

SENATE BILL No. 60

By Committee on Judiciary

1-22

1 AN ACT concerning civil procedure; relating to habeas corpus; prohibiting
2 second and successive motions in certain circumstances; prohibiting
3 claims of ineffective counsel; providing appeals to the supreme court as
4 a matter of right in claims filed by inmates sentenced to death;
5 amending K.S.A. 2024 Supp. 60-1507 and 60-2102 and repealing the
6 existing sections.
7

8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 2024 Supp. 60-1507 is hereby amended to read as
10 follows: 60-1507. (a) *Motion attacking sentence.* A prisoner in custody
11 under sentence of a court of general jurisdiction claiming the right to be
12 released upon the ground that the sentence was imposed in violation of the
13 constitution or laws of the United States, or the constitution or laws of the
14 state of Kansas, or that the court was without jurisdiction to impose such
15 sentence, or that the sentence was in excess of the maximum authorized by
16 law, or is otherwise subject to collateral attack, may, pursuant to the time
17 limitations imposed by subsection (f), move the court which imposed the
18 sentence to vacate, set aside or correct the sentence.

19 (b) *Hearing and judgment.* Unless the motion and the files and
20 records of the case conclusively show that the prisoner is entitled to no
21 relief, the court shall cause notice thereof to be served upon the county
22 attorney, grant a prompt hearing thereon, determine the issues and make
23 findings of fact and conclusions of law with respect thereto. The court may
24 entertain and determine such motion without requiring the production of
25 the prisoner at the hearing. *A motion filed by a prisoner who has been*
26 *sentenced to death shall be expedited.* If the court finds that the judgment
27 was rendered without jurisdiction, or that the sentence imposed was not
28 authorized by law or is otherwise open to collateral attack, or that there has
29 been such a denial or infringement of the constitutional rights of the
30 prisoner as to render the judgment vulnerable to collateral attack, the court
31 shall vacate and set the judgment aside and shall discharge the prisoner or
32 resentence ~~said~~ *such* prisoner or grant a new trial or correct the sentence as
33 may appear appropriate.

34 (c) *Second and successive motions.* (1) The sentencing court shall not
35 ~~be required to entertain a second or successive motion for similar relief on~~
36 ~~behalf of the same prisoner~~ *consider a second or successive motion*

1 unless:

2 (A) The claim relies on a new rule of constitutional law that was
3 made retroactive by the supreme court or the United States supreme court
4 and applies to the prisoner's case; or

5 (B) the factual basis for the claim could not have been discovered
6 previously through the exercise of due diligence, and such facts, if proven
7 and viewed in light of the evidence as a whole, would be sufficient to
8 establish by clear and convincing evidence that, but for constitutional
9 error, no reasonable fact finder would have found the prisoner guilty of
10 the underlying offense.

11 (2) A second or successive motion shall not be filed while an appeal
12 is pending on a motion previously filed pursuant to this section or during
13 the time within which such an appeal may be perfected.

14 (3) A motion is a second motion if it raises issues that could have
15 been raised in a previous motion filed pursuant to this section. A motion is
16 successive if it raises issues previously raised in a motion filed pursuant to
17 this section.

18 (d) *Appeal.* An appeal may be taken to the appellate court as provided
19 by law from the order entered on the motion as from a final judgment on
20 application for a writ of habeas corpus. *If an appeal is taken on a motion*
21 *filed by a prisoner who has been sentenced to death, such appeal shall be*
22 *taken directly to the supreme court.*

23 (e) *Exclusiveness of remedy.* An application for a writ of habeas
24 corpus ~~in~~ on behalf of a prisoner who is authorized to apply for relief by
25 motion pursuant to this section, shall not be entertained if it appears that
26 the applicant has failed to apply for relief, by motion, to the court which
27 sentenced ~~said~~ such applicant, or that such court has denied ~~said~~ such
28 applicant relief, unless it also appears that the remedy by motion is
29 inadequate or ineffective to test the legality of ~~said~~ such applicant's
30 detention.

31 (f) *Time limitations.* (1) Any action under this section must be
32 brought within one year of:

33 (A) The final order of the last appellate court in this state to exercise
34 jurisdiction on a direct appeal or the termination of such appellate
35 jurisdiction;

36 (B) the denial of a petition for writ of certiorari to the United States
37 supreme court or issuance of such court's final order following granting
38 such petition; or

39 (C) *when claiming error in a previous action filed pursuant to this*
40 *section, the decision of the district court denying a prior motion under this*
41 *section, the opinion of the last appellate court in this state to exercise*
42 *jurisdiction on such prior motion or the denial of the petition for review on*
43 *such prior motion, whichever is later.*

1 (2) The time limitation herein may be extended by the court only to
2 prevent a manifest injustice.

3 (A) For purposes of finding manifest injustice under this section, the
4 court's inquiry shall be limited to determining why the prisoner failed to
5 file the motion within the one-year time limitation or whether the prisoner
6 makes a colorable claim of actual innocence. As used herein, the term
7 actual innocence requires the prisoner to show it is more likely than not
8 that no reasonable juror would have convicted the prisoner in light of new
9 evidence.

10 (B) If the court makes a manifest-injustice finding, it must state the
11 factual and legal basis for such finding in writing with service to the
12 parties.

13 (3) If the court, upon its own inspection of the motions, files and
14 records of the case, determines the time limitations under this section have
15 been exceeded and that the dismissal of the motion would not equate with
16 manifest injustice, the district court must dismiss the motion as untimely
17 filed.

18 ~~(g) The amendments made to subsection (f) by this act shall not bar~~
19 ~~actions under this section that are brought within one year of the effective~~
20 ~~date of this act.~~
21 *ineffective counsel. Notwithstanding the provisions of*
22 *K.S.A. 22-4506 and 22-4522, and amendments thereto, the ineffectiveness*
23 *of counsel during a previous action brought by an inmate pursuant to this*
24 *section shall not be a ground for relief in a subsequent action brought*
25 *pursuant to this section unless such claim alleges that the ineffectiveness*
26 *of counsel completely foreclosed the prisoner's ability to appeal or seek*
27 *discretionary review by an appellate court.*

28 Sec. 2. K.S.A. 2024 Supp. 60-2102 is hereby amended to read as
29 follows: 60-2102. (a) *Appeal to court of appeals as matter of right.* Except
30 for any order or final decision of a district magistrate judge who is not
31 regularly admitted to practice law in Kansas, the appellate jurisdiction of
32 the court of appeals may be invoked by appeal as a matter of right from:

33 (1) An order that discharges, vacates or modifies a provisional
34 remedy.

35 (2) An order that grants, continues, modifies, refuses or dissolves an
36 injunction, or an order that grants or refuses relief in the form of
37 mandamus, quo warranto or habeas corpus.

38 (3) An order that appoints a receiver or refuses to wind up a
39 receivership or to take steps to accomplish the purposes thereof, such as
40 directing sales or other disposal of property, or an order involving the tax
41 or revenue laws, the title to real estate, the constitution of this state or the
42 constitution, laws or treaties of the United States.

43 (4) A final decision in any action, except in an action where a direct
44 appeal to the supreme court is required by law. In any appeal or cross

1 appeal from a final decision, any act or ruling from the beginning of the
2 proceedings shall be reviewable.

3 (b) *Appeal to supreme court as matter of right.* The appellate
4 jurisdiction of the supreme court may be invoked by appeal as a matter of
5 right from:

6 (1) A preliminary or final decision in which a statute of this state has
7 been held unconstitutional as a violation of Article 6 of the constitution of
8 the state of Kansas pursuant to K.S.A. 72-5633, and amendments thereto.
9 Any appeal filed pursuant to this subsection (b)(1) shall be filed within 30
10 days of the date the preliminary or final decision is filed.

11 (2) A final decision of the district court in any action challenging the
12 constitutionality of or arising out of any provision of the Kansas expanded
13 lottery act, any lottery gaming facility management contract or any
14 racetrack gaming facility management contract entered into pursuant to the
15 Kansas expanded lottery act.

16 (3) *A final decision of the district court in any habeas corpus action*
17 *filed pursuant to K.S.A. 60-1507, and amendments thereto, by a prisoner*
18 *who has been sentenced to death.*

19 (c) *Other appeals.* When a district judge, or a district magistrate
20 judge who is regularly admitted to practice law in Kansas, in making in a
21 civil action an order not otherwise appealable under this section, is of the
22 opinion that such order involves a controlling question of law as to which
23 there is substantial ground for difference of opinion and that an immediate
24 appeal from the order may materially advance the ultimate termination of
25 the litigation, the judge shall so state in writing in such order. The court of
26 appeals may thereupon, in its discretion, permit an appeal to be taken from
27 such order, if application is made to it within 14 days after the entry of the
28 order under such terms and conditions as the supreme court fixes by rule.
29 Application for an appeal pursuant to this subsection shall not stay
30 proceedings in the district court unless the judge of the district court or an
31 appellate court or a judge thereof so orders.

32 Sec. 3. K.S.A. 2024 Supp. 60-1507 and 60-2102 are hereby repealed.

33 Sec. 4. This act shall take effect and be in force from and after its
34 publication in the statute book.