

HOUSE BILL No. 2502

By Committee on Corrections and Juvenile Justice

1-21

HB2502-Balloon-AG
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Office of Revisor of Statutes
February 18, 2016

1 AN ACT concerning civil procedure; relating to habeas corpus; time
2 limitations in motion to attack sentence; amending K.S.A. 60-1507 and
3 repealing the existing section.
4

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

6 Section 1. K.S.A. 60-1507 is hereby amended to read as follows: 60-
7 1507. (a) *Motion attacking sentence.* A prisoner in custody under sentence
8 of a court of general jurisdiction claiming the right to be released upon the
9 ground that the sentence was imposed in violation of the constitution or
10 laws of the United States, or the constitution or laws of the state of Kansas,
11 or that the court was without jurisdiction to impose such sentence, or that
12 the sentence was in excess of the maximum authorized by law, or is
13 otherwise subject to collateral attack, may, pursuant to the time limitations
14 imposed by subsection (f), move the court which imposed the sentence to
15 vacate, set aside or correct the sentence.

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

30 (c) *Successive motions.* The sentencing court shall not be required to
31 entertain a second or successive motion for similar relief on behalf of the
32 same prisoner.

33 (d) *Appeal.* An appeal may be taken to the appellate court as provided
34 by law from the order entered on the motion as from a final judgment on
35 application for a writ of habeas corpus.

36 (e) *Exclusiveness of remedy.* An application for a writ of habeas

1 corpus in behalf of a prisoner who is authorized to apply for relief by
 2 motion pursuant to this section, shall not be entertained if it appears that
 3 the applicant has failed to apply for relief, by motion, to the court which
 4 sentenced said applicant, or that such court has denied said applicant relief,
 5 unless it also appears that the remedy by motion is inadequate or
 6 ineffective to test the legality of said applicant's detention.

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

9 (i) (A) The final order of the last appellate court in this state to exercise
 10 jurisdiction on a direct appeal or the termination of such appellate
 11 jurisdiction; or

12 (ii) (B) the denial of a petition for writ of certiorari to the United States
 13 supreme court or issuance of such court's final order following granting
 14 such petition.

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

17 (A) *For purposes of finding manifest injustice under this section, the*
 18 *court's sole inquiry is to determine why the prisoner failed to file the*
 19 *motion within the one-year time limitation.*

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

23 (3) *If the court, upon its own inspection of the motions, files and*
 24 *records of the case, determines the time limitations under this section have*
 25 *been exceeded and that the dismissal of the motion would not equate with*
 26 *manifest injustice, the district court must dismiss the motion as untimely*
 27 *filed.*

28 Sec. 2. K.S.A. 60-1507 is hereby repealed.

29 Sec. 3. This act shall take effect and be in force from and after its
 30 publication in the statute book.

or whether the prisoner makes a colorable
 claim of actual innocence. As used herein,
 the term actual innocence requires the
 prisoner to show it is more likely than not
 that no reasonable juror would have
 convicted the prisoner in light of new
 evidence