

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXASIN THE MATTER OF STATE PRISONERS §
FILING PETITIONS FOR WRITS OF §
HABEAS CORPUS UNDER 28 U.S.C. §
2254

APR 01 1988

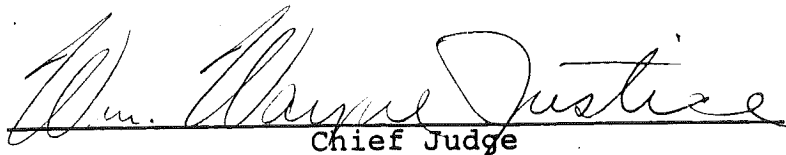
MURRAY L. HARRIS, CLERK
ByDeputy *Rita Robbins*GENERAL ORDER

Acting by consent of the judges of this court, it is ORDERED, effective immediately, that this court adopt a prescribed form for state prisoners filing petitions for writs of habeas corpus under 28 U.S.C. §2254. To facilitate this, the following rules are also adopted:

1. The prescribed form for a Petition for Writ of Habeas Corpus for State Prisoners filing under 28 U.S.C. §2254 is attached hereto as Exhibit A. Complaints may be accepted and filed on other forms at the discretion of the court; however, completion of the prescribed form may be required as a pleading auxiliary, either before or after filing.
2. The court also adopts, as a mandatory form, the Application to Proceed in Forma Pauperis (AO-240) which is attached hereto as Exhibit B. No complaint will be accepted for filing in forma pauperis, except at the discretion of the court, until the application on the prescribed form is received. All such applications, to be valid, must be certified by an authorized official of the institution wherein the petitioner is detained and must contain a statement of either the petitioner's average prisoner account balance over the preceding six-month period or the petitioner's total income received over the preceding six-month period.

3. Verification of the petition and the application to proceed in forma pauperis is required before the pleading will be accepted. Pleadings may be verified, pursuant to 28 U.S.C. §1746, by signature under penalty of perjury or under oath before a notary public or other person authorized by law to administer an oath.
4. In the event that a petition for writ of habeas corpus under 28 U.S.C. §2254 is received but is determined by the Clerk to be technically deficient so as to fail to meet the requirements for filing in this court, the Clerk is hereby authorized to return the original and all copies received of said petition to the petitioner for correction of all such technical deficiencies without obligation on the part of the Clerk to retain a copy of said petition pending its return.

SIGNED this 1st day of April, 1988, on behalf of the court.


Chief Judge

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK
EASTERN DISTRICT OF TEXAS

MURRAY L. HARRIS
CLERK

211 W. FERGUSON
TYLER, TEXAS 75702

Re: Your Request for Forms for Filing a Petition for Writ of Habeas Corpus

In response to your inquiry, the forms you have requested for prisoners in filing a petition for writ of habeas corpus are enclosed.

Please read the forms and follow the instructions **VERY** carefully. Make certain that you have answered **ALL** the questions and that you have signed in all the required places.

The filing fee for this type of civil action is \$5.00. At the time you submit the petition, you may submit your check or money order made payable to:

Clerk, U.S. District Court.

In addition, certain petitions are served to the respondents by the United States Marshal with a usual charge of \$3.00 for each person served. **DO NOT** submit payment for the service at this time. After the case is filed and a judicial order is entered for service to the respondent, the U. S. Marshal Service will notify you by letter how you may prepay the fee for this service if such is required.

If you are unable to pay the filing fee and service costs for this petition, you may ask the Court to allow you to proceed in forma pauperis. An application for this purpose is included with your forms. If you use this form, make certain that **each and every** question is properly answered, that you sign the form, and that the certificate portion is completed and signed by an authorized official of your institution. If you are an inmate of the Texas Department of Corrections, it is our understanding that the type of information required in the certificate is only available in Huntsville. The form must be submitted with a properly notarized release form through appropriate channels to E&R Accounting in Huntsville so that the certificate may be certified by an authorized person.

Submit only the **original** petition to this court. If we need copies, we will make them. The papers you submit need to be reproducible. If possible use typewriter or black ink. If this is not available, submit only originals which are clearly legible.

The use of legal-size paper has been eliminated. Standard size is now 8- $\frac{1}{2}$ x 11 inches. If you must submit additional pages, use only this size. **DO NOT** write on the reverse side of any pages.

Petitions which do not conform to these instructions will be returned with a notation as to the deficiency. You should hear about acceptance of your case in about six weeks. Please wait that long before inquiring. Be assured that we make every effort to handle each case in the order in which it is received.

Any forms returned should be sent to: Clerk, U. S. District Court
211 West Ferguson Street, Room 309
Tyler, TX 75702

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Instructions—Read Carefully

- (1) This petition must be legibly handwritten 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. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must 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 account in the institution. If your personal account exceeds \$ _____, you must pay the filing fee as required by the rules of the district court.
- (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and at least two copies must be mailed to the Clerk of the United States District Court whose address is _____.
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District _____
Name _____	Prisoner No. _____	Case No. _____
Place of Confinement _____		
Name of Petitioner (include name under which convicted) _____		Name of Respondent (authorized person having custody of petitioner) _____
V.		
The Attorney General of the State of: _____		

PETITION

1. Name and location of court which entered the judgment of conviction under attack _____

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

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (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) Name of court _____

(b) Result _____

(c) Date of result and citation, if known _____

(d) Grounds raised _____

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

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, state or federal?

Yes No

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

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result _____

(6) Date of result _____

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

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result _____

(6) Date of result _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No

(2) Second petition, etc. Yes No

(d) 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* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred 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 habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

B. Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

D. Ground four _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(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 an indictment, or on more than one indictment, in the same court and at 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?
Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

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

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(date)

Signature of Petitioner

United States District Court

DISTRICT OF _____

APPLICATION TO PROCEED IN FORMA PAUPERIS, SUPPORTING DOCUMENTATION AND ORDER

v.

CASE NUMBER: _____

I, _____, declare that I am the (check appropriate box)

petitioner/plaintiff

movant (filing 28 U.S.C. 2255 motion)

respondent/defendant

other

in the above-entitled proceeding; that, in support of my request to proceed without being required to prepay fees, cost or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief. The nature of my action, defense, or other proceeding or the issues I intend to present on appeal are briefly stated as follows:

In further support of this application, I answer the following questions.

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. (list both gross and net salary)

 - b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?
 - a. Business, profession or other form of self-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