

CHAPTER 590

POSTCONVICTION REMEDY

590.01 Availability, conditions.
 590.02 Petition; filing; service; costs.
 590.03 Pleadings and practice after filing a
 postconviction petition.

590.04 Hearings on petition; evidence; order.
 590.05 Indigent petitioners.
 590.06 Appeals.

590.01 AVAILABILITY, CONDITIONS.

Subdivision 1. **Petition.** Except at a time when direct appellate relief is available, a person convicted of a crime, who claims that the conviction obtained or the sentence or other disposition made violated the person's rights under the Constitution or laws of the United States or of the state, may commence a proceeding to secure relief by filing a petition in the district court in the county in which the conviction was had to vacate and set aside the judgment and to discharge the petitioner or to resentence the petitioner or grant a new trial or correct the sentence or make other disposition as may be appropriate. Nothing contained herein shall prevent the supreme court or the court of appeals, upon application by a party, from granting a stay of a case on appeal for the purpose of allowing an appellant to apply to the district court for an evidentiary hearing under the provisions of this chapter. The proceeding shall conform with sections 590.01 to 590.06.

Subd. 2. This remedy takes the place of any other common law, statutory or other remedies which may have been available for challenging the validity of a conviction, sentence, or other disposition and must be used exclusively in place of them unless it is inadequate or ineffective to test the legality of the conviction, sentence or other disposition.

Subd. 3. A person who has been convicted and sentenced for a crime committed before May 1, 1980 may institute a proceeding applying for relief under this chapter upon the ground that a significant change in substantive or procedural law has occurred which, in the interest of justice, should be applied retrospectively, including resentencing under subsequently enacted law.

No petition seeking resentencing shall be granted unless the court makes specific findings of fact that release of the petitioner prior to the time the petitioner would be released under the sentence currently being served does not present a danger to the public and is not incompatible with the welfare of society.

History: 1967 c 336 s 1; 1969 c 491 s 1; 1981 c 366 s 1; 1983 c 247 s 201; 1986 c 444; 1Sp1986 c 3 art 1 s 65

590.02 PETITION; FILING; SERVICE; COSTS.

Subdivision 1. The petition filed in the district court pursuant to section 590.01 shall be entitled in the name of the petitioner versus the state of Minnesota and shall contain:

(1) A statement of the facts and the grounds upon which the petition is based and the relief desired. All grounds for relief must be stated in the petition or any amendment thereof unless they could not reasonably have been set forth therein. It shall not contain argument or citation of authorities;

(2) An identification of the proceedings in which the petitioner was convicted including the date of the entry of judgment and sentence or other disposition complained of;

(3) An identification of any previous proceeding, together with the grounds therein asserted taken on behalf of the petitioner to secure relief from the conviction and sentence or other disposition;

(4) The name and address of any attorney representing the petitioner. In the event

the petitioner is without counsel, the court administrator shall forthwith transmit a copy of the petition to the state public defender and shall advise the petitioner of such referral.

Subd. 2. The filing of the petition and any document subsequent thereto and all proceedings thereon shall be without costs or any fees charged to the petitioner.

Subd. 3. When a petition is filed pursuant to section 590.01 it shall be filed with an original and three copies, each verified by the petitioner or signed by the petitioner's attorney. It shall be addressed to the district court of the judicial district in the county where the conviction took place.

In those cases in which the petitioner is represented by counsel or in which the petitioner has filed a written waiver of right to counsel, the court administrator of the district court shall deliver a copy of the petition to the county attorney and to the attorney general and shall immediately direct attention of the filing thereof to the chief judge or judge acting in the chief judge's behalf who shall promptly assign the matter to a judge in said district.

History: 1967 c 336 s 2; 1986 c 444; 1Sp1986 c 3 art 1 s 82

590.03 PLEADINGS AND PRACTICE AFTER FILING A POSTCONVICTION PETITION.

Within 20 days after the filing of the petition pursuant to section 590.01 or within such time as the judge to whom the matter has been assigned may fix, the county attorney, or the attorney general, on behalf of the state, shall respond to the petition by answer or motion which shall be filed with the court administrator of district court and served on the petitioner if unrepresented or on the petitioner's attorney. No further pleadings are necessary except as the court may order. The court may at any time prior to its decision on the merits permit a withdrawal of the petition, may permit amendments thereto, and to the answer. The court shall liberally construe the petition and any amendments thereto and shall look to the substance thereof and waive any irregularities or defects in form.

History: 1967 c 336 s 3; 1Sp1986 c 3 art 1 s 82

590.04 HEARINGS ON PETITION; EVIDENCE; ORDER.

Subdivision 1. Unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief, the court shall promptly set an early hearing on the petition and response thereto, and promptly determine the issues, make findings of fact and conclusions of law with respect thereto, and either deny the petition or enter an order granting appropriate relief.

Subd. 2. Hearings on a petition filed pursuant to section 590.01 shall be in open court in the judicial district in which the conviction took place or in the second, fourth, seventh, or tenth judicial districts in the discretion of the judge to whom the proceeding has been assigned.

Subd. 3. **Hearing.** The court may order the petitioner to be present at the hearing. If the petitioner is represented by an attorney, the attorney shall be present at any hearing.

A verbatim record of any hearing shall be made and kept.

Unless otherwise ordered by the court, the burden of proof of the facts alleged in the petition shall be upon the petitioner to establish the facts by a fair preponderance of the evidence.

In the discretion of the court, it may receive evidence in the form of affidavit, deposition, or oral testimony. The court may inquire into and decide any grounds for relief, even though not raised by the petitioner.

The court may summarily deny a second or successive petition for similar relief on behalf of the same petitioner and may summarily deny a petition when the issues raised in it have previously been decided by the court of appeals or the supreme court in the same case.

History: 1967 c 336 s 4; 1969 c 491 s 2; 1977 c 190 s 1; 1983 c 247 s 202

MINNESOTA STATUTES 1988

10103

POSTCONVICTION REMEDY 590.06

590.05 INDIGENT PETITIONERS.

A person financially unable to obtain counsel who desires to pursue the remedy provided in section 590.01 is entitled to be represented by the state public defender. The state public defender shall be appointed to represent such person pursuant to the applicable provisions of Minnesota Statutes 1965, sections 611.14 to 611.29.

History: 1967 c 336 s 5

590.06 APPEALS.

An appeal may be taken to the court of appeals or, in a case involving a conviction for first degree murder, to the supreme court from the order granting relief or denying the petition within 60 days after the entry of the order.

The appealing party shall, within the 60 days, serve a notice of appeal from the final order upon the court administrator of district court and the opposing party. If the appeal is by the petitioner, the service shall be on the county attorney and the attorney general. If the appeal is by the state, the service shall be on the petitioner or the petitioner's attorney. No fees or bond for costs shall be required for the appeal.

History: 1967 c 336 s 6; 1983 c 247 s 203; 1986 c 444; 1Sp1986 c 3 art 1 s 82