

AN ACT

ENTITLED, An Act to revise certain provisions regarding habeas corpus.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 21-27-3.1 be amended to read as follows:

21-27-3.1. Proceedings under this chapter cannot be maintained while an appeal from the applicant's conviction and sentence is pending or during the time within which such appeal may be perfected.

Section 2. That § 21-27-3.2 be repealed.

Section 3. That chapter 21-27 be amended by adding thereto a NEW SECTION to read as follows:

A two-year statute of limitation applies to all applications for relief under this chapter. This limitation period shall run from the latest of:

- (1) The date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (2) The date on which the impediment to filing an application created by state action in violation of the constitution or laws of the United States or of this state is removed, if such impediment prevented the applicant from filing;
- (3) The date on which the constitutional right asserted in the application was initially recognized by the Supreme Court of the United States or the Supreme Court of this state if the right has both been newly recognized and is retroactively applicable to cases on collateral review; or
- (4) The date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

Section 4. That § 21-27-4 be amended to read as follows:

21-27-4. If a person has been committed, detained, imprisoned, or restrained of liberty, under any color or pretense whatever, civil or criminal, and if upon application made in good faith to the court or judge thereof, having jurisdiction, for a writ of habeas corpus, it is satisfactorily shown that the person is without means to prosecute the proceeding, the court or judge shall, if the judge finds that such appointment is necessary to ensure a full, fair, and impartial proceeding, appoint counsel for the indigent person pursuant to chapter 23A-40. Such counsel fees or expenses shall be a charge against and be paid by the county from which the person was committed, or for which the person is held as determined by the court. Payment of all such fees or expenses shall be made only upon written order of the court or judge issuing the writ. The ineffectiveness or incompetence of counsel, whether retained or appointed, during any collateral post-conviction proceeding is not grounds for relief under this chapter.

Section 5. That chapter 21-27 be amended by adding thereto a NEW SECTION to read as follows:

A claim presented in a second or subsequent habeas corpus application under this chapter that was presented in a prior application under this chapter or otherwise to the courts of this state by the same applicant shall be dismissed.

Before a second or subsequent application for a writ of habeas corpus may be filed, the applicant shall move in the circuit court of appropriate jurisdiction for an order authorizing the applicant to file the application.

The assigned judge shall enter an order denying leave to file a second or successive application for a writ of habeas corpus unless:

- (1) The applicant identifies newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the applicant guilty of the underlying

offense; or

- (2) The application raises a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court and the South Dakota Supreme Court, that was previously unavailable. The grant or denial of an authorization by the circuit court to file a second or subsequent application shall not be appealable.

Section 6. That § 21-27-16.1 be repealed.

An Act to revise certain provisions regarding habeas corpus.

I certify that the attached Act
originated in the

SENATE as Bill No. 42

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 42

File No. _____

Chapter No. _____

Received at this Executive Office
this ____ day of _____ ,

20__ at _____ M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State