WEST VIRGINIA CODE: §53-4A-7

§53-4A-7. Denial of relief; hearings; evidence; record; judgment.

(a) If the petition, affidavits, exhibits, records and other documentary evidence attached thereto, or the return or other pleadings, or the record in the proceedings which resulted in the conviction and sentence, or the record or records in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or the record or records in any other proceeding or proceedings instituted by the petitioner to secure relief from his conviction or sentence, show to the satisfaction of the court that the petitioner is entitled to no relief, or that the contention or contentions and grounds (in fact or law) advanced have been previously and finally adjudicated or waived, the court shall enter an order denying the relief sought. If it appears to the court from said petition, affidavits, exhibits, records and other documentary evidence attached thereto, or the return or other pleadings, or any such record or records referred to above, that there is probable cause to believe that the petitioner may be entitled to some relief and that the contention or contentions and grounds (in fact or law) advanced have not been previously and finally adjudicated or waived, the court shall promptly hold a hearing and/or take evidence on the contention or contentions and grounds (in fact or law) advanced, and the court shall pass upon all issues of fact without a jury. The court may also provide for one or more hearings to be held and/or evidence to be taken in any other county or counties in the state.

(b) A record of all proceedings under this article and all hearings and evidence shall be made and kept. The evidentiary depositions of witnesses taken by either the petitioner or the state, on reasonable notice to the other, may be read as evidence. The court may receive proof by proper oral testimony or other proper evidence. All of the evidence shall be made a part of the record. When a hearing is held and/or evidence is taken by a judge of a circuit court or statutory court in vacation, a transcript of the proceedings shall be signed by the judge and certified to the clerk of the court in which the judgment is to be rendered, and be entered by him among the records of that court. A record of all proceedings in the Supreme Court of Appeals shall be entered among the records of such court.

(c) When the court determines to deny or grant relief, as the case may be, the court shall enter an appropriate order with respect to the conviction or sentence in the former criminal proceedings and such supplementary matters as are deemed necessary and proper to the findings in the case, including, but not limited to, remand, the vacating or setting aside of the plea, conviction and sentence, rearraignment, retrial, custody, bail, discharge, correction of sentence and resentencing, or other matters which may be necessary and proper. In any order entered in accordance with the provisions of this section, the court shall make specific findings of fact and conclusions of law relating to each contention or contentions and grounds (in fact or law) advanced, shall clearly state the grounds upon which the matter was determined, and shall state whether a federal and/or state right was presented and decided. Any order entered in accordance with the provisions of this section shall constitute a final

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judgment, and, unless reversed, shall be conclusive.

(d) Notwithstanding any provision of law to the contrary, whenever a conviction from a crime of violence is reversed or a sentence of incarceration for such an offence is vacated pursuant to the provisions of this article, the prosecuting attorney of the county of prosecution shall, prior to a retrial or entering into any plea negotiations or sentence negotiations to resolve the matter, notify the victim or if the offence was a homicide, the next of kin of the victim, by United States mail sent to the last known address of said person, if his or her name and address has previously been provided to the prosecuting attorney.

WV Legislature