

Supreme Court of Virginia

Proposed Rule 3A:15.1

The Supreme Court of Virginia is considering the adoption of the following Rule of Court relative to cases in which the sentence of death has been imposed, and the Court invites the comments of interested persons. Comments will be received in the office of Robert N. Baldwin, Executive Secretary of the Supreme Court of Virginia, Third Floor, Supreme Court Building, 100 North Ninth Street, Richmond, Virginia 23219, on or before November 13, 2000.

Rule 3A:15.1 Petition for new trial or other relief in cases in which the sentence of death has been imposed.

(a) Notwithstanding the provisions of Rule 1:1 and 3A:15(b), a prisoner under sentence of death may petition the Supreme Court to set aside the judgment of guilt and sentence of death on the basis that newly discovered evidence, unknown to the prisoner or trial counsel at the time of trial, establishes a substantial likelihood that the prisoner is actually innocent of the crime for which the death sentence was imposed. The petition must allege with particularity the newly discovered evidence, together with a complete explanation of the reasons the evidence was not previously discovered. The petition must also describe with particularity how the newly discovered evidence establishes the substantial likelihood of the prisoner's actual innocence. The petition must be verified by oath by the prisoner and counsel. A copy of the petition must be served on the Attorney General before or contemporaneously with filing such petition in the Supreme Court. The Supreme Court may issue a stay of execution pending proceedings under this Rule.

(b) Upon review of the petition and any pleadings filed by the Attorney General, the Supreme Court may: (1) refer the petition to the circuit court that entered the judgment of conviction and imposition of the death penalty for further proceedings as directed in the order of reference; (2) dismiss the petition if the Supreme Court determines that the petition fails to comply with the requirements of this Rule or that the allegations of the petition do not establish a substantial likelihood of actual innocence, or the petition otherwise fails to state a claim under this Rule.

(c) If the Supreme Court refers the petition, the findings of the circuit court shall be certified to the Supreme Court. Upon consideration of the certified findings, if the Supreme Court determines that the newly discovered evidence establishes a substantial likelihood that the prisoner is actually innocent of the crime for which the death penalty was imposed, the Supreme Court may vacate the conviction, grant a new trial or sentencing proceeding, or grant such other relief as may be appropriate.

(d) The Commonwealth may file pleadings and, if the petition is referred, present evidence, in any proceeding under this Rule.

(e) Except by permission of a justice of this Court, no petition pursuant to this rule or a response thereto shall exceed 50 typed or 36 printed pages. Page limits under this Rule do not include appendices. All petitions, responses, replies, motions and other papers filed pursuant to this Rule shall conform to the provisions of Rule 5:6(a).