

9-701. Petition for writ of habeas corpus.

[For use with District Court Criminal Rule 5-802 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE DISTRICT COURT

For Official Use Only
No. _____
*(To be supplied by the
clerk of the court)*

_____,
(Full name of prisoner)
Petitioner,

v.

_____,
*(Name of warden, jailor
or other person having
power to release the petitioner)*
Respondent.

Instructions — Read Carefully

Make sure that all information provided in this form is true and correct. If more space is required, attach additional pages as needed. Make sure that all necessary documents are attached, or explain why the documents are not being included. If you are currently incarcerated, you may file the petition without payment of the filing fee. If you are not incarcerated and are seeking free process, complete Form 9-403.

Finally, you must complete the certificate of service and mail or otherwise serve copies of this petition on the respondent and the district attorney in the county in which the petition is filed. You must file the original petition and one copy with the Clerk of the District Court. You should keep a copy for your own records.

PETITION FOR WRIT OF HABEAS CORPUS¹

1. _____ *(name of person in custody)* is imprisoned or otherwise restrained at _____ *(name of facility and county of detention)* by _____ *(name and title of person having custody)*.

2. This petition (**SELECT ONLY ONE**. *If you wish to raise both types of claims, you must file two separate petitions and submit each petition in the location required by Rule 5-802(E)*):

[] seeks to vacate, set aside or correct an illegal sentence or order of confinement (i.e., ineffective assistance of counsel, illegal search and seizure, involuntary confession, interpretation of the sentence by the institution or other matters relating to the trial or sentence the confined person received).
NOTE: If the petition seeks to vacate, set aside or correct the sentence or order of confinement, correct the Corrections Department's interpretation

or application of the sentence or order of confinement, or challenge the conviction, it shall be filed in the county of the court in which the matter was adjudicated, or, if the matter has not been adjudicated, it must be filed in the county of the court that ordered the contested confinement. See Rule 5-802(E)(1) NMRA.)

[] challenges confinement or conditions of confinement or matters other than the sentence or order of confinement. *(This applies only to matters arising after the confined person arrived at the institution, i.e., county jail confinement, mental hospital confinement, detention facility confinement, good time credit, misconduct report, prison due process violation or parole.)* NOTE: *If the petition challenges conditions of confinement or matters other than challenges to the sentence or order of confinement (those set forth in the first option), it shall be filed in the county where the petitioner is confined or restrained. See Rule 5-802(E)(2) NMRA.*

3. State concisely the facts upon which the confined person bases the claim:

4. State concisely the grounds and law, or other legal authorities on which the confined person bases the claim:

5. Have the grounds being raised in this petition been raised previously in your direct appeal? If so, explain the result. If not, explain why not:

6. Have the grounds raised in this petition been raised previously in another petition for a writ of habeas corpus? If so, explain the result. If not explain why not:

7. Briefly describe the relief requested:

8. State the nature of the court proceeding resulting in the confinement (*i.e., criminal prosecution, civil commitment, etc.*), including:

(a) case name:

(b) docket number:

(c) name of judge:

(d) name and location of the court in which the proceeding was held:

9. State the date of the final judgment, order or decree for confinement:

10. Attach a copy of the judgment, order or decree. If not, describe your sentence.

11. Was the conviction the result of:

Guilty plea

No Contest plea (*nolo contendere*)

Finding of guilty by judge or jury

12. Was the confined person represented by an attorney during the proceedings resulting in the confinement?

Yes

No

13. If you answered "yes" to (12), list the name and address of each attorney who represented the confined person:

14. Did you appeal your conviction?

Yes (*Go to 15*)

No (*Go to 16*)

15. If you answered "yes" to (14), list:

(a) The name of each court to which an appeal was taken:

(b) The case name and docket number for each appeal:

(c) The date each appeal was filed and decided: (*Attach a copy of each opinion or order*)

(d) A summary of the grounds upon which each appeal was based:

(e) The result of each appeal:

(f) The name and address of the attorney on appeal:

16. If you answered "no" to (14), state the reasons for not appealing:

17. Apart from any appeals listed in (15), have any other post conviction applications, petitions or motions, been filed with regard to this same imprisonment or restraint?

_____ Yes (*Go to 18*)

_____ No (*Go to 19*)

18. If you answered "yes" to (15), list with respect to each such petition or motion:

(a) The type of proceeding:

(b) The name and date of each case:

(c) The docket number:

(d) The court, the administrative agency, or institutional grievance committee from which relief was sought:

(e) The result of each proceeding. (*Attach a copy of each decision.*)

(f) The issues raised in each proceeding:

(g) State whether a hearing was held in connection with each of these proceedings:

(h) State whether the confined person was represented by an attorney in each proceeding and, if so, the attorney's name and address:

19. Do you seek the appointment of counsel to represent you?²
_____ Yes
_____ No

VERIFICATION

STATE OF NEW MEXICO
COUNTY OF _____

I, the undersigned, state that I am the petitioner in this action. I have read the foregoing petition and know and understand its contents, and the information contained herein is true and correct to the best of my knowledge, information and belief. I affirm under penalty of perjury under the laws of the State of New Mexico that on _____, _____ (*date*), I deposited this petition in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the district court at the following address:

_____ Court (*name of court*)
_____ (*city*), New Mexico, _____ (*zip code*).

(*Signature*)

(*Address*)

PNM No., if applicable

USE NOTE

1. After this petition is reviewed by the Court, the Court will enter the order granting or denying the writ or ordering a response before further action. The order shall be prepared by the Court.

2. Petitioners who are incarcerated at the time of filing the petition need not file a motion for free process and may file the petition without payment of the applicable filing fee. *See* Rule 5-802(D)(2) NMRA.

[Adopted, effective August 1, 1989; as amended by Supreme Court Order No. 09-8300-008, effective May 6, 2009; as amended by Supreme Court Order No. 14-8300-014, effective for all cases filed on or after December 31, 2014; as amended by Supreme Court Order No. 17-8300-025, effective for all cases pending or filed on or after December 31, 2017.]