

Rule 3.987. Motion for Postconviction Relief

MODEL FORM FOR USE IN MOTIONS FOR
POSTCONVICTION RELIEF PURSUANT TO
FLORIDA RULE OF CRIMINAL PROCEDURE 3.850

In the Circuit Court of the

Judicial Circuit,

in and for

County, Florida

State of Florida,)

)

v.) Criminal Division

)

) Case No.:

(your name)) (the original case number)

)

)

MOTION FOR POSTCONVICTION RELIEF

Instructions — Read Carefully

(1) This motion must be typewritten or hand-written in legible printed lettering, in blue or black ink, double-spaced, with margins no less than 1 inch on white 8 1/2 by 11 inch paper. No motion, including any memorandum of law, shall exceed 50 pages without leave of the court upon a showing of good cause. 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 that you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted in support of your legal claims (as opposed to your factual claims), they should be submitted in the form of a separate memorandum of law. This memorandum should have the same caption as this motion.

- (3) No filing fee is required when submitting a motion for postconviction relief.
- (4) Only the judgment of one case may be challenged in a single motion for postconviction relief. If you seek to challenge judgments entered in different cases, or different courts, you must file separate motions as to each such case. The single exception to this is if you are challenging the judgments in the different cases that were consolidated for trial. In this event, show each case number involved in the caption.
- (5) Your attention is directed to the fact that you must include all grounds for relief, and all facts that support such grounds, in the motion you file seeking relief from any judgment of conviction.
- (6) Claims of newly discovered evidence must be supported by affidavits attached to your motion. If your newly discovered evidence claim is based on recanted trial testimony or a newly discovered witness, the attached affidavit must be from that witness. For all other newly discovered evidence claims, the attached affidavit must be from any person whose testimony is necessary to factually support your claim for relief. If the required affidavit is not attached to your motion, you must provide an explanation why the required affidavit could not be obtained.
- (7) Your motion must also be submitted under oath and state as follows:
 - (a) that you are the defendant in the cause,
 - (b) that you understand English or, if you cannot understand English, that you have had the motion translated completely into a language that you understand, along with the name and address of the person who translated the motion and a certification from that person that he or she provided you with an accurate and complete translation,
 - (c) that you have either read your motion or had it read to you,
 - (d) that you understand all of its contents,
 - (e) that your motion is filed in good faith, with a reasonable belief that it is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court,
 - (f) that all of the facts stated in your motion are true and correct, and
 - (g) that you are subject to sanctions, whether imposed by the court or administratively by the Department of Corrections, including but not limited to forfeiture of gain time, if your motion is found to be frivolous, malicious, or otherwise made in bad faith or with reckless disregard for the truth.
- (8) When the motion is fully completed, the original must be mailed to the clerk of the court

whose address is
Courthouse,
Procedure 9.420.

(county where sentence was imposed) County
(address of clerk), as stated in Florida Rule of Appellate

MOTION

1. Name and location of the court that entered the judgment of conviction under attack:

2. Date of judgment of conviction:

3. Length of sentence:

4. Nature of offense(s) involved (all counts):

5. What was your plea? (check only one)

(a) Not guilty

(b) Guilty

(c) Nolo contendere

(d) Not guilty by reason of insanity

If you entered one plea to one count and a different plea to another count, give details:

6. Kind of trial: (check only one)

(a) Jury

(b) Judge only without jury

7. Did you testify at the trial or at any pretrial hearing?

Yes

No

If yes, list each such occasion:

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:
- (d) Citation (if known):

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, motions, etc., with respect to this judgment in this court?

Yes No

11. If your answer to number 10 was "yes," give the following information (applies only to proceedings in this court):

- (a) (1) Nature of the proceeding:
- (2) Grounds raised:
- (3) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes No

- (4) Result:
- (5) Date of result:
- (b) As to any second petition, application, motion, etc., give the same information:
 - (1) Nature of the proceeding:
 - (2) Grounds raised:
 - (3) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes No

(4) Result:

(5) Date of result:

12. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, motions, etc., with respect to this judgment in any other court?

Yes No

13. If your answer to number 12 was "yes," give the following information:

(a) (1) Name of court:

(2) Nature of the proceeding:

(3) Grounds raised:

(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes No

(5) Result:

(6) Date of result:

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

(1) Name of court:

(2) Nature of the proceeding:

(3) Grounds raised:

(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes No

- (5) Result:
- (6) Date of result:
- (c) As to any third petition, application, motion, etc., give the same information:
 - (1) Name of court:
 - (2) Nature of the proceeding:
 - (3) Grounds raised:
- (4) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes No

- (5) Result:
- (6) Date of result:

14. State concisely every ground on which you claim that the judgment or sentence is unlawful. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and the facts supporting them.

For your information, the following is a list of the most frequently raised grounds for postconviction relief. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds that you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that your conviction or sentence is unlawful.

DO NOT CHECK ANY OF THESE LISTED GROUNDS. If you select one or more of these grounds for relief, you must allege facts. The motion will not be accepted by the court if you merely check (a) through (i).

- (a) Conviction obtained by plea of guilty or nolo contendere that 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 the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

- (c) Conviction obtained by a violation of the protection against double jeopardy.
- (d) Denial of effective assistance of counsel.
- (e) Denial of right of appeal.
- (f) Lack of jurisdiction of the court to enter the judgment or impose sentence (such as an unconstitutional statute).
- (g) Sentence in excess of the maximum authorized by law.
- (h) Newly discovered evidence.
- (i) Changes in the law that would be retroactive.

1. Ground 1:

Supporting FACTS (tell your story briefly without citing cases or law):

1. Ground 2:

Supporting FACTS (tell your story briefly without citing cases or law):

1. Ground 3:

Supporting FACTS (tell your story briefly without citing cases or law):

1. Ground 4:

Supporting FACTS (tell your story briefly without citing cases or law):

15. If any of the grounds listed in 14 A, B, C, and D were not previously presented on your direct appeal, state briefly what grounds were not so presented and give your reasons they were not so presented:

16. Do you have any petition, application, appeal, motion, etc., now pending in any court, either state or federal, as to the judgment under attack?

Yes No

17. If your answer to number 16 was "yes," give the following information:

- (a) Name of court:
- (b) Nature of the proceeding:
- (c) Grounds raised:
- (d) Status of the proceedings:

18. 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 postconviction proceeding:
- (g) On appeal from any adverse ruling in a postconviction proceeding:

WHEREFORE, movant requests that the court grant all relief to which the movant may be entitled in this proceeding, including but not limited to (here list the nature of the relief sought):

2. Such other and further relief as the court deems just and proper.

OATH

Under penalties of perjury and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this motion is found to be frivolous or made in bad faith, I certify that I understand the contents of the foregoing motion, that the facts contained in the motion are true and correct, and that I have a reasonable belief that the motion is timely filed. I certify that this motion does not duplicate previous motions that have been disposed of by the court. I further certify that I understand English and have read the foregoing motion or had the motion read to me, or the foregoing motion was translated completely into a language which I understand and read to me by(name). . . ., whose address is(address). . . ., and whose certification of an accurate and complete translation is attached to this motion.

/s/

Name

DC#

Certificate of Mailing

(Must use Certificate of Mailing OR Certificate of Service)

I certify that I placed this document in the hands of(here insert name of institution

official). . . . for mailing to (here insert name or names and addresses used for service). . .
.. on (date).

/s/

Name

Address

DC#

Certificate of Service

(Must use Certificate of Mailing OR Certificate of Service)

I certify that the foregoing document has been furnished to (here insert name or names,
addresses used for service and mailing addresses). . . . by (e-mail) (delivery) (mail) (fax) on . . .
.. (date).

/s/

Attorney

Certificate of an Accurate and Complete Translation

(To be used if translation of the motion was necessary.)

I certify that a complete and accurate translation of this motion was provided to the Defendant
in this case on (date).

/s/

Name

Address

DC#