

Effective 5/5/2021

78B-9-106 Preclusion of relief -- Exception.

- (1) A petitioner is not eligible for relief under this chapter upon any ground that:
 - (a) may still be raised on direct appeal or by a post-trial motion;
 - (b) was raised or addressed in the trial court, at trial, or on appeal;
 - (c) could have been but was not raised in the trial court, at trial, or on appeal;
 - (d) was raised or addressed in any previous request for post-conviction relief or could have been, but was not, raised in a previous request for postconviction relief; or
 - (e) is barred by the limitation period established in Section 78B-9-107.
- (2)
 - (a) The state may raise any of the procedural bars or time bar at any time, including during an appeal from an order granting or denying postconviction relief, unless the court determines that the state should have raised the time bar or procedural bar at an earlier time.
 - (b) Any court may raise a procedural bar or time bar on the court's own motion, provided that the court gives the parties notice and an opportunity to be heard.
- (3)
 - (a) Notwithstanding Subsection (1)(c), a petitioner may be eligible for relief on a basis that the ground could have been but was not raised in the trial court, at trial, or on appeal, if the failure to raise that ground was due to ineffective assistance of counsel.
 - (b) Notwithstanding Subsections (1)(c) and (1)(d), a petitioner may be eligible for relief on a basis that the ground could have been but was not raised in the trial court, at trial, on appeal, or in a previous request for postconviction relief, if the failure to raise that ground was due to force, fraud, or coercion as defined in Section 76-5-308.
- (4) This section authorizes a merits review only to the extent required to address the exception set forth in Subsection (3).
- (5) This section does not apply to a petition filed under Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.

Amended by Chapter 46, 2021 General Session