of law. If a colorable claim is stated, the court shall enter an order requiring the state to answer the allegations, if it has not done so, and setting an evidentiary hearing. Orders of dismissal and all final orders shall be served upon counsel for petitioner, the district attorney general, the Attorney General and Reporter in Nashville, and any authority imposing restraint on petitioner. The clerk shall certify on each order the date of entry and the date and manner of service. In the event the court requires petitioner or the state to take other steps to prepare the case for trial, petitioner and the state shall comply. The answer or motion to dismiss shall comply with the statute and with the requirements of Section 5 G. The state shall provide discovery in accordance with Section 6 C 7. B Production of Documents. Evidentiary Hearing A Timing. The evidentiary hearing shall be conducted within four 4 months of the order scheduling the hearing. The hearing shall not be continued except by order of the court finding that unforeseeable circumstances render a continuance a manifest necessity. No continuance shall extend the hearing more than sixty 60 days beyond the original hearing date. C Witnesses 1 Petitioner. If the judge allows affidavit or deposition testimony under the provisions of Tenn. If the state is allowed to file deposition testimony, the state shall provide to counsel for indigent petitioners or indigent petitioners if pro se a copy of the deposition at state expense. Each party shall have the right to subpoena witnesses for appearance at the evidentiary hearing. Those claims shall be considered after the outcome of the delayed appeal if allowed, or after the appeal of the claim, if denied. The court shall liberally allow a continuance in the event an amendment is allowed to enable the objecting party to meet the evidence. Amended November 28, , January 22, The court shall enter an order granting or denying the petition within sixty 60 days of the conclusion of the proof. The order shall contain specific findings of fact and conclusions of law relating to each issue presented. The deadline for entry of the order shall not be extended unless the court finds that unforeseeable circumstances make an extension a manifest necessity. In such circumstances, the order shall not be delayed more than thirty 30 days beyond the original deadline. B Availability of Relief. C Orders Granting Relief. If the court finds that petitioner is entitled to relief, the court shall enter an order vacating and setting aside the judgment of conviction or sentence or an order granting a delayed appeal. The court shall also enter any other appropriate supplementary orders that may be necessary and proper. D Grant of a Delayed Appeal. Upon determination by the trial court that the petitioner was deprived of the right to file an appeal pursuant to Rule 3, Tennessee Rules of Appellate Procedure, the trial court shall apply the procedures set out in Tennessee Code Annotated section The appeal shall then proceed in accordance with the Tennessee Rules of Appellate Procedure as in any appeal as of right. If the State does not file a Rule 11 application, the petitioner has sixty 60 days from the issuance of the mandate of the Court of Criminal Appeals to file the delayed Rule 11 application with the Supreme Court. The petitioner has sixty 60

days from the date of filing of this notice to file the delayed Rule 11 application. The Court of Criminal Appeals shall consider and resolve this issue along with any other issues raised in the post-conviction appeal. Should the Court of Criminal Appeals grant a delayed appeal, the post-conviction appeal shall not be stayed; instead, any party may challenge the decision of the Court of Criminal Appeals, or any portion thereof, by filing an application for permission to appeal pursuant to Rule 11, Tennessee Rules of Appellate Procedure. If the Court of Criminal Appeals determines that the trial court properly denied the request, the Court of Criminal Appeals shall dispose of the remaining issues in the post-conviction appeal. If, however, the Court of Criminal Appeals determines that the trial court erred in denying the delayed appeal, the Court of Criminal Appeals shall enter an order granting the petitioner a delayed appeal and staying the post-conviction proceedings pending the final disposition of the delayed appeal. The case shall then proceed in accordance with Rule Appeals A Dismissals or Denials of Petition. An appeal from the dismissal or denial of a post-conviction petition shall be in accordance with the Tennessee Rules of Appellate Procedure. B Denials of Motions to Reopen. A petitioner whose motion to reopen is denied shall have thirty 30 days to seek permission to appeal by filing an application, accompanied by the order denying the motion, in the Court of Criminal Appeals. The state shall have thirty 30 days to respond. The Court of Criminal Appeals may allow the parties to file additional briefs, argue the case, or both. In the event the Court of Criminal Appeals finds that the trial court abused its discretion by denying the motion to reopen, the court shall, by order, remand the case to the trial court for further proceedings. The application shall be accompanied by copies of all documents filed by both parties in the trial court and the orders denying the motion in the trial court and the Court of Criminal Appeals. The State shall have fifteen 15 days to file a response.

Chapter 4 : Post-Conviction Supervision - Judicial Business | United States Courts

DM# v7, Rev. 10/14/ What is Post-Conviction Relief? Once the appellant completes the entire direct appeal process there is yet another way for the appellant to challenge.

September 29, Extent: Janet Paulk Date of Interview: November 3, Extent: Linda Bryant talks about opening Charis bookstore. Linda Bryant was born in Paducah, Kentucky. Growing up as an "Army brat," Bryant moved around a lot during her childhood. While she was working as an English teacher at Walker High School, Bryant dreamed of owning a bookstore, and with the help of a few friends this became a reality. She teamed up with Barbara Borgman, and in they found a location in Little Five Points for their store, Charis Books and More - one for the first feminist bookstores in the country. She also adopted and raised a baby boy. Bryant served on the board for the Gay and Lesbian Youth Funding Initiative for the Community Foundation of Greater Atlanta, and this influenced her to start Charis Circle, a non-profit organization committed to maintaining social justice. Bryant still works closely with both Charis Books and More and Charis Circle, and continues her work in social justice philanthropy. Abstract, September 29, Linda Bryant begins her interview by discussing her childhood. She was born in Paducah, Kentucky, but her father was in the Army, and as a result, they moved around a lot. She had a religious upbringing, and eventually attended Oklahoma Baptist College. She later transferred to the University of Florida, in part, to become involved with the Christian youth group, Young Life. She speaks about the influence that Young Life had upon her, and the many important friendships that she developed in that organization. She moved to Atlanta, Georgia to continue working with Young Life, and she talks about the work she did with students. She enrolled in graduate programs at both Emory and Georgia State Universities, and she discusses her reasons for doing so. At the same time, she and two other women opened a non-profit bookstore called Charis Books in the Little Five Points neighborhood. She speaks about their non-profit status, which was supported by an education reform group called Exodus Incorporated. Not long after starting Charis, Bryant was asked to take in a three month old baby. Despite being single, in graduate school, and running a bookstore, Bryant accepted the baby, and she talks about some of the challenges she faced as an adoptive mother. Bryant discusses how falling in love with a woman caused a tension with her fellow church members and some of her Christian friends. Abstract, November 3, Linda Bryant begins the second interview by talking about programming and political activism that came out of Charis Books. She mentions anti-nuclear protests at the Savannah River Plant as being any early catalyst for activism. Charis became a meeting place for many groups, and in turn, those group members were often valuable resources for fundraising and support for the store. Bryant talks about the many financial challenges the store has faced over the years, and the various strategies that were implemented to survive when so many other independent bookstores have closed. She discusses changes in the Little Five Points neighborhood, and a move into a new space, as well as a planned move to Decatur, Georgia that did not happen. She talks about the bookselling and publishing businesses, particularly as they pertain to feminism. She continues to discuss organizations that Charis was involved with and events at which they sold books; WAND in particular.

Chapter 5 : Actual innocence - Wikipedia

Post-Conviction Challenges to the Death Penalty: Mental Health Records and the Fifth Amendment Honorable Barbara Gilleran-Johnson & Gloria A. Kristopek**.*

Criminal Appeals[edit] The appeals process is the request for a formal change of a decision made by a court of law. The litigant who files the appeal is known as the "appellant. The appellate procedure in the United States takes place in appellate court , and that court normally makes its judgment based only on the record of the original case. The appellant generally submits a document of legal arguments called a "brief," a written attempt to persuade the judges of appellate court that the decision of the trial court should be reversed. If selected for an "oral argument," appellants may present a short spoken argument to the court. No additional pieces of evidence or witnesses are considered. **Writs**[edit] Writs are directives from a higher court to a lower court or government official, and are only issued when the one seeking the writ the moving party has no other options. These writs require that the detainee be considered by a judge or court, and are in place to prevent unconstitutional imprisonment. Typically, an inmate will argue that his imprisonment is unconstitutional. While habeas corpus can be filed in state or federal court, all state avenues must be exhausted first. In the United States federal court system the writ of habeas corpus is used most frequently to review state court convictions. Federal statutes 28 U. Error coram nobis is another writ issued only rarely at the federal level in cases of federal criminal convictions when "no other remedy is available. This is an important part of the legal strategy, especially for those inmates who have legitimate claims. **Capital Cases**[edit] Cases that involve the death penalty are especially significant in the post conviction stage. These inmates will often file numerous appeals to courts at every level. In these unique cases, inmates can file an appeal which could potentially be reviewed by the United States Supreme Court. The court has the ability to stay the execution if some legal flaw in the original trial comes to light. The Court does not often exercise this power, though several individuals from around the world sentenced with capital punishment have been exonerated in the past thirty years. Inmates in this position can also file for clemency or pardon. Practices vary from state to state, but the clemency process usually requires the governor or board of advisors or both. Since death row inmates have been granted clemency for humanitarian reasons. They can still attain freedom if legitimate innocence can be proven. The most common method is by using DNA evidence to disprove a crime that happened before DNA testing was a viable option. Other common innocence efforts center on victim recantations if applicable.

Chapter 6 : Post Conviction Remedies & Challenges in Wisconsin

Indiana Post-Conviction Rule 1(10)(b) allows a trial court to impose a new sentence which is more severe than that originally imposed when a sentence has been set aside pursuant to a post-conviction challenge if the court's reasons for selecting the sentence include a reliance upon identifiable conduct on the part of the petitioner that.

Arguably, even affirmative defenses such as "self-defense", insanity, or "mistake of fact" qualify as "actual innocence" claims because while in those cases the accused admits to both his or her identity as the actor and to the existence of the act " actus reus " , he or she is claiming that the State cannot prove that he or she had the requisite mental state " mens rea " to constitute a crime. However, the specific term "actual innocence" is most often used in the context of someone convicted for a crime he or she did not commit. Claims of "actual innocence" are, in that sense, usually raised in post-conviction challenges to a conviction. The Tarlton Law Library at the University of Texas at Austin maintains an "Actual Innocence awareness database" containing "resources pertaining to wrongful convictions, selected from the popular media such as newspaper articles and segments which aired on television news magazines , journal articles, books, reports, legislation and websites". In the United States, establishing "actual innocence" after a conviction may be considerably more difficult than winning an acquittal at trial, however. At trial, the defendant enjoys a due process right to the presumption of innocence, and the State is obligated to prove the guilt of the accused beyond a reasonable doubt. United States, U. However, "innocence" is a factual question, and once a fact-finderâ€”judge or juryâ€”makes a factual determination, appellate and post-conviction courts generally are bound by those factual determinations. Appeals and post-conviction cases, by their very nature, focus on legal errors, not factual disputes. Indeed, it is unclear whether proof of actual innocence is, in and of itself, grounds for appellate reversal. Collins , U. The first is direct appeal. Direct appeals are limited in number and scope, and address only those issues raised in the lower court. The second method of attacking the validity of a conviction is known as "collateral" review, and can take many forms, including state and federal petitions for writs of habeas corpus , petitions for writs of error coram nobis , andâ€”increasinglyâ€”a newly developed form of collateral relief which allows petitioners to raise claims of actual innocence, whether through DNA testing or through some other method. Thus, it is in collateral, post-conviction filings that claims of actual innocence are most likely to be considered. The typical innocence defense[edit] Because the prosecution must prove guilt beyond a reasonable doubt , a defendant asserting actual innocence need only raise a reasonable doubt as to whether they were the person who committed a particular crime, or whether the acts that they committed amount to the commission of a crime. In point of fact, the defendant is not obliged to present a defense at all. Examples of an actual innocence defense include: Alibi â€” the defendant will present evidence of having been in a different location at the time the act occurred, thereby making it impossible for the defendant to have committed the crime. Many celebrated criminal cases have rested solely on the defense that the defendant did not commit the crimeâ€”for example, O. Simpson , Robert Blake , and Michael Jackson all claimed that they simply had not committed the acts charged. By contrast, defendants such as Jeffrey Dahmer , Susan Smith , and Lorena Bobbitt conceded that they committed the criminal act, but raised defenses such as insanity or diminished capacity. Other defendants, such as George Zimmerman , conceded that the act was committed, but asserted that it was justified, and therefore not a crime. Otherwise, in order to obtain post-conviction collateral relief, a defendant must often plead a specific statutory grounds for relief, i. The jurisdictional bar is often rationalized by citing the requirement of finality of the judicial process in order to maintain the integrity of the system. While some argue that this is unjust for the convicted, it is rationalized that continued specter of "actual innocence" after the conclusion of a trial would make the adjudication process moot, which may lead to rule of law problems. In the United States, this tradition has been heavily revised. As DNA testing grew more sophisticated, every state adopted statutes or rules allowing newly discovered DNA results to form the basis of a challenge to a conviction on grounds of "actual innocence". The Supreme Court has ruled that convicted persons do not have a constitutional due process right to bring DNA-based post-conviction "actual innocence" claims. Osborne , U. Thus, the way such claims are handled may vary greatly from one jurisdiction

to the next. Following reports of a sizable number of DNA-based exonerations, some states also have adopted broader "actual innocence" statutes allowing post-conviction challenges on the basis of newly discovered evidence in general. The Commonwealth of Virginia adopted such a law in 2001, subjecting petitioners to a very high standard of proof to overturn a conviction: Upon the presentation of such evidence, the Virginia Court of Appeals its intermediate appellate court may reverse the conviction. In the State of Maryland adopted a law with a significantly lower standard: However, the Maryland law allows for a retrial rather than a summary reversal. The State of Utah has adopted an actual innocence statute. The legislatures of Wyoming and Missouri were considering similar laws in 2001. Even in those jurisdictions without formal "actual innocence" provisions in their post-conviction statutes, actual innocence can have a procedural effect, in that it will excuse procedural default and permit the filing of a successor collateral relief petition. This is based on the U. Delo , U. Schlup also argued that he was actually innocentâ€”not because that was a substantive ground for relief, but because his actual innocence excused his failure to raise his ineffective-counsel and prosecutorial-nondisclosure claims in his state court pleadings and in his first federal habeas petition. Whether or not relief was to be granted, the Schlup Court held, depended on the merits of his ineffective counsel and prosecutorial nondisclosure claims. Pleading in the alternative[edit] Because pleading in the alternative is generally permitted in criminal cases, a defendant may claim to have not committed the crime itself, but at the same time may claim that if the defendant had committed the crime, the act was excused for a reason such as insanity or intoxication, or was justified due to provocation or self-defense. Such claims are, for obvious reasons, difficult to present to juries, because they entail arguing both that the defendant did and did not commit the crime alleged. An English perspective[edit] Much of U. A court examines the issues in sequence since there is little point in establishing intent if the accused did not commit the act. The court will convict only if the actus and the mens are shown beyond reasonable doubt. If convicted, the accused may contest either or both of the findings of actus or mens. England does not have the specific concept of "actual innocence" but the courts are concerned to ensure that an innocent person is not subject to a criminal penalty. The appeal process will not impose an onus of proof of "beyond reasonable doubt" to show innocence, but even if the process takes years a court will allow new evidence to be adduced if it tends to show that the accused did not or could not commit the crime. The United Kingdom , like all 47 Member States of the Council of Europe , is a signatory to the European Convention of Human Rights , [6] and is prohibited by Article 3 from using the death penalty so there is no longer the fear that an innocent man may be executed. The case of prisoner Troy Davis , executed 21 September , illustrates the difficulties that a person has, once convicted, to prove his "actual innocence" in the U. Olano , U. The court of appeals should no doubt correct a plain forfeited error that causes the conviction or sentencing of an actually innocent defendant United States , U. United States, F. Rodriguez , U. Burwell , S. Rodrigues , U. Malesko , U. Know Your Rights, Survive the System , p. Gardner, Victor Manian, Criminal Law: Principles, Cases, and Readings , p.