

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2227**

Introduced by

Senators Carlisle, Flakoll, Warner

Representatives Grande, Klemin, Amerman

1 A BILL for an Act to amend and reenact sections 29-32.1-01 and 29-32.1-09 of the North
2 Dakota Century Code, relating to limitations and summary disposition for postconviction relief
3 proceedings.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 29-32.1-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **29-32.1-01. Remedy - To whom available - Conditions.**

8 1. A person who has been convicted of and sentenced for a crime may institute a
9 proceeding applying for relief under this chapter upon the ground that:

- 10 a. The conviction was obtained or the sentence was imposed in violation of the laws
11 or the Constitution of the United States or of the laws or Constitution of North
12 Dakota;
- 13 b. The conviction was obtained under a statute that is in violation of the Constitution
14 of the United States or the Constitution of North Dakota, or that the conduct for
15 which the applicant was prosecuted is constitutionally protected;
- 16 c. The court that rendered the judgment of conviction and sentence was without
17 jurisdiction over the person of the applicant or the subject matter;
- 18 d. The sentence is not authorized by law;
- 19 e. Evidence, not previously presented and heard, exists requiring vacation of the
20 conviction or sentence in the interest of justice;
- 21 f. A significant change in substantive or procedural law has occurred which, in the
22 interest of justice, should be applied retrospectively;

- 1 g. The sentence has expired, probation or parole or conditional release was
2 unlawfully revoked, or the applicant is otherwise unlawfully in custody or
3 restrained; or
- 4 h. The conviction or sentence is otherwise subject to collateral attack upon any
5 ground of alleged error available before July 1, 1985, under any common law,
6 statutory or other writ, motion, proceeding, or remedy.
- 7 2. Except as provided in subsection 3, an application for relief under this chapter must be
8 filed within two years of the date the conviction becomes final. A conviction becomes
9 final for purposes of this chapter when:
- 10 a. The time for appeal of the conviction to the North Dakota supreme court expires;
11 b. If an appeal was taken to the North Dakota supreme court, the time for petitioning
12 the United States supreme court for review expires; or
13 c. If review was sought in the United States supreme court, the date the supreme
14 court issues a final order in the case.
- 15 3. a. Notwithstanding subsection 2, a court may consider an application for relief under
16 this chapter if:
- 17 (1) The petition alleges the existence of newly discovered evidence, including
18 DNA evidence, which if proved and reviewed in light of the evidence as a
19 whole, would establish that the petitioner did not engage in the criminal
20 conduct for which the petitioner was convicted;
- 21 (2) The petitioner establishes that the petitioner suffered from a physical
22 disability or mental disease that precluded timely assertion of the application
23 for relief; or
- 24 (3) The petitioner asserts a new interpretation of federal or state constitutional
25 or statutory law by either the United States supreme court or a North Dakota
26 appellate court and the petitioner establishes that the interpretation is
27 retroactively applicable to the petitioner's case.
- 28 b. An application under this subsection must be filed within two years of the date the
29 petitioner discovers or reasonably should have discovered the existence of the
30 new evidence, the disability or disease ceases, or the effective date of the
31 retroactive application of law.

1 4. A proceeding under this chapter is not a substitute for and does not affect any remedy
2 incident to the prosecution in the trial court or direct review of the judgment of
3 conviction or sentence in an appellate court. Except as otherwise provided in this
4 chapter, a proceeding under this chapter replaces all other common law, statutory, or
5 other remedies available before July 1, 1985, for collaterally challenging the validity of
6 the judgment of conviction or sentence. It is to be used exclusively in place of them. A
7 proceeding under this chapter is not available to provide relief for disciplinary
8 measures, custodial treatment, or other violations of civil rights of a convicted person
9 occurring after the imposition of sentence.

10 **SECTION 2. AMENDMENT.** Section 29-32.1-09 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **29-32.1-09. Summary disposition.**

- 13 1. The court, on its own motion, may enter a judgment denying a meritless application on
14 any and all issues raised in the application before any response by the state. The
15 court also may summarily deny a second or successive application for similar relief on
16 behalf of the same applicant and may summarily deny any application when the issues
17 raised in the application have previously been decided by the appellate court in the
18 same case.
- 19 2. The court, on its own motion, may dismiss any grounds of an application which allege
20 ineffective assistance of postconviction counsel. An applicant may not claim
21 constitutionally ineffective assistance of postconviction counsel in proceedings under
22 this chapter.
- 23 3. The court may grant a motion by either party for summary disposition if the application,
24 pleadings, any previous proceeding, discovery, or other matters of record show that
25 there is no genuine issue as to any material fact and the moving party is entitled to a
26 judgment as a matter of law.
- 27 ~~2.4.~~ If an evidentiary hearing is necessary, the court may determine which issues of
28 material fact are in controversy and appropriately restrict the hearing.