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Inmates trying to open a new door

Filings increasing for last-ditch option

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John Harchar spent seven years in prison, fighting his robbery conviction all the way.

But it was only when he applied for post-conviction relief that his legal struggle gained traction. The 46-year-old Edison man was able to prove his original trial attorney failed to provide the jury with a photo that might have exonerated him. The photo showed that, unlike the long-haired perpetrator, Harchar had a short cut only weeks before the crime.

The long shot worked: His conviction was thrown out.

More New Jersey inmates than ever are asking the courts to take a fresh look at their cases through post-conviction relief, a last-ditch legal instrument available only after all appeals have been exhausted.

The option is often confused with the appeals process, but it's subtly different in a way that can sometimes be significant. Unlike appeals, which are extensions of the original criminal case, a relief filing is a new case. It's a blank slate of sorts, allowing certain matters that can't be reviewed on appeal to be put back in play.

And even though it offers convicts just the smallest crack in the prison door -- success rates dropped to 7 percent in 2005, down from 11.4 percent in 1991, according to the Attorney General's Office -- more of them are trying to push through. Filings jumped 46 percent across the state over the past four years, up to 762 in the state fiscal year that ended June 30, according to court statistics.

Since 1992, when a state Supreme Court ruling required attorneys working on these cases to raise whatever claims their clients want, no matter how frivolous, the number of claims have more than doubled.

Critics of the state's system say that has put stress on already overloaded courts, since the filings often require fresh testimony. And the strain is only going to grow: Legal experts expect post-conviction relief filings to climb as mandatory minimum terms and other get-tough-on-crime measures increase the length of prison sentences.

Longer stays mean inmates "have more time to do more applications," Morris County Assistant Prosecutor John McNamara Jr. said.

Defendants "are getting long and harsh sentences," said John Whipple, a vice president of the Association of Criminal Defense Lawyers of New Jersey. "The more the Legislature takes away discretion of judges, you're always going to see an increase in PCRs."

Ten years ago, half of the state's prisoners were serving mandatory minimum sentences, terms that must be served prior to parole eligibility, according to the Department of Corrections. This year, 65 percent of inmates are serving them.

The state's No Early Release Act is also resulting in longer stays, corrections spokesman Matthew Schuman said.

The law, which went into effect in 1997, requires violent offenders to serve at least 85 percent of their sentences before becoming eligible for parole. Nearly 6,000 of the state's 26,746 prisoners are subject to the terms of No Early Release, and half of those inmates are serving sentences of more than nine years. Plus, since length of stay isn't measured until inmates are released, the average time of sentences served is expected only to increase as more No Early Release offenders get out, Schuman said.

As it is, the median stay for convicts paroled or completing their sentencing is steadily increasing, according to DOC statistics. In 1997, the median stay was 21 months. By 2005, it had crept up to 25 months.

So defendants have plenty of time to file for post-conviction relief and virtually nothing to lose by doing so, legal experts say.

Most of the post-conviction relief filings have "no legal substance whatsoever" and eat up court time, said Bergen County Prosecutor John Molinelli, who heads the state association of county prosecutors.

Middlesex County Assistant Prosecutor Simon Rosenbach summed up the frustration of many law-enforcement officials in May, when he asked the state Supreme Court to overhaul the PCR process:

"The number of applications has skyrocketed, the length of time that is required for disposition has skyrocketed, the number of lawyers who must defend their baselessly impugned reputations and who are inconvenienced by testifying has skyrocketed, and the amount of courtroom time that is required for resolution of these cases has skyrocketed," he wrote. "The only number that has not skyrocketed is the number of petitions granted; that number has plummeted. Obviously, we need to re-create this system."

Under the current system, an inmate has five years following conviction to file for post-conviction relief, after exhausting his direct appeals. Rosenbach argued the time frame should be shortened, and since the most common claim is that a mistake by a defense attorney denied an inmate his rights, that argument should be heard by a judge while memories are still fresh, and reviewed as part of the direct appeal process.

In July, the Supreme Court essentially upheld the process, requiring lawyers to include all claims by a defendant, at a minimum by referencing them, so the judge hearing the relief filing may consider them.

"We're the last set of eyes to make sure everything was done fairly," said Ingrid Yurchenko, acting deputy public defender in charge of the office's post-conviction relief unit. It was started in 2001 to deal with the backlogged caseload and now has 11 attorneys.

Anne Picker, a longtime assistant deputy public defender, said sometimes the office gets verdicts thrown out, sometimes sentences are reduced, and sometimes it's just a matter of getting the defendant jail credit he was entitled to.

"In many cases, nothing did go wrong, and the PCR is dismissed," she said.

Picker got a judge to reduce a Cape May County man's sentence for stealing a pricey vacuum cleaner from eight years to 18 months by proving the Kenmore retailed for only \$249 -- making his offense a lower-level crime. By the time he won his case, the man had served four years in prison, she said.

The state Office of Public Defender, which handles the bulk of the cases statewide, has also seen an increase in immigrants trying to get their convictions reversed to avoid deportation. That stems from a federal law passed a decade ago requiring the deportation of non-citizens for certain offenses, and a crackdown by U.S. Immigration and Customs Enforcement.

Some foreign-born felons sentenced to probation or short jail terms are now realizing they could be sent back to their home country, office spokesman Thomas Rosenthal said.

"This is just starting to show up," he said.

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