

Rule Change #1999(1)

CHAPTER 29. COLORADO RULES OF CRIMINAL PROCEDURE

VII. JUDGMENT

Rule 35. Postconviction Remedies

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(a) and (b) * * * *[NO CHANGE]

(c) **Other Remedies.**

(1) and (2)* * * *[NO CHANGE]

(3) One who is aggrieved and claiming either a right to be released or to have a judgment of conviction set aside on one or more of the grounds enumerated in section (c)(2) of this Rule may file a motion in the court which imposed sentence to vacate, set aside, or correct the sentence, or to make such order as necessary to correct a violation of his constitutional rights. ANY MOTION FILED OUTSIDE OF THE TIME LIMITS SET FORTH IN §16-5-402, 6 C.R.S. SHALL ALLEGE FACTS WHICH, IF TRUE, WOULD ESTABLISH ONE OF THE EXCEPTIONS LISTED IN §16-5-402(2), 6 C.R.S.

Unless the motion and the files and record of the case show to the satisfaction of the court that the prisoner is not entitled to relief, the court shall cause a copy of said motion to be served on the prosecuting attorney, grant a prompt hearing thereon, and take whatever evidence is necessary for the disposition of the motion. IF THE PETITIONER HAS REQUESTED COUNSEL AND THE COURT HAS NOT SUMMARILY DETERMINED THAT THE PRISONER IS NOT ENTITLED TO RELIEF, THEN THE COURT SHALL ALSO REFER A COPY OF THE MOTION TO THE PUBLIC DEFENDER'S OFFICE FOR CONSIDERATION PURSUANT TO § 21-1-104(1)(B), 6 C.R.S.

In all cases, the court shall determine the issues and make findings of fact and conclusions of law with respect thereto.

If the court finds that defendant is entitled to postconviction relief, the court shall vacate and set aside the judgment, impose a new sentence, or grant a new trial, or discharge the prisoner, or make such orders as may appear appropriate to restore a right which was violated. The court may stay its order for discharge of the prisoner pending appellate court review of the order. If the court orders a new trial, the transcript of testimony given at the trial, which resulted in the vacated sentence by witnesses who have since died or otherwise become unavailable, may be used at the new trial. The court need not entertain a second motion or successive motions for similar relief based upon

the same or similar allegations on behalf of the same prisoner. The order of the trial court granting or denying the motion is a final order reviewable on appeal.

COMMITTEE COMMENT

AS A PRACTICAL MATTER AND TO AVOID UNNECESSARY DELAY ANY MOTION FILED PURSUANT TO RULE 35(C) SHOULD INCLUDE THE FOLLOWING INFORMATION:

- A. CASE NUMBER;
- B. COUNTY AND COURT WHERE CONVICTED;
- C. DATE OF CONVICTION;
- D. NATURE AND LENGTH OF SENTENCE;
- E. WHETHER CONVICTION WAS BY TRIAL OR PLEA;
- F. THE NAMES AND ADDRESSES OF ANY ATTORNEYS WHO REPRESENTED THE DEFENDANT AT ANY STAGE OF THE PROCEEDING;
- G. WHETHER THERE WAS AN APPEAL, AND IF SO, THE CASE NUMBER OF THE APPEAL, THE NAME OF THE COURT THAT CONSIDERED THE APPEAL, THE RESULT OF THE APPEAL, AND THE DATE OF THE RESULT OF THE APPEAL;
- H. OTHER THAN APPELLATE MOTIONS, THE NATURE OF ANY PREVIOUS POST-TRIAL PETITIONS, APPLICATIONS OR MOTIONS FILED WITH RESPECT TO THE CASE;
- I. WHETHER THE PETITIONER IS REQUESTING COUNSEL TO BE APPOINTED;
- J. ALL GROUNDS FOR RELIEF (FAILURE TO INCLUDE ALL GROUNDS MAY RESULT IN SUCH ADDITIONAL GROUNDS BEING BARRED FROM PRESENTATION IN FUTURE MOTIONS); AND
- K. ALL FACTS WHICH SUPPORT EACH GROUND FOR RELIEF PRESENTED AS SPECIFICALLY AS POSSIBLE.

Amended and Adopted by the Court, En Banc, January 7, 1999, effective July 1, 1999.

BY THE COURT:

**Gregory J. Hobbs, Jr.
Justice, Colorado Supreme Court**