



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

INSTRUCTIONS FOR FILING A MOTION TO VACATE
OR MODIFY SENTENCE PURSUANT TO 28 U.S.C. SECTION 2255

This packet is to be used by *pro se* prisoners being held in custody who wish to attack or challenge a federal conviction or sentence imposed by the United States District Court for the Northern District of West Virginia. Do NOT use this form for anything other than a motion to vacate or modify sentence pursuant to 28 U.S.C. § 2255. Separate forms are available for other actions. The Clerk of Court can send you a copy upon request, or one should be available in the law library of your institution.

GENERAL INFORMATION

THE RIGHT COURT

You may file your **2255 motion** in the United States District Court for the Northern District of West Virginia **only** if you were convicted in this District.

BASIC GUIDELINES

When filing forms and documents with the Court, you must follow these guidelines:

- Complete all forms as thoroughly as possible
- Use letter size paper only (8 ½ x 11)
- Sign all documents
- Send the original
- Do not use pencil. Either type or print neatly using black or blue pens only
- Do not bind or staple documents
- Write only on the fronts of documents, do not write on the backs of documents
- Number all additional pages

FORMS AND INSTRUCTIONS FOR FILING DOCUMENTS

Directions for filing a motion are listed below and all necessary forms are included. Please read all of the following instructions carefully before completing **ANY** of the attached forms. **PLEASE ALSO READ THE LOCAL RULES OF PRISONER LITIGATION.**

THE MOTION (Attachment A). *Instructions for Completing the Motion Form:*

- a. Submit one original motion to the Court. Keep one exact copy of the motion for your records. If you do not keep a copy of your motion and later request a copy from the Court, you will be required to pay a copying fee of \$0.50 per page.
- b. Forms from other districts are not permitted.
- c. Do not write on the back of the motion forms. If you need more space, use additional sheets of paper not to exceed a total of five (5) typed pages or ten (10) neatly printed pages unless accompanied by a Motion for Leave to file excess pages. (LR PL 3.4.4). Additional pages must be numbered. Your motion and all other pleadings/documents must be in English and must be neatly printed or typed. (LR PL 3.4.1).
- d. **GROUND**S: You are required to give facts regarding your motion. When your motion involves more than one incident, each incident should be identified as a separate ground. Each incident must include appropriate supporting facts and must be clearly described, including the relevant times, dates and locations.
- e. **RELIEF REQUESTED**: State what you want the Court to do for you. Do not make legal arguments.
- f. **VERIFICATION**: You should make sure that all answers are true and correct. You must declare under “Penalty of Perjury” that the information contained in your motion is true and accurate. This is done by signing the motion form on p. 18.

- g. Note: under RULE 11, Federal Rules of Civil Procedure: only the signature of a *pro se* party on pleadings will be acceptable to the Court.

FILING THE PETITION

After completing the motion and all applicable forms, proofread them to ensure compliance with all instructions. Return the completed forms to the appropriate point of holding court. The appropriate point of holding court is the court where you were sentenced. The West Virginia counties for each point of holding court are listed below.

Clerk, U.S. District Court
PO Box 2857
Clarksburg, WV 26302
Attn: Inmate Litigation Clerk
Pleasants, Ritchie, Calhoun, Gilmer,
Braxton, Doddridge, Harrison,
Marion, Monongalia, Taylor and
Preston Counties

Clerk, U.S. District Court
PO Box 471
Wheeling, WV 26003
Attn: Inmate Litigation Clerk
Hancock, Brooke, Ohio,
Marshall, Wetzel and
Tyler Counties

Clerk, U.S. District Court
217 W. King St., Room 102
Martinsburg, WV 25401
Attn: Inmate Litigation Clerk
Mineral, Hampshire, Morgan,
Berkeley and Jefferson Counties

Clerk, U.S. District Court
PO Box 1518
Elkins, WV 26241
Attn: Inmate Litigation Clerk
Lewis, Upshur, Webster,
Pocahontas, Randolph,
Pendleton, Barbour, Tucker,
Grant and Hardy Counties

FILING FEE

No filing fee is required for a motion filed under Title 28 U.S.C. Section 2255.

**FILING DOCUMENTS AFTER THE
RESPONDENT HAS BEEN ORDERED TO ANSWER**

Documents filed with the Clerk of Court after the respondent has been ordered to answer must be filed with the Court in writing in the form of a pleading, for example: motion, notice, memorandum, etc.

You must serve respondent's counsel with a copy of every pleading, letter, or other document submitted for consideration by the Court. The original of all documents filed with the Clerk must have a "Certificate of Service" (Attachment B).

The Court may return any document submitted to the Clerk of Court for filing that does not bear a proper Certificate of Service. You must sign all papers (pleadings, letters, motions, or other documents) relating to your case and must state the case number. All documents and correspondence submitted to the Clerk of Court should be on letter-size paper (8 ½ x 11 inches). Do not use legal-size (8 ½ x 14 inches) paper.

IMPORTANT ADDITIONAL INFORMATION

1. IF YOU DO NOT KEEP THE COURT ADVISED OF YOUR CURRENT ADDRESS, YOUR CASE WILL BE DISMISSED BY THE COURT.
2. It is improper to communicate directly with Judges or Magistrate Judges concerning matters that may become a subject in their Court.
3. The Clerk, Judges, Laws Clerks, and Magistrate Judges are prohibited from giving legal advice to litigants.

Thank you in advance for your cooperation regarding these instructions.

AT THE DIRECTION OF THE COURT

Cheryl Dean Riley, Clerk

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR
CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court	Northern District of West Virginia	
Name (under which you were convicted):		Criminal Case No.:
Place of Confinement:		BOP Prisoner No.:

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____

- (b) Criminal case number (if you know): _____
2. (a) Date of the judgment of conviction (if you know): _____
- (b) Date of sentencing: _____
3. Length of sentence: _____
4. Nature of crime (all counts): _____

5. (a) What was your plea? (Check one)

Not guilty ☐

Guilty ☐

Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count of the indictment, and a not guilty plea to another count of the indictment, what did you plead guilty to and what did you plead not guilty to? _____

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☐

8. Did you appeal from the judgment of conviction? Yes ☐ No ☐

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Appeal case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Grounds raised: _____

(f) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes

☐ No

If yes, answer the following:

(1) Case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court? ☐ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? ☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

- (b) If you filed a second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motions? ☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First Petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach no more than 5 typed or 10 neatly printed additional pages total for all grounds if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

_____ (b)

Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) **Post Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed:

Case number (if you know): _____

Date of the Court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☐ No

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) What was the result? _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed:

Case number (if you know): _____

Date of the Court’s decision: _____

Result (attach a copy of the court’s opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☐ No

(5) If your answer to Questions (c)(4) is “Yes,” did you raise this issue in the

appeal? ☐ Yes ☐ No

(6) What was the result? _____

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue: _____

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed:

Case number (if you know): _____

Date of the Court’s decision: _____

Result (attach a copy of the court’s opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☐ No

(5) If your answer to Questions (c)(4) is “Yes,” did you raise this issue in the appeal? ☐ Yes ☐ No

(6) What was the result? _____

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue: _____

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) **Post Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed:

Case number (if you know): _____

Date of the Court’s decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☐ No

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) What was the result? _____

If your answer to Question (c)(4) is "Yes," state:

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☐

If “Yes,” state the name and location of the court, the case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any proceeding after conviction other than direct appeal: _____

(g) On appeal from any ruling against you in any post-conviction proceeding after conviction other than direct appeal: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐

- (a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____
- (b) Give the date the other sentence was imposed: _____
- (c) Give the length of the other sentence: _____
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future?
- Yes ☐ No ☐

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final more than one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.¹

Therefore, you ask that the Court grant the following relief:

¹ The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255 paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of -

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court, if applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

and any other relief to which you may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____ (month, day, year).

Executed (signed) on _____ (date).

Your Signature

If the person signing is not you, state the relationship to you and explain why you are not signing this petition.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

Your full name

v.

Civil Action No.: _____

Enter above the full name of respondent in this action

Certificate of Service

I, _____ (your name here), appearing *pro se*, hereby
certify that I have served the foregoing _____ (title of
document being sent) upon the respondent by depositing true copies of the same in the
United States mail, postage prepaid, upon the following counsel of record for the
respondent on _____ (insert date here):

(List name and address of counsel for respondent)

(sign your name)