

**78B-9-404 Hearing upon petition -- Procedures -- Court determination of factual innocence.**

- (1)
  - (a) In any hearing conducted under this part, the Utah attorney general shall represent the state.
  - (b) The burden is upon the petitioner to establish the petitioner's factual innocence by clear and convincing evidence.
- (2) The court may consider:
  - (a) evidence that was suppressed or would be suppressed at a criminal trial; and
  - (b) hearsay evidence, and may consider that the evidence is hearsay in evaluating its weight and credibility.
- (3) In making its determination the court shall consider, in addition to the evidence presented at the hearing under this part, the record of the original criminal case and at any postconviction proceedings in the case.
- (4) If the court, after considering all the evidence, determines by clear and convincing evidence that the petitioner:
  - (a) is factually innocent of one or more offenses of which the petitioner was convicted, the court shall order that those convictions:
    - (i) be vacated with prejudice; and
    - (ii) be expunged from the petitioner's record; or
  - (b) did not commit one or more offenses of which the petitioner was convicted, but the court does not find by clear and convincing evidence that the petitioner did not commit any lesser included offenses relating to those offenses, the court shall modify the original conviction and sentence of the petitioner as appropriate for the lesser included offense, whether or not the lesser included offense was originally submitted to the trier of fact.
- (5)
  - (a) If the court, after considering all the evidence, does not determine by clear and convincing evidence that the petitioner is factually innocent of the offense or offenses the petitioner is challenging and does not find that Subsection (4)(b) applies, the court shall deny the petition regarding the offense or offenses.
  - (b) If the court finds that the petition was brought in bad faith, it shall enter the finding on the record, and the petitioner may not file a second or successive petition under this section without first applying to and obtaining permission from the court which denied the prior petition.
- (6) At least 30 days prior to a hearing on a petition to determine factual innocence, the petitioner and the respondent shall exchange information regarding the evidence each intends to present at the hearing. This information shall include:
  - (a) a list of witnesses to be called at the hearing; and
  - (b) a summary of the testimony or other evidence to be introduced through each witness, including any expert witnesses.
- (7) Each party is entitled to a copy of any expert report to be introduced or relied upon by that expert or another expert at least 30 days prior to hearing.
- (8) The court, after considering all the evidence, may not find the petitioner to be factually innocent unless:
  - (a) the court determines by clear and convincing evidence that the petitioner did not commit one or more of the offenses of which the petitioner was convicted, as defined in Subsection 78B-9-401.5(2); and
  - (b) the determination is based upon the newly discovered material evidence described in the petition, pursuant to Section 78B-9-402, and as defined in Subsection 78B-9-401.5(3).

Amended by Chapter 220, 2012 General Session