

INFORMATION AND INSTRUCTIONS  
FOR FILING A MOTION TO VACATE SENTENCE  
PURSUANT TO 28 U.S.C. § 2255  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

You should follow these instructions carefully. The failure to do so may result in your motion not being filed and considered by the court, or at least being delayed. If you add additional pages, be sure to identify what is being continued or the number of the additional ground(s).

1. The attached form is designed to assist you in preparation of a Motion to Vacate, Set Aside, or Correct Sentence. In order for your motion to be considered by the district court, it must be typewritten or legibly handwritten. All questions must be answered concisely in the appropriate spaces on the form. The motion must be signed and include a declaration under penalty of perjury. You are cautioned that any false statement of material fact may serve as basis for prosecution and conviction for perjury. You should, therefore, exercise care to assure that all answers are true, correct and complete.

2. **Extra pages are not permitted**, except that up to two additional pages (8½" by 11") may be attached, if necessary, to complete your answers to question #17. A copy of an appellate court opinion or order specifically concerning your conviction may also be attached. Citation of legal authority is not necessary and no briefs or argument are to be submitted unless specifically requested by an order of the court.

3. In your motion, you should raise all available grounds for relief. If you fail to do so, you may be barred from presenting additional grounds at a later date. Rule 9 of the Supreme Court Rules governing §2255 proceedings provides that, before presenting a second or successive motion, you must obtain an order from the court of appeals authorizing the district court to consider the second or successive motion.

4. The following list of the most frequently raised grounds for relief in post-conviction proceedings is furnished for your information only. This list is not complete and you may raise any other grounds for relief you may have.

- (a) denial of effective assistance of counsel;
- (b) denial of right of appeal;
- (c) conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge or the consequences of the plea;
- (d) conviction obtained by use of coerced confession;
- (e) conviction obtained by use of evidence obtained pursuant to an unlawful search and seizure;
- (f) conviction obtained by use of evidence obtained pursuant to an unlawful arrest;
- (g) conviction obtained by a violation of privilege against self-incrimination;
- (h) conviction obtained by the unlawful failure of the prosecution to disclose evidence favorable to the defendant;
- (i) conviction obtained by a violation of the protection against double jeopardy;
- (j) conviction obtained by the action of a grand or petit jury which was unconstitutionally selected and impaneled;
- (k) conviction obtained by the knowing use of perjured testimony;

- (l) denial of compulsory process to obtain witnesses favorable to the defendant;
- (m) sentence imposed is cruel and unusual punishment;
- (n) conviction obtained by the use of evidence obtained pursuant to an unlawful lineup or identification procedure;
- (o) denial of speedy trial; and
- (p) conviction obtained as a result of a plea of guilty or trial while the defendant was mentally incompetent.

5. On a single motion, you may challenge the judgments of only one court. If you seek to challenge the judgments entered by different judges, either in the same or different districts, you must file separate motions as to each judgment in the appropriate district.

6. When your motion is fully completed, the original and three copies must be mailed to the clerk of the United States District Court, whose address is:

Clerk, U.S. District Court  
District of Nevada  
400 South Virginia Street  
Room 301  
Reno NV 89501

OR

Clerk, U.S. District Court  
District of Nevada  
333 Las Vegas Boulevard South  
Room 1334  
Las Vegas NV 89101

7. No filing fee is required. However, if you do not have the necessary funds for transcripts, counsel, appeal or other costs associated with a motion of this type, you may request permission to proceed in forma pauperis. To do this, you must execute the attached motion and declaration setting forth information regarding your inability to pay costs and fees. You must also have an authorized officer of the penal institution complete the certificate indicating the amount of money or securities on deposit to your credit in any account in the institution.

8. **Motions which do not conform to these instructions will not be filed**, and will be returned by the clerk with a notation as to the deficiency.

9. If you wish to have a file-stamped copy of any filed document returned to you, you must furnish one additional copy of the document to the clerk with your filing.

10. Once the respondent has appeared in the case, you need not serve the respondent copies of documents you file in the case. Any document you file after the respondent has appeared will be considered served on the respondent when it appears on the district court docket.

11. You must immediately notify the clerk in writing of any change in your mailing address. (See LR IA 3-1.)

12. The judges of this court, the clerk of court, deputy clerks and other court staff are officers of the court, and as such they are prohibited from giving legal advice. Questions of this nature should be directed to an attorney who is not a member of the court's staff.



- 5) Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion?  
 Yes  No
- 6) Name of the judge who imposed sentence under attack in this motion: \_\_\_\_\_  
 \_\_\_\_\_
- 7) Nature of the offense involved (all counts): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 8) What was your plea? **(check one)**  
 a) Not Guilty  b) Guilty  c) Nolo Contendere
- 9) If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 10) If you were found guilty after a plea of not guilty, was the finding made by: **(check one)**  
 a) A jury  b) A judge without a jury
- 11) Did you testify at trial (if any)? Yes  No
- 12) Did you **appeal** from the judgment of conviction? Yes  No
- 13) If you did appeal, answer the following:  
 a) State the name and location of the court where the appeal was filed, the result, the case number and the date of the court's decision (or attach a copy of the court's opinion or order):  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 b) State the issues raised: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 14) If you did not appeal, explain briefly why you did not: \_\_\_\_\_

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15) Other than a direct appeal from the judgment of conviction and sentence, have you previously filed in any federal court any petitions, applications or motions with respect to the judgment under attack in this motion? Yes  No

16) If your answer to question 15 was “Yes”, give the following information:

a) As to the first petition, application or motion:

1) Name of court: \_\_\_\_\_

2) Nature of proceeding: \_\_\_\_\_

3) Issues raised: \_\_\_\_\_

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4) Did you receive an evidentiary hearing on your petition, application or motion? Yes  No

5) Result: \_\_\_\_\_

6) Date of result: \_\_\_\_\_

7) Did you appeal the result to the federal appellate court having jurisdiction? Yes  No  If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court’s decision (or attach a copy of the court’s opinion or order): \_\_\_\_\_

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8) If you did not appeal, briefly explain why you did not:

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b) As to any second petition, application or motion, give the following information:

- 1) Name of court: \_\_\_\_\_
- 2) Nature of proceeding: \_\_\_\_\_
- 3) Issues raised: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 4) Did you receive an evidentiary hearing on your petition, application or motion? Yes  No
- 5) Result: \_\_\_\_\_
- 6) Date of result: \_\_\_\_\_
- 7) Did you appeal the result to the federal appellate court having jurisdiction? Yes  No  If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 8) If you did not appeal, briefly explain why you did not:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

c) As to any third petition, application or motion, give the following information:

- 1) Name of court: \_\_\_\_\_
- 2) Nature of proceeding: \_\_\_\_\_
- 3) Issues raised: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 4) Did you receive an evidentiary hearing on your petition, application or motion? Yes  No
- 5) Result: \_\_\_\_\_
- 6) Date of result: \_\_\_\_\_

7) Did you appeal the result to the federal appellate court having jurisdiction? Yes  No  If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8) If you did not appeal, briefly explain why you did not:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17) State **concisely** every ground on which you claim that you are being held unlawfully. Summarize **briefly** the **facts** supporting each ground. If necessary, you may attach up to two extra pages (8 1/2" x 11") stating additional grounds or supporting facts. You should raise in this motion all available grounds for relief which relate to the conviction under attack.

a) Ground One: \_\_\_\_\_  
\_\_\_\_\_

1) Supporting facts (tell your story briefly without citing legal authority or argument):

2) Has this ground been previously presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. § 2255, or any other petition, motion or application?  
Yes  No

a) If your answer is "Yes", indicate which type of proceeding you used to present this ground: \_\_\_\_\_

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b) If your answer is “No”, state briefly your reason(s) for not presenting this ground:\_\_\_\_\_

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b) Ground Two:\_\_\_\_\_

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1) Supporting facts (tell your story briefly without citing legal authority or argument):

2) Has this ground been previously presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. §2255, or any other petition, motion or application?

Yes  No

a) If your answer is “Yes”, indicate which type of proceeding you used to present this ground:\_\_\_\_\_

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b) If your answer is “No”, state briefly your reason(s) for not presenting this ground:\_\_\_\_\_

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c) Ground Three: \_\_\_\_\_

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1) Supporting facts (tell your story briefly without citing legal authority or argument):

2) Has this ground been previously presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. §2255, or any other petition, motion or application? Yes  No

a) If your answer is “Yes”, indicate which type of proceeding you used to present this ground: \_\_\_\_\_  
\_\_\_\_\_

b) If your answer is “No”, state briefly your reason(s) for not presenting this ground: \_\_\_\_\_  
\_\_\_\_\_

d) Ground Four: \_\_\_\_\_  
\_\_\_\_\_

1) Supporting facts (tell your story briefly without citing legal authority or argument):

2) Has this ground been previously presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. §2255, or any other petition, motion or application? Yes  No

a) If your answer is “Yes”, indicate which type of proceeding you used to present this ground: \_\_\_\_\_  
\_\_\_\_\_

b) If your answer is “No”, state briefly your reason(s) for not presenting this ground: \_\_\_\_\_  
\_\_\_\_\_

18) Do you have any petition, application, motion or appeal now pending in any court regarding the conviction under attack? Yes  No  If “Yes”, state the name of the court and the nature of the proceeding: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19) Were you represented by an attorney at any time during the course of your arraignment and plea, trial (if any), sentencing, appeal (if any), or during the preparation, presentation or consideration of any petitions, motions or applications which you filed with respect to this conviction? Yes  No  If “Yes”, state the name(s) and address (es) of any such attorney(s), the proceedings in which you were so represented and whether said attorney(s) was/were of your own choosing or if appointed by the court: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Wherefore, movant prays that the court grant him such relief to which he may be entitled in this proceeding.

\_\_\_\_\_

Signature of Attorney (if any)

Signature of Movant

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Attorney's full address and telephone number.)

**DECLARATION UNDER PENALTY OF PERJURY**

The undersigned declares under penalty of perjury that he is the movant in the above action, that he has read the above pleading and that the information contained therein is true and correct.

28 U.S.C. § 1746. 18 U.S.C. § 1621.

Executed at \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_.  
(Location) (Date)

\_\_\_\_\_  
(Signature)