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CHAPTER 27.

 UNIFORM POST‑CONVICTION PROCEDURE ACT

**SECTION 17‑27‑10.** Short title.

 This chapter may be cited as the Uniform Post‑Conviction Procedure Act.

HISTORY: 1962 Code Section 17‑612; 1969 (56) 158.

**SECTION 17‑27‑20.** Persons who may institute proceeding; exclusiveness of remedy.

 (a) Any person who has been convicted of, or sentenced for, a crime and who claims:

 (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

 (2) That the court was without jurisdiction to impose sentence;

 (3) That the sentence exceeds the maximum authorized by law;

 (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

 (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

 (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

 (b) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

HISTORY: 1962 Code Section 17‑601; 1969 (56) 158.

**SECTION 17‑27‑30.** Jurisdiction of court.

 The court in which, by the Constitution and statutes of this State, original jurisdiction in habeas corpus is vested, may entertain in accordance with its rules a proceeding under this chapter in the exercise of its original jurisdiction and in that event this chapter, to the extent applicable, governs the proceeding.

HISTORY: 1962 Code Section 17‑602; 1969 (56) 158.

**SECTION 17‑27‑40.** Commencement of proceedings by filing of application.

 A proceeding is commenced by filing an application verified by the applicant with the clerk of the court in which the conviction took place. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the solicitor of the circuit in which the applicant was convicted and a copy to the Attorney General.

HISTORY: 1962 Code Section 17‑603; 1969 (56) 158.

**SECTION 17‑27‑45.** Filing procedures for post conviction relief applications.

 (A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

 (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

 (C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

HISTORY: 1995 Act No. 7, Part II, Section 40.

**SECTION 17‑27‑50.** Form and contents of application.

 The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment and sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be verified as provided in Section 17‑27‑40. Affidavits, records or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or sentence. Argument, citations and discussion of authorities are unnecessary. The application shall be made on such form as prescribed by the Supreme Court.

HISTORY: 1962 Code Section 17‑604; 1969 (56) 158.

**SECTION 17‑27‑60.** Court costs and expenses for indigents.

 If the applicant is unable to pay court costs and expenses of representation, including stenographic, printing and legal services, these costs and expenses shall be made available to the applicant in the trial court, and on review, in amounts and to the extent funds are made available to indigent defendants by the General Assembly.

HISTORY: 1962 Code Section 17‑605; 1969 (56) 158.

**SECTION 17‑27‑70.** Court procedure on receipt of application.

 (a) Within thirty days after the docketing of the application, or within any further time the court may fix, the State shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may, when appropriate, issue orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application, the court shall take account of substance, regardless of defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.

 (b) When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post‑conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a material issue of fact.

 (c) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

HISTORY: 1962 Code Section 17‑606; 1969 (56) 158.

**SECTION 17‑27‑80.** Hearing on application; final judgment.

 The application shall be heard in, and before any judge of, a court of competent jurisdiction in the county in which the conviction took place. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings are available to the parties. The court may receive proof by affidavits, depositions, oral testimony or other evidence and may order the applicant brought before it for hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

HISTORY: 1962 Code Section 17‑607; 1969 (56) 158.

**SECTION 17‑27‑90.** Grounds for relief.

 All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

HISTORY: 1962 Code Section 17‑608; 1969 (56) 158.

**SECTION 17‑27‑100.** Appeals.

 A final judgment entered under this chapter may be reviewed by a writ of certiorari as provided by the South Carolina Appellate Court Rules.

HISTORY: 1962 Code Section 17‑609; 1969 (56) 158; 1999 Act No. 55, Section 24.

**SECTION 17‑27‑110.** Rules.

 The Supreme Court may adopt such rules as it shall deem necessary to effectuate the purposes of this chapter.

HISTORY: 1962 Code Section 17‑611; 1969 (56) 158.

**SECTION 17‑27‑120.** Construction.

 This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

HISTORY: 1962 Code Section 17‑610; 1969 (56) 158.

**SECTION 17‑27‑130.** Waiver of attorney‑client privilege by allegation of ineffective prior counsel; access to files.

 Where a defendant alleges ineffective assistance of prior trial counsel or appellate counsel as a ground for post‑conviction relief or collateral relief under any procedure, the applicant shall be deemed to have waived the attorney‑client privilege with respect to both oral and written communications between counsel and the defendant, and between retained or appointed experts and the defendant, to the extent necessary for prior counsel to respond to the allegation. This waiver of the attorney‑client privilege shall be deemed automatic upon the filing of the allegation alleging ineffective assistance of prior counsel and the court need not enter an order waiving the privilege. Thereafter, counsel alleged to have been ineffective is free to discuss and disclose any aspect of the representation with representatives of the State for purposes of defending against the allegations of ineffectiveness, to the extent necessary for prior counsel to respond to the allegation.

 In the case of a defendant who has been convicted of a capital offense and sentenced to death, the defendant's prior trial counsel or appellate counsel shall make available to the capital defendant's collateral counsel the complete files of the defendant's trial or appellate counsel. The capital defendant's collateral counsel may inspect and photocopy the files, but the defendant's prior trial or appellate counsel shall maintain custody of their respective files, except as to the material which is admitted into evidence in any trial proceeding.

HISTORY: 1996 Act No. 448, Section 4.

**SECTION 17‑27‑150.** Discovery in post‑conviction relief proceeding.

 (A) A party in a noncapital post‑conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for the effective utilization of discovery procedures, counsel may be appointed by the judge for an applicant who qualifies for appointment pursuant to Section 17‑27‑60 or similar applicable provisions of law.

 (B) A party in a capital post‑conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure.

HISTORY: 1996 Act No. 448, Section 5.

**SECTION 17‑27‑160.** Capital case post‑conviction relief procedures.

 (A) If a defendant has been sentenced to death in South Carolina, he must file his application for post‑conviction relief in the county in which he was indicted for the crime resulting in the sentence of death. Upon receipt of the application for post‑conviction relief, the clerk of court shall forward the application to the judge who has been assigned to hear the post‑conviction relief application. This judge shall maintain control over the expedited consideration of the application pursuant to this section. The judge assigned as the post‑conviction relief judge must not be the original sentencing judge. A copy of the application shall be immediately provided to the solicitor of the circuit in which the applicant was convicted and a copy provided to the Attorney General. The filing of the application does not automatically stay any sentence of death.

 (B) Upon receipt of the application for post‑conviction relief, the counsel for the respondent shall file a return within thirty days after receipt of the application.

 If the applicant is indigent and desires representation by counsel, two counsel shall be immediately appointed to represent the petitioner in this action. At least one of the attorneys appointed to represent the applicant must have previously represented a death‑sentenced inmate in state or federal post‑conviction relief proceedings or (1) must meet the minimum qualifications set forth in Section 16‑3‑26(B) and Section 16‑3‑26(F) and (2) have successfully completed, within the previous two years, not less than twelve hours of South Carolina Bar approved continuing legal education or professional training primarily involving advocacy in the field of capital appellate and/or post‑conviction defense. The Supreme Court may promulgate additional standards for qualifications of counsel in capital post‑conviction proceedings. The court may not appoint an attorney as counsel under this section if the attorney represented the applicant at trial or in a direct appeal unless the applicant and the attorney request appointment on the record or the court finds good cause to make the appointment. Counsel appointed in these cases shall be compensated from the funding provided in Section 16‑3‑26 in the same manner and rate as appointed trial counsel, provided that Section 16‑3‑26(I) shall not apply to counsel appointed in post‑conviction relief proceedings. Appointed counsel on appeal from state post‑conviction relief cases shall be funded and compensated from the funds established for representation of indigents on appeal by the Office of Appellate Defense pursuant to Chapter 4 of Title 17. Nothing in this section shall preclude an out‑of‑state attorney from appearing pro hac vice.

 If counsel is the same person appointed as counsel on appeal, the court shall appoint a second counsel to assist in the preparation of the application for post‑conviction relief. If the applicant elects to proceed pro se, any findings made by the court shall be done on the record and in open court concerning the waiver of the assistance of counsel.

 (C) Not later than thirty days after the filing of the state's return, the judge shall convene a status conference to schedule a hearing on the merits of the application for post‑conviction relief. The hearing must be scheduled within one hundred eighty days from the date of the status conference, unless good cause is shown to justify a continuance.

 (D) Within thirty days from the receipt of the transcript, or if the judge requests post trial briefs, within thirty days from the receipt of the post trial briefs, the hearing judge in writing shall make specific findings of fact and state expressly the judge's conclusions of law relating to each issue. This order is a final judgment subject to a motion for rehearing, a motion to alter or amend judgment, a motion for relief from judgment or order, or any other motion as allowed by the South Carolina Rules of Civil Procedure.

 (E) In these expedited capital post‑conviction relief hearings, a court reporter shall be assigned to take testimony. The transcription of the testimony and record shall be given priority over all other matters concerning the preparation of the record and, upon completion, shall immediately be provided to the parties and the Clerk of the Supreme Court of South Carolina.

HISTORY: 1996 Act No. 448, Section 6.