

Virginia State Crime Commission

Writs of Actual Innocence

2008

WRITS OF ACTUAL INNOCENCE

Background

Prior to 2001, there was no judicial mechanism in Virginia to directly reverse a guilty verdict in a criminal case if more than twenty-one days had passed after the entry of the final order in the case, even if new evidence was discovered that conclusively proved the innocence of the defendant. While a writ of habeas corpus might indirectly provide relief to a defendant, habeas corpus is a collateral attack on a conviction, not a direct appeal, and therefore cannot be used to determine the guilt or innocence of the prisoner. In at least some circumstances, proof of innocence is insufficient grounds to grant a writ of habeas corpus. Furthermore, there exist strict time limits within which a petition for habeas corpus relief must be filed, or no relief can be granted: generally, within two years from final judgment of the trial court or one year from final disposition on appeal, whichever is later, in non-capital cases; and 120 days from denial of a petition for a writ of certiorari by the United States Supreme Court in capital cases. There also exist strict time limits for the filing of a petition for habeas corpus relief in federal courts: generally, one year from the final disposition of any state appeal or habeas petition.

In 2001, Virginia created a special writ to handle instances where a defendant had newly discovered biological evidence that demonstrated his actual innocence. The time limit for filing a petition for relief under the writ of actual innocence was not calculated from the time of final judgment in the criminal case, but from the time of the test results on the new DNA evidence. Under this writ, the Supreme Court of Virginia has the authority to directly vacate the conviction of a defendant who is found to be innocent of the crime for which he was convicted. In addition to other requirements, though, the writ is only available to those persons who are currently incarcerated. A person who has served all of his time, or who is out on probation or parole, cannot petition for a writ of actual innocence. Additionally, the writ is only available to defendants who entered a plea of not guilty at their original trial, unless they were convicted of capital murder, a Class 2 felony, or a felony that carries a maximum penalty of life imprisonment.

In 2004, a second special writ was created to deal with cases where the newly discovered evidence that proves innocence is not DNA or biological in character. Petitions for this writ are submitted to the Virginia Court of Appeals rather than the Supreme Court, although the parties may petition the Supreme Court of Virginia to accept an appeal from any final decision made by the

Court of Appeals. The writ of actual innocence based on nonbiological evidence does not require that the petitioner be incarcerated at the time of the suit. It also differs from the writ of actual innocence in that there are no exceptions to the requirement that the defendant must have plead not guilty at the time of the original trial. Even if the defendant has been sentenced to life in prison, or has been convicted of capital murder and is facing execution, he may not make use of this writ if he originally plead guilty.

Analysis

Crime Commission staff requested information from the Supreme Court of Virginia on the number of petitions that have been filed for writs of actual innocence since the writ was first created. The following numbers were reported: there were no petitions filed in 2002 (the writ did not become available until November 15, 2002); there were 10 petitions filed in 2003; 11 petitions filed in 2004; 2 petitions filed in 2005; 2 petitions filed in 2006; and 3 petitions filed in 2007. As of October 14, no petitions had been filed in 2008. The Supreme Court dismissed all 28 of these petitions (every one that has been filed to date).

It was suggested that because so few petitions have been filed for writs of actual innocence, the availability of this writ, and the writ of actual innocence based on nonbiological evidence, might be increased without creating undue burdens on the judicial system. Accordingly, the Crime Commission considered eliminating the requirement that the petitioner be incarcerated in order to apply for a writ of actual innocence. It was also proposed that the requirement of having plead not guilty be eliminated for both writs.

Conclusion

The members of the Crime Commission considered these proposals at the January 13, 2009, meeting. After deliberations, the Crime Commission voted to eliminate the requirement that a petitioner be incarcerated in order to file a petition for a writ of actual innocence. The Crime Commission voted not to change any of the existing requirements that the petitioner must have plead not guilty at the original trial.