

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971

ENROLLED

SENATE BILL NO. 266

(By Mr. BROTHERTON)

PASSED FEBRUARY 20, 1971

In Effect NINETY DAYS FROM Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 2-26-71

266

ENROLLED

Senate Bill No. 266

(By MR. BROTHERTON)

[Passed February 20, 1971; in effect ninety days from passage]

AN ACT to amend and reenact section three, article four-a, chapter fifty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to post-conviction review by a writ of habeas corpus; and providing that the court with whose clerk a petition for a writ of habeas corpus for such purpose is filed may examine and review the record or records which are part of the official court files of any court within the same judicial circuit as the court with whose clerk such petition is filed.

Be it enacted by the Legislature of West Virginia:

That section three, article four-a, chapter fifty-three of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 4A. POST-CONVICTION HABEAS CORPUS.

§53-4A-3. Refusal of writ; granting of writ; direction of writ; how writ made returnable; duties of clerk, attorney general and prosecuting attorney.

1 (a) If the petition, affidavits, exhibits, records and other
2 documentary evidence attached thereto, or the record in
3 the proceedings which resulted in the conviction and
4 sentence, or the record or records in a proceeding or
5 proceedings on a prior petition or petitions filed under
6 the provisions of this article, or the record or records
7 in any other proceeding or proceedings instituted by the
8 petitioner to secure relief from his conviction or sen-
9 tence (if any such record or records are part of the
10 official court files of the court with whose clerk the
11 petition is filed or are part of the official court files of
12 any other court within the same judicial circuit as the
13 court with whose clerk such petition is filed and are thus
14 available for examination and review by such court)
15 show to the satisfaction of the court that the petitioner

16 is entitled to no relief, or that the contention or con-
17 tentions and grounds (in fact or law) advanced have been
18 previously and finally adjudicated or waived, the court
19 shall by order entered of record refuse to grant a writ,
20 and such refusal shall constitute a final judgment. If it
21 appears to such court from said petition, affidavits, ex-
22 hibits, records and other documentary evidence, or any
23 such available record or records referred to above, that
24 there is probable cause to believe that the petitioner may
25 be entitled to some relief, and that the contention or
26 contentions and grounds (in fact or law) advanced have
27 not been previously and finally adjudicated or waived,
28 the court shall forthwith grant a writ, directed to and
29 returnable as provided in subsection (b) hereof. If any
30 such record or records referred to above are not a part
31 of the official court files of the court with whose clerk
32 the petition is filed or are not part of the official court
33 files of any other court within the same judicial circuit
34 as the court with whose clerk such petition is filed and
35 are thus not available for examination and review by
36 such court, the determination as to whether to refuse

37 or grant the writ shall be made on the basis of the pe-
38 tition, affidavits, exhibits, records and other documentary
39 evidence attached thereto.

40 (b) Any writ granted in accordance with the provi-
41 sions of this article shall be directed to the person under
42 whose supervision the petitioner is incarcerated. Whether
43 the writ is granted by the supreme court of appeals, a
44 circuit court, or any statutory court in this state, it shall,
45 in the discretion of the court, be returnable before (i)
46 the court granting it, (ii) the circuit court, or a statutory
47 court, of the county wherein the petitioner is incarce-
48 rated, or (iii) the circuit court, or the statutory court,
49 in which, as the case may be, the petitioner was con-
50 victed and sentenced.

51 (c) The clerk of the court to which a writ granted in
52 accordance with the provisions of this article is made
53 returnable shall promptly bring the petition and any
54 affidavits, exhibits, records and other documentary evi-
55 dence attached thereto, and the writ to the attention of
56 the court if the writ was granted by some other court,
57 and in every case deliver a copy of such petition and

58 any affidavits, exhibits, records and other documentary
59 evidence attached thereto and the writ to the prosecuting
60 attorney of the county, or the attorney general if the writ
61 is returnable before the supreme court of appeals. The
62 prosecuting attorney or the attorney general, as the case
63 may be, shall represent the state in all cases arising under
64 the provisions of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James H. Beale
Chairman Senate Committee

Phyllis Rutledge
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Howard Meyer
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Edmont
President of the Senate

Ivor P. Boarsky
Speaker House of Delegates

The within approved this the 25th
day of February, 1971.

Archa Shaver, Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 2/22/71

Time 2:38 p.m.

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA
FEB 25 6 54 AM '71

RECEIVED