

TO: The Task Force on Conviction Integrity and Post-Conviction Review
FROM: Elliot Nash; Jordan Rowland
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RE: Overview of Ohio’s Current Post-Conviction Review Process

In Ohio, there are two distinct methods by which a criminal defendant may attack a criminal conviction or sentence. The first method is to file a direct appeal, which is appropriate if the alleged error is apparent from the face of the record such as the suppression of certain evidence or the admissibility of a confession. However, if the alleged error is not apparent from the record, the defendant must file a petition for post-conviction relief pursuant to R.C. § 2953.21. Common examples of issues properly addressed in a petition for post-conviction relief include newly discovered evidence or ineffective assistance of counsel.

This memorandum first discusses the current process under Ohio law for a petition for post-conviction relief. In the second section, this memorandum discusses current issues with Ohio’s post-conviction review process and offers a quick discussion of recent and pending litigation relevant to the process.

I. Overview of Ohio’s Current Post-Conviction Petition Process.

The life cycle of a petition for post-conviction relief can take years. First, a defendant must file the petition, which is required to adhere to strict timing, substantive, and procedural requirements.¹ The petition must be verified and filed with the clerk of the court in which the sentence was imposed.² Once the petition is filed, the court is required to “independently review the evidence in each case and address the substance of a petitioner’s claims regardless of whether the state responds.”³

If the petition is timely and survives the initial review, either party is then permitted to move for summary judgment.⁴ Regardless of whether the state moves for summary judgment, however, the trial court is statutorily required to conduct a *sua sponte* analysis on the merits of the petition.⁵ The trial court is required to consider all available evidence and decide “whether there

¹ R.C. § 2953.21(A)(2); R.C. § 2953.23(A).

² State v. Friley, 10th Dist. Franklin No. 05AP-15, 2006-Ohio-230, ¶ 9 (affirming dismissal of petition as untimely when the petition was due on September 30, 2003, because although the petition “was placed in the prison mailbox on September 26, 2003,” it did not arrive to the clerk of court until October 7, 2003) (J. French conc.).

³ State v. Fluker, 9th Dist. Lorain No. 94CA005793, 1994 Ohio App. LEXIS 2159, at *2–3 (May 18, 1994).

⁴ R.C. § 2953.21(E).

⁵ State v. McCabe, 4th Dist. Washington Case No. 97CA32, 1998 Ohio App. LEXIS 4487, at *2 (Sep. 14, 1998) (holding that even if the State’s motion for summary judgment was untimely, the trial court’s consideration of the motion would have been harmless error because R.C. 2953.21(C) requires the trial court to *sua sponte* analyze the petition).

are substantive grounds for relief” contained in the petition.⁶ This determination is entirely at the trial judge’s discretion and often takes years.⁷

If the court determines that there are no substantive grounds for relief, the court will dismiss the petition without a hearing.⁸ However, if the court determines that the petition does state substantive grounds for relief, it is then required to “proceed to a prompt hearing on the issues[.]”⁹ Neither the Ohio legislature nor its courts have clarified what qualifies as “prompt,” but Ohio’s *Postconviction Pro Se Packet* warns potential petitioners that it can often take “a year or more” to get a hearing.¹⁰ If a hearing is granted, an incarcerated petitioner has the right to be present at the hearing.¹¹

Upon making its determination of whether to hold a hearing, the trial court is required to make and file findings of fact and conclusions of law supporting its decision.¹² The ruling may be appealed by either party within 30 days of the decision. Notably, there is a wide discrepancy among Ohio courts about what standard of review to apply when a petition is dismissed without a hearing. Some districts apply a *de novo* standard,¹³ while at least three apply an abuse of discretion standard.¹⁴ Others consider the decision a mixed question and apply a manifest weight of the evidence standard to the facts and a *de novo* standard to the law.¹⁵

After a hearing, the trial judge can take several more years to issue a final ruling.¹⁶ Appeals add another layer of delays, and rulings made after an evidentiary hearing are unanimously subject to an abuse of discretion standard.¹⁷ Finally, even if a post-conviction petition survives each of these stages, the fight is still not over. A successful post-conviction petition generally does not exonerate the petitioner; it only entitles him or her to a new trial on the original charges.

⁶ R.C. § 2953.21(D).

⁷ See, e.g., *State v. Mobarak*, 10th Dist. Franklin Nos. 18AP-540, 18AP-551, 2020-Ohio-249 (defendant filed post-conviction petition on December 19, 2014, and received a final ruling denying a hearing on June 12, 2018).

⁸ R.C. § 2953.21(F).

⁹ *Id.*

¹⁰ Ohio Postconviction Pro Se Packet, pg. 3, available at <https://pdf4pro.com/view/postconviction-pro-se-packet-opd-10ff7d.html>.

¹¹ R.C. § 2953.22.

¹² R.C. § 2953.23(H); *State v. Williams*, 165 Ohio App. 3d 594, 2006 Ohio 617, 847 N.E.2d 495.

¹³ See *State v. Garner*, 11th Dist. Lake No. 2018-L-057, 2018-Ohio-4661, ¶ 12 (applying *de novo* standard of review); *State v. Coy*, 2d Dist. Montgomery C.A. Case No. 18440, 2001 Ohio App. LEXIS 1625, at *4 (Apr. 6, 2001) (applying *de novo* standard of review).

¹⁴ *State v. Sowell*, 8th Dist. Cuyahoga No. 108018, 2020-Ohio-2938, ¶ 128 (applying abuse of discretion standard); *State v. Delawder*, 4th Dist. Scioto No. 18CA3854, 2019-Ohio-3379, ¶ 9 (applying abuse of discretion standard); *State v. Francis*, 2014-Ohio-443, 8 N.E.3d 371, ¶ 22 (12th Dist.) (applying abuse of discretion standard).

¹⁵ *State v. Somers*, 5th Dist. Muskingum No. CT2019-0020, 2019-Ohio-3157, ¶ 15 (mixed question of law and fact); *State v. Conway*, 10th Dist. Franklin No. 17AP-504, 2019-Ohio-2260, ¶ 10 (mixed question of law and fact).

¹⁶ See, e.g., *State v. Mackey*, 2018-Ohio-516, 106 N.E.3d 241, ¶ 15 (2d Dist.) (hearing held on August 3, 2015, but final ruling denying petition not issued until April 4, 2017).

¹⁷ *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, ¶ 58, 860 N.E.2d 77 (“We hold that a trial court’s decision granting or denying a postconviction petition filed pursuant to R.C. 2953.21 should be upheld absent an abuse of discretion; a reviewing court should not overrule the trial court’s finding on a petition for postconviction relief that is supported by competent and credible evidence.”). The United States Supreme Court has jurisdiction over the final judgments of state postconviction courts. *Weary v. Cain*, 136 S. Ct. 1002, 1008 (2016).

A. Non-Death Penalty Petitioners Do Not Have a Right to Counsel.

Generally, a petitioner does not have a right to counsel at any stage during the post-conviction petition process.¹⁸ Instead, Ohio law permits an indigent petitioner to submit a Motion for Appointment of Counsel along with his or her petition for post-conviction relief.¹⁹ If the judge decides to hold an evidentiary hearing, the court may—but is not required to—appoint counsel.²⁰ Alternatively, the court may notify the public defender’s office who will then determine whether the claims have arguable merit, and if so, will represent the petitioner.²¹

The lone exception to the no-right-to-counsel rule is contained in R.C. § 2953.21(J)(1), which provides that a person sentenced to death who “intends to file a petition” has an automatic right to counsel upon a showing that the person is indigent and accepts the appointment of counsel. However, this right “is limited to first and timely petitions.”²²

B. Timing and Substantive Requirements of a Petition for Post-Conviction Relief.

The timing requirements for filing a petition are strict and firmly enforced, resulting in a huge number of petitions being dismissed as untimely without being evaluated on their merits. Ohio law states that if the defendant filed a direct appeal from the conviction, the petition must be filed within 365 days of the date that the trial transcript is filed in the court of appeals.²³ Conversely, if a timely appeal was not filed, then the post-conviction petition is due 365 days after the date a timely notice of appeal was due to be filed.²⁴ This 365-day timing requirement is subject to only two narrow exceptions, described in R.C. § 2953.23(A).

i. The ‘retroactive right’ or ‘newly discovered evidence’ exception.

The first exception is split into two subparts. A trial court may entertain an untimely petition if either (a) the United States Supreme Court has recognized a new federal or state right that applies retroactively,²⁵ or, more commonly (b) if “the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner” bases the claim for relief.²⁶ Notably, the court will not look to the merits of the newly discovered evidence at this stage. Rather, the “key issue” is only whether the petitioner “knew or could have discovered” the evidence “within the time period provided.”²⁷

If the petitioner is able to satisfy one of those threshold conditions, he or she must also demonstrate that, but for a constitutional error at trial, no reasonable factfinder would have found

¹⁸ See, e.g., State v. Chubb, 10th Dist. Franklin No. 08AP-232, 2008-Ohio-4549, ¶ 12 (“[A]n indigent defendant has no state or federal constitutional right to appointment of counsel in post-conviction proceedings.”).

¹⁹ See State v. Conway, 10th Dist. Franklin No. 12AP-412, 2013-Ohio-3741.

²⁰ See State v. Moss, C.P. No. CR07-2673, 2008 Ohio Misc. LEXIS 5301 (May 22, 2008).

²¹ State v. Crowder, 60 Ohio St.3d 151, 573 N.E.2d 652 (1991).

²² State v. Waddy, 2016-Ohio-4911, 68 N.E.3d 381, ¶ 51 (10th Dist.).

²³ R.C. § 2953.21(A)(2).

²⁴ Id.

²⁵ R.C. § 2953.23(A)(1)(a).

²⁶ Id.

²⁷ State v. Thornton, 5th Dist. Muskingum No. CT2016-0041, 2017-Ohio-637, ¶ 52.

them guilty.²⁸ This ‘but for’ requirement operates as an absolute bar to untimely petitions by a defendant that pleaded guilty or no contest to the underlying charges. As the Ohio Eighth District Court of Appeals explained, a defendant that “pleaded guilty . . . can never demonstrate that, but for the error at trial, no reasonable trier of fact would have found him guilty.”²⁹ Further, the ‘but for’ requirement also limits the impact of important, if not necessarily determinative, newly discovered evidence, such as perjury or recantations.³⁰

ii. The ‘actual innocence’ by DNA evidence exception.

Second, a trial court may entertain an untimely petition when the results of DNA testing establish by clear and convincing evidence the petitioner’s “actual innocence” of a felony offense of which the petitioner was convicted or of an aggravating circumstance that is the basis of a death sentence.³¹

If the petition for post-conviction relief was not filed according to the 365-day rule, or if it does not explicitly fit either of the two exceptions, the petition will be dismissed for lack of jurisdiction, the merits of the petition will not be examined, and the trial court will not be required to issue findings of fact and conclusions of law.³² Dismissals of petitions as untimely are reviewed under a *de novo* standard of review.³³

C. *Res Judicata Precludes Post-Conviction Relief if the Issues or Evidence are Apparent From the Face of the Record.*

Ohio courts have acknowledged that the “most significant restriction on Ohio’s statutory procedure for post-conviction relief is the doctrine of *res judicata*,” which precludes post-conviction relief unless the petitioner presents sufficient cogent evidence outside the original record.³⁴ In other words, a petition for post-conviction relief cannot rely on any issue or evidence that was raised, or could have been raised, at trial or on direct appeal.³⁵

²⁸ R.C. § 2953.23(A)(1)(b). Alternatively, if the claim challenges a sentence of death, the petitioner must demonstrate that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence. *Id.*

²⁹ *State v. Ward*, 8th Dist. Cuyahoga No. 105001, 2017-Ohio-2990, ¶ 7.

³⁰ *See, e.g., State v. Mackey*, 2018-Ohio-516, 106 N.E.3d 241, ¶ 12 (2d Dist.) (“We have recognized that ‘evidence of perjury, without proof of knowledge on the part of the prosecution of that perjury, does not implicate constitutional rights and therefore, does not support a petition for post-conviction relief.’”) (citation omitted); *State v. Worthington*, 12th Dist. Brown No. CA2014-12-022, 2015-Ohio-3173, ¶ 47 (upholding trial court’s rejection of petition based on recantations because, *inter alia*, petitioner “failed to show by clear and convincing evidence that but for a constitutional error at trial, no reasonable factfinder would have found him guilty”); *State v. Elkins*, 9th Dist. Summit No. 21380, 2003-Ohio-4522, ¶ 11 (“[E]ven if we were to assume that Defendant was unavoidably prevented from discovering a key trial witness’ recantation, Defendant has failed to demonstrate that a constitutional error was committed at trial.”).

³¹ R.C. § 2953.23(A)(2).

³² *State ex rel. James v. Coyne*, 114 Ohio St. 3d 45, 2007 Ohio 2716, 867 N.E.2d 837.

³³ *State v. Conway*, 10th Dist. Franklin No. 17AP-90, 2019-Ohio-382, ¶ 8.

³⁴ *State v. Chubb*, 10th Dist. Franklin No. 08AP-232, 2008-Ohio-4549, ¶ 6.

³⁵ *Id.*

One quasi-exception to the absolute application of *res judicata* is when ineffective assistance of counsel at trial is claimed.³⁶ In that instance, the defendant is required to proffer evidence which, if believed, would establish not only that the trial counsel substantially violated at least one of a defense attorney’s essential duties to the client but also that the violation was prejudicial to the defendant.³⁷ Even so, trial counsel’s alleged violation still must not be apparent from the face of the record. For example, one court dismissed a petition alleging that the defendant’s attorney failed “to require the trial court to establish a factual basis for defendant’s plea,” because the court determined that the alleged failure could have been challenged at trial or on direct appeal.³⁸

D. *Only Timely and First Petitions Attacking a Death Sentence are Entitled to Discovery, and Only Upon “Good Cause Shown.”*

Ohio courts have “repeatedly held that there is no right to conduct discovery in post-conviction proceedings.”³⁹ However, in 2017, R.C. § 2953.21 was amended to authorize trial courts to grant post-conviction petitioners in capital cases discovery upon a showing of good cause.⁴⁰ Importantly, however, the discovery procedure set forth under R.C. § 2953.21(A)(1)(d) only applies to an initial, timely petition for post-conviction relief, and does not contemplate discovery for successive or untimely petitions.⁴¹ Further, even when discovery is permitted, the amount and scope is entirely subject to the trial judge’s discretion.⁴² A court’s denial of discovery requests is reviewed under an abuse of discretion standard.⁴³

E. *Only ‘Eligible’ Petitioners May Apply for State-Funded DNA Testing, and a Judge May Approve an Application Only Under Certain Circumstances.*

Ohio’s procedure for reviewing and accepting DNA-test applications is set forth in R.C. § 2953.71 through 2953.82, which provide that a person convicted of a felony may petition the trial court to order state-funded DNA testing, subject to several statutory factors. Most limiting is the rule that precludes offenders who pleaded guilty or no contest from applying.⁴⁴ If an “eligible” petitioner applies, only then may the trial court exercise its discretion in determining whether to approve or deny the application.⁴⁵

After an eligible person submits a DNA-test application, R.C. § 2953.73(D) states that the trial court “shall expedite its review” and “make the determination as to whether the application should be accepted or rejected.” For the court to approve the application, one of the following must apply:

³⁶ State v. Cole, 2 Ohio St.3d 112, 113, 443 N.E.2d 169 (1982).

³⁷ Id. at 114.

³⁸ State v. Chubb, 10th Dist. Franklin No. 08AP-232, 2008-Ohio-4549, ¶ 7.

³⁹ State v. Smith, 9th Dist. Lorain No. 04CA008546, 2005-Ohio-2571, ¶ 20. See also State v. Sowell, 8th Dist. Cuyahoga No. 108018, 2020-Ohio-2938, ¶ 120 (“The long-standing rule in Ohio has been that a convicted criminal defendant has no right to additional or new discovery during postconviction relief proceedings.”).

⁴⁰ R.C. § 2953.21(A)(1)(d). See also State v. Obermiller, 8th Dist. Cuyahoga No. 101456, 2019-Ohio-1234, ¶ 16.

⁴¹ State v. Conway, 10th Dist. Franklin No. 17AP-504, 2019-Ohio-2260, ¶ 39.

⁴² State v. Mack, 8th Dist. Cuyahoga No. 101261, 2018-Ohio-301, ¶ 21–22.

⁴³ State v. Sowell, 8th Dist. Cuyahoga No. 108018, 2020-Ohio-2938, ¶ 121.

⁴⁴ R.C. §2953.72(C)(2). See also State v. Littlepage, 1st Dist. Hamilton No. C-160918, 2018-Ohio-1382 (holding that the defendant was not “eligible” to apply because he pled guilty to aggravated murder).

⁴⁵ Id.

(1) (a) The applicant did not have a DNA test conducted at the trial stage, (b) the results would have been outcome determinative, and (c) either (i) DNA testing was not generally accepted; (ii) DNA test results were not generally admissible in evidence; or (iii) DNA testing was not yet available; or

(2) (a) the inmate did have a DNA test conducted at the trial stage, but the test was not definitive, and (b) the exclusion of the results was outcome determinative at trial.⁴⁶

In making its determination, the court must consider, among other things, the content of the application, supporting affidavits, the response submitted by the prosecuting attorney and/or the attorney general, and the complete record of the case, including the trial transcript.⁴⁷ The trial court is not required to hold an evidentiary hearing in making its determination.⁴⁸

Once the determination is made, the court must explain its “reasons for the acceptance or rejection” of the application, but is not required to file findings of fact or conclusions of law.⁴⁹ Denial of applications by petitioners sentenced to death may only be appealed to the Ohio Supreme Court.⁵⁰ The trial court’s ruling on an eligible inmate’s application for DNA testing is reviewed under an abuse of discretion standard.⁵¹

Notably, the current statutory scheme provides that a convicted person may apply to have only their own DNA compared against biological evidence recovered from the victim or the crime scene, and only for the purpose of scientifically precluding the offender as a “contributor of biological material from the crime scene or victim in question.”⁵²

II. Current Issues.

While case law on Ohio’s postconviction review statutes is vast, there are several unresolved issues that, if addressed, would make the entire process more effective and fair for all parties involved.

A. Criminal Rule 33.

One major source of problems is the application of Criminal Rule 33 by the courts. Under Criminal Rule 33(B), a Motion for a New Trial may be filed more than 120 days after the verdict when “it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which he must rely.” For nearly two decades, the courts did not impose a timing requirement for requests for leave to file motions for a new trial. However, beginning in 1997, the Eighth District Court of Appeals started asking whether the motion for leave to file a motion for a new trial was requested within a “reasonable” time

⁴⁶ R.C. § 2953.74(B).

⁴⁷ R.C. § 2953.73(D).

⁴⁸ Id.

⁴⁹ Id.; see also State v. Price, 165 Ohio App. 3d 198, 2006 Ohio 180, 845 N.E.2d 559 (2006).

⁵⁰ R.C. § 2953.73(E)(1).

⁵¹ State v. Wilson, 5th Dist. Delaware No. 18CAA040034, 2018-Ohio-5166, ¶ 19–20.

⁵² R.C. § 2953.71(G). See also R.C. § 2953.74(C).

after discovering new evidence.⁵³ The adoption of a standard with so much judicial discretion leads to uncertainty for defendants seeking a new trial. This also leads to motions being denied without consideration of the merits of the case. A defendant can raise viable arguments in their motion, but these will be ignored due to a judicially-imposed procedural requirement.

To limit these problems, the Task Force on Conviction Integrity and Postconviction Review would need to propose to the legislature that Criminal Rule 33 be amended to make it absolutely clear that there is no timing requirement for a motion for a new trial. In the alternative, if the task force determines that a specific time limit is necessary, they should propose that the rule be amended to make that explicit in the rule. This would allow defendants more certainty when seeking postconviction review.

One additional point to mention about the timing requirement imposed by courts is that it results in defense attorneys filing motions for a new trial before they have had the opportunity to gather and review all of the evidence. If an attorney is required to file a motion for a new trial before they have reviewed all of the evidence out of fear that a judge will find the delay in filing unreasonable, this results in motions asserting claims that may not have all been properly vetted. This could result in courts denying relief to those who are truly innocent simply because their attorney could not yet conduct a full investigation of the facts.

Another unresolved issue is that Criminal Rule 33 does not include “shifting science” as an explicit basis for a new trial motion. “Shifting science” is also referred to as “junk science” or “false evidence,” and these terms all refer to evidence that has, since the time of the defendant’s trial, undergone significant technological improvements to the point where the efficacy or reliability of that evidence is put into question.

Due to advances in science, DNA technology has become one avenue for defendants to prove their innocence in crimes where DNA evidence was available and collected. This new advancement puts strain on the criminal justice system’s belief in finality of judgments.

However, other scientific methods that were once prevalent in criminal prosecutions have come under scrutiny. Methods such as hair microscopy, fire research, ballistics, and blood spatter analysis have all been attacked as potentially unreliable. Often times, these methods were simply given too much weight at trial.

In order to address advances in technology, Criminal Rule 33 would need to be amended to allow defendants more avenues to challenge these types of evidence. Presently, DNA evidence is used the most by defendants to challenge convictions, and judges tend to give the most weight to this evidence. For example, one post-conviction petitioner requested that gunshot residue testing be done on a shirt in the murder victim’s apartment, but this request was denied because he did not overcome his burden of providing sufficient operative facts demonstrating substantive grounds for relief.⁵⁴ While this testing may not have found anything of value, the petitioner should be able to test evidence, at least at their own expense. Other states have already made

⁵³ State v. Stansberry, 8th Dist. Cuyahoga No. 71004, 1997 WL 626063, *3 (Oct. 9, 1997).

⁵⁴ State v. Tolliver, 10 Dist. Franklin No. 04AP-591, 2005-Ohio-989.

changes to their bases for postconviction review and allow defendants more avenues to challenge their convictions.

Overall, the structure of Criminal Rule 33 and how it has been interpreted hurts defendants with claims of actual innocence. Because a freestanding claim of actual innocence is not itself a cognizable claim for postconviction relief, defendants must rely on evidence to prove their innocence and make claims.⁵⁵

Lastly, the standard for granting a new trial under Criminal Rule 33 should be reviewed. When a judge is evaluating a postconviction petitioner's motion for a new trial, the judge determines whether there is a "strong probability" that the evidence would lead to a different result if a new trial were granted. This is a big hurdle for postconviction petitioners. Most other states use "reasonable probability" or "preponderance of the evidence" as their standards of proof. Both of these standards used by other states are easier to meet and give more leeway to the postconviction petitioner. This means that more petitioners have the chance to present their evidence to the court again if they believe the wrong outcome was reached the first time.

B. Expanded Access to Evidence for Testing.

For petitioners seeking postconviction review, access to evidence for testing can be crucial to proving their claims of innocence. In regard to DNA testing, Ohio has specific procedures in place under R.C. § 2953.71 through R.C. 2953.81. The scenarios under which a petitioner may apply for access to DNA testing are limited. A convicted person may only apply to have their own DNA compared against evidence recovered from the victim or the crime scene, and only for the purpose of scientifically precluding the offender as a "contributor of biological material from the crime scene or victim in question."⁵⁶ This severely limits the petitioner's access to this biological evidence, which may prove innocence.

While Ohio law has specific procedures in place for postconviction DNA testing, it lacks the same structure for other types of evidence, such as autopsy slides, hair samples, and fingerprints. Even providing access to this evidence and requiring the petitioner to bear their own expenses could result in positive changes in the postconviction review process. While testing outside of that prescribed by statute is not prohibited, there lacks a formal mechanism for petitioners to follow, and therefore, courts are left to their own discretion, which often results in a denial.

While Ohio's law on postconviction review is vast, there are still considerable gaps in the case law and statutory scheme that, if addressed, could lead to a more comprehensive and fair postconviction review process. Changes to both Criminal Rule 33 and Ohio statutes could result in more access to evidence and testing for those attacking their convictions.

C. Pending and Recently Decided Cases.

Recently, the Supreme Court of Ohio accepted a case for review that deals with postconviction review in the state. In State v. Bethel, the defendant's first proposition of law is as follows: A

⁵⁵ State v. Willis, 2016-Ohio-335, 58 N.E.3d 515, ¶ 14 (6th Dist.).

⁵⁶ R.C. § 2953.74(G).

defendant's right to due process of law is violated when the State suppresses material and exculpatory evidence in contravention of Brady v. Maryland⁵⁷ and Bethel is entitled to a new trial on this basis.⁵⁸ The second proposition of law proposed by the defendant is as follows: Ohio law regarding postconviction does not provide adequate relief when a defendant's rights are violated in contravention of Brady v. Maryland, because it unconstitutionally shifts the burden to the defendant. These are both critically important issues for the Court to consider, so it will be interesting to see the final decision in this case.

In a trio of recently decided cases by the Supreme Court of Ohio, the same proposition of law was proposed by the three separate defendants.⁵⁹ In a decision written by Justice DeWine, the Court held that a trial court need not consider an inmate's present or future ability to pay court costs, or determine whether any exemption statutes prohibit collection from an inmate's account, when ruling on a post-conviction motion to vacate, stay, or remit court costs. This holding was due in part to that fact that the statutory scheme in question did not impose any obligation on the trial court to consider these circumstances.⁶⁰ The full opinion is written in Taylor, with the other two cases, Sibrian and Dunson, being reversed using Taylor as controlling precedent.

⁵⁷ 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

⁵⁸ State v. Bethel, 2020-Ohio-0648 (appeal accepted).

⁵⁹ State v. Taylor, Slip Opinion No. 2020-Ohio-3514; State v. Sibrian, Slip Opinion No. 2020-Ohio-3876; State v. Dunson, Slip Opinion No. 2020-Ohio-8365.

⁶⁰ State v. Taylor, Slip Opinion No. 2020-Ohio-3514.