

GENERAL ORDER NO. 9

FORMS FOR PETITION OF WRIT OF HABEAS CORPUS
AND FORMA PAUPERIS AFFIDAVIT

IT IS ORDERED that the form which is attached hereto (Attachment A) is adopted as the approved form of petitions for writs of habeas corpus by or on behalf of persons in custody under the judgment and sentence of a State court.

IT IS FURTHER ORDERED that the form which is attached hereto (Attachment B) is adopted as the approved form of motions to vacate, set aside, or correct sentence by persons in custody under judgment and sentence of a Federal court.

DATED: March 25, 1977

PETITION FOR A WRIT OF HABEAS CORPUS

BY A PERSON IN STATE CUSTODY

INSTRUCTIONS

Your petition must be legibly handwritten or typed and must be signed by you under penalty of perjury.

Read the entire form first before answering any questions.

Complete all applicable questions in the proper blank spaces. If additional space is required, you may finish answers to particular questions on the reverse side of the page or on an extra blank page. Make clear the question to which any such continued answer refers.

Set forth your answers concisely. You will note that brief explanatory comments appear throughout the form. Read these carefully before you answer the questions because they are intended to help you fill out the petition.

Only one sentence or conviction may be challenged in a single petition. If you challenge more than one, you must do so by separate petitions.

Every petition must be made under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. You should be very sure that all answers are true and correct.

If you are seeking leave to proceed in forma pauperis (without paying the \$5.00 filing fee and other court costs), then you must also execute the affidavit on page seven, setting forth information which shows your inability to pay the fees and costs of the proceedings.

Petitions which are not prepared in accordance with these instructions will be returned.

WHERE TO MAIL

When the petition is completed you should mail the original and two copies to the Clerk of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, Box 36060, San Francisco, California 94102.

BEFORE MAILING YOUR PETITION, REMOVE THIS INSTRUCTION SHEET FROM THE PETITION.

PART A

JURISDICTION

The federal district court can only consider your petition if you satisfy certain jurisdictional requirements. The information below will allow the court to determine whether those requirements are met.

1. For what crime were you sentenced? (If you seek habeas corpus based upon a sentence for more than one crime, list each crime separately, using Penal Code numbers if known. If you are seeking habeas corpus as to more than one sentence, a different petition should be filed for each sentence.

2. The sentence from which you seek relief is as follows:

(a) Name and location of court which imposed sentence (for example, Alameda County Superior Court, Oakland):

(Court) (Location)

(b) Case number, if known _____

(c) Date and terms of sentence _____

(d) Are you now in custody serving this term? Yes No

(Custody means being in jail, on parole or probation. You are not in custody if you are released on bail, on your own recognizance or if there is a stay of execution of sentence.)

Where? _____
(Name of Institution) (Address)

3. What post-conviction relief have you sought?

APPEAL

(a) Did you take an appeal from your conviction? Yes No

(b) To what court(s)? Check
Court of Appeal Yes No (Give year) (Result)

Supreme Court of California Yes No (Give year) (Result)

Any other court _____
(Give name and year: Result)

(c) If you appealed, were the grounds the same as those which will be set forth in this petition? Yes No

(d) Was any opinion rendered? Yes No _____
(Citation if known)

(e) If you did not appeal, what were your reasons?

(f) Did you seek permission to file a late appeal under Rule 31(a)?
Yes No

If you answered "Yes" give _____
(Name of Court)

(and result)

OTHER POST-CONVICTION REVIEW

(g) Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes No

(h) If you answered "Yes" give the following information about each proceeding. (Use back side of this page if you need more space. Fill in the same questions for each.)

I. Name of Court _____

Type of Proceeding _____

Grounds raised (Be brief and specific):

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____

Result _____ Date of Result _____

Citation of opinion, if any and known _____

II. Name of Court _____

Grounds raised (Be brief and specific):

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____

Result _____ Date of Result _____

Citation of opinion if any and known _____

III. Name of Court _____

Type of Proceeding _____

Grounds raised (Be brief and specific)

a. _____

b. _____

c. _____

d. _____

e. _____

Result _____ Date of Result _____

Citation of opinion if any and known _____

(i) If you answered "No" explain briefly why you have not sought any post-conviction review?

(j) Is any petition or other post-conviction proceeding now pending in any court? Yes No

(Name and location of Court)

PART B - TRIAL INFORMATION

4. Check if any of the following were held in your case?

Arraignment: Yes No Preliminary Hearing: Yes No

Motion to Suppress: Yes No

5. Check whether a finding of guilty was made after a plea of

Guilty Not Guilty Nolo Contendere

Any other plea _____
(Specify)

6. Check kind of trial:

Jury Judge alone

Judge alone on a transcript

7. Did you testify at your trial? Yes No

PART C - GROUNDS FOR RELIEF FROM CONVICTION

State briefly and concisely every ground which you believe supports your claim that you are being held in unlawful confinement. This means telling the court the facts upon which you rely. You should avoid legal arguments with numerous case citations. Thus, what legal right or privilege were you deprived of in your case? What happened to deprive you of this right? Who made the error of which you complain? What did he do wrong? When did he do it? If you lack space to state all your grounds, use the back side of the page.

NOTE WELL: You should state all possible grounds for relief from the conviction described in Part A in this petition. If you fail to set forth your grounds now, you may bar yourself from presenting such grounds at a later date, or the respondent may assert successfully that a second petition from you is an abuse of the federal habeas corpus remedy.

8. Grounds for Relief

(a) Ground One: _____

Supporting Facts: _____

(b) Ground Two: _____

Supporting Facts: _____

(c) Ground Three: _____

Supporting Facts: _____

9. If any of the grounds listed were not previously presented to any other court, state briefly which grounds were not so presented and why:

10. Supporting cases, if any. List by name and citation only, the cases which you think are close factually to yours so that it is an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

PART D - ATTORNEY INFORMATION

11. Give the name and address of each attorney who represented you in the proceedings attached here.

- (a) Arraignment _____
- (b) At preliminary hearing _____
- (c) At time of plea _____
- (d) At trial _____
- (e) At sentencing _____
- (f) On appeal _____
- (g) Other post-conviction proceeding _____

12. Was the attorney hired by you or for your family?

Appointed by the Court? Yes No

Are you alleging as one ground for relief that your attorney gave you ineffective legal assistance? If so, whom and at what stage? _____

13. If you did not have an attorney represent you, did you represent yourself? Yes ___ No ___

With consent of Court: Yes ___ No ___

14. Are you represented by an attorney in this petition?

Yes ___ No ___

If you answered "Yes" give name and address of your attorney:

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

Executed at _____ Dated: _____

Signature of Petitioner

FORMA PAUPERIS AFFIDAVIT

(See Instructions of this form)

I hereby apply for leave to proceed with this habeas corpus petition without prepayment of fees or costs or security therefor. In support of my application, I state that the following facts are true:

- (1) I am the petitioner in said petition, and I believe I am entitled to redress.
- (2) I am unable to pay the costs of said action or give security because:

Signature of Petitioner
(Sign here only if you seek to proceed without payment of fees)

STATE OF _____)

COUNTY OF _____)

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

Signed on _____
(Date)

Signature of Petitioner

CERTIFICATE

I hereby certify that the petitioner herein has the sum of
\$ _____ on account to his credit at the _____
institution where he is confined. I further certify that petitioner
likewise has the following securities to his credit according to
the records of said _____ institution:

Authorized Officer of
Institution

MOTION, PURSUANT TO SECTION 2255 OF TITLE 28
UNITED STATES CODE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ATTACKING A SENTENCE IMPOSED BY THAT COURT

United States of America)
)
 vs.) CASE NO. _____
) (To be supplied by the
) Clerk of the District Court)
 _____)
 Name of Movant)
 (Full name under which you were)
 convicted))
 _____)

INSTRUCTIONS - READ CAREFULLY

In order for this motion to receive consideration by the District Court, it shall be in writing (legibly handwritten or typewritten), signed by the Movant, under penalty of perjury, and it shall set forth in concise form the answers to each applicable question. If necessary, Movant may finish his answer to a particular question on the reverse side of the page or on an additional blank page. Movant shall make it clear to which question any such continued answer refers.

Since every motion under Section 2255 of Title 28, United States Code, must be made under penalty of perjury, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Movants should therefore exercise care to assure that all answers are true and correct.

If the motion is made in forma pauperis, it shall include an affidavit (page 6 of the form) setting forth information which establishes that the Movant will be unable to pay the fees and costs of the 2255 proceedings. When the form is completed, the original and 2 copies shall be mailed to the Clerk of the District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102.

1. Place of detention _____
2. Name and location of court which, and name of judge who, imposed sentence _____

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) _____

(b) _____

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) _____

(b) _____

(c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

6. If you were found guilty after a plea of not guilty, check whether that finding was made by

(a) a jury _____

(b) a judge without a jury _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? _____

8. If you answered "yes" to (7), list

(a) the name of each court to which you appealed:

I. _____

II. _____

III. _____

(b) the result in each such court to which you appealed:

I. _____

II. _____

III. _____

(c) the date of each such result:

I. _____

II. _____

III. _____

8. cont'd.

(d) if known, citations of any written opinions or orders entered pursuant to such results:

I. _____

II. _____

III. _____

9. State concisely the grounds on which you base your allegation that the sentence which was imposed on you is invalid:

(a)

(b)

(c)

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a)

(b)

(c)

11. Have you previously filed petitions for habeas corpus, motions under section 2255 of Title 28, United States Code, or any other applications, petitions or motions with respect to this conviction? _____

12. If you answered "yes" to (11), list with respect to each petition, motion or application

(a) the specific nature thereof:

I. _____

II. _____

III. _____

(b) the name and location of the court in which each was filed:

I. _____

II. _____

III. _____

(c) the disposition thereof:

I. _____

II. _____

III. _____

(d) the date of each such disposition:

I. _____

II. _____

III. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

I. _____

II. _____

III. _____

13. Has any ground set forth in (9) been previously presented to this or any other federal court by way of petition for habeas corpus, motion under section 2255 of Title 28, United States Code, or any other petition, motion or application? _____

14. If you answered "yes" to (13), identify

(a) which grounds have been previously presented:

- I. _____
- II. _____
- III. _____

(b) the proceedings in which each ground was raised:

- I. _____
- II. _____
- III. _____

15. Were you represented by an attorney at any time during the course of

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

16. If you answered "yes" to one or more parts of (15), list

(a) the name and address of each attorney who represented you:

- I. _____

- II. _____

- III. _____

(b) the proceedings at which each such attorney represented you:

- I. _____
- II. _____
- III. _____

CERTIFICATE

I hereby certify that the movant herein has the sum of
\$ _____ on account to his credit at the _____
_____ institution where he is confined. I further
certify that movant likewise has the following securities to his
credit according to the records of said _____
institution: _____

Authorized Officer of
Institution