

HOUSE BILL NO. 1214

Introduced by

Representative DeKrey

1 A BILL for an Act to amend and reenact section 29-32.1-01 of the North Dakota Century Code,
2 relating to limitations on applications for postconviction relief.

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

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

6 **29-32.1-01. Remedy - To whom available - Conditions.**

- 7 1. A person who has been convicted of and sentenced for a crime may institute a
8 proceeding applying for relief under this chapter upon the ground that:
- 9 a. The conviction was obtained or the sentence was imposed in violation of the
10 laws or the Constitution of the United States or of the laws or Constitution of
11 North Dakota;
 - 12 b. The conviction was obtained under a statute that is in violation of the
13 Constitution of the United States or the Constitution of North Dakota, or that
14 the conduct for which the applicant was prosecuted is constitutionally
15 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
22 the 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
8 must be filed within one year of the date the conviction becomes final. A conviction
9 becomes final for purposes of this chapter when:
- 10 a. The time for appeal of the conviction to the North Dakota supreme court
11 expires;
- 12 b. If an appeal was taken to the North Dakota supreme court, the time for
13 petitioning the United States supreme court for review expires; or
- 14 c. If review was sought in the United States supreme court, the date the
15 supreme court issues a final order in the case.
- 16 3. a. Notwithstanding subsection 2, a court may consider an application for relief
17 under this chapter if:
- 18 (1) The petitioner alleges the existence of newly discovered evidence that,
19 if proved and viewed in light of the evidence as a whole, would
20 establish that the petitioner did not engage in the criminal conduct for
21 which the petitioner was convicted;
- 22 (2) The petitioner establishes that the petitioner suffered from a physical
23 disability or mental disease that precluded timely assertion of the
24 application for relief; or
- 25 (3) The petitioner asserts a new interpretation of federal or state
26 constitutional or statutory law by either the United States supreme court
27 or a North Dakota appellate court and the petitioner establishes that the
28 interpretation is retroactively applicable to the petitioner's case.
- 29 b. An application under this subsection must be filed within one year of the date
30 the petitioner discovers or reasonably should have discovered the existence

1 of the new evidence, the disability or disease ceases, or the effective date of
2 the retroactive application of law.

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