

By Senator Klein

28-1199A-99

1                                   A bill to be entitled  
2           An act relating to criminal appeals and  
3           collateral review; amending s. 924.051, F.S.;  
4           providing standards of evidence for the  
5           appellate court for purposes of reviewing a  
6           claim of insufficient evidence; prohibiting the  
7           appellate court from reversing a conviction on  
8           the ground of insufficiency of evidence under  
9           certain circumstances; providing standards of  
10          review for the Supreme Court in determining  
11          whether harmless error was committed on appeal;  
12          prohibiting the court from presuming that error  
13          affected the defendant's substantial rights;  
14          providing certain limitations on filing  
15          successive motions for collateral relief or  
16          other postconviction relief; limiting  
17          circumstances under which a postconviction  
18          proceeding may be stayed based upon a claim  
19          that the defendant has certain mental  
20          deficiencies; requiring that the state be  
21          notified of defense witnesses; providing that a  
22          judgment under appeal or collateral review may  
23          be used to enhance or reclassify other  
24          sentences or dispositions; amending s. 924.055,  
25          F.S., relating to time limitations for  
26          postconviction proceedings in capital cases;  
27          providing that an improperly filed  
28          postconviction motion or petition does not toll  
29          the time limitations; providing for  
30          severability; providing an effective date.  
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 924.051, Florida Statutes, is  
4 amended to read:

5 924.051 Terms and conditions of appeals and collateral  
6 review in criminal cases.--

7 (1) As used in this section:

8 (a) "Prejudicial error" means an error in the trial  
9 court that harmfully affected the judgment or sentence.

10 (b) "Preserved" means that an issue, legal argument,  
11 or objection to evidence was timely raised before, and ruled  
12 on by, the trial court, and that the issue, legal argument, or  
13 objection to evidence was sufficiently precise that it fairly  
14 apprised the trial court of the relief sought and the grounds  
15 therefor.

16 (2) The right to direct appeal and the provisions for  
17 collateral review created in this chapter may only be  
18 implemented in strict accordance with the terms and conditions  
19 of this section.

20 (3) An appeal may not be taken from a judgment or  
21 order of a trial court unless a prejudicial error is alleged  
22 and is properly preserved or, if not properly preserved, would  
23 constitute fundamental error. A judgment or sentence may be  
24 reversed on appeal only when an appellate court determines  
25 after a review of the complete record that prejudicial error  
26 occurred and was properly preserved in the trial court or, if  
27 not properly preserved, would constitute fundamental error.

28 (4) When reviewing a claim that the evidence is  
29 insufficient to support the conviction, the appellate court  
30 must view the evidence in the light most favorable to the  
31 state, give the state the benefit of all inferences that

1 logically may be drawn from the evidence, and sustain the  
2 conviction if it is supported by competent substantial  
3 evidence. A conviction may be based in whole or in part on  
4 circumstantial evidence. The evidence need not exclude every  
5 reasonable hypothesis except guilt. The appellate court may  
6 not reverse the judgment of conviction on the ground of  
7 insufficiency of the evidence unless a rational trier of fact  
8 could not have found the essential elements of the crime  
9 beyond a reasonable doubt.

10 (5)(a)(4) If a defendant pleads nolo contendere  
11 without expressly reserving the right to appeal a legally  
12 dispositive issue, or if a defendant pleads guilty without  
13 expressly reserving the right to appeal a legally dispositive  
14 issue, the defendant may not appeal the judgment or sentence.

15 (b) A judgment in a capital case may not be reversed  
16 unless the Supreme Court is of the opinion, after an  
17 examination of the entire appellate record, that error was  
18 committed that so injuriously affected the substantial rights  
19 of the defendant that the error is not harmless. The Supreme  
20 Court may not presume that error injuriously affected the  
21 substantial rights of the defendant.

22 (6)(5) Collateral relief is not available on grounds  
23 that were or could have been raised at trial and, if properly  
24 preserved, on direct appeal of the conviction and sentence.

25 (7)(6)(a) In a noncapital case, a petition or motion  
26 for collateral or other postconviction relief may not be  
27 considered if it is filed more than 2 years after the judgment  
28 and sentence became final, unless the petition or motion  
29 alleges that:

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1           1. The facts upon which the claim is predicated were  
2 unknown to the petitioner or his or her attorney and could not  
3 have been ascertained by the exercise of due diligence;

4           2. The fundamental constitutional right asserted was  
5 not established within the period provided for in this  
6 subsection and has been held to apply retroactively; or

7           3. The sentence imposed was illegal because it either  
8 exceeded the maximum or fell below the minimum authorized by  
9 statute for the criminal offense at issue. Either the state  
10 or the defendant may petition the trial court to vacate an  
11 illegal sentence at any time.

12           (b) In a capital case in which the sentence of death  
13 has been imposed:

14           1. A motion for collateral or other postconviction  
15 relief may not be considered if the motion is filed more than  
16 1 year after the judgment and sentence became final, unless  
17 the facts upon which the claim is predicated were unknown to  
18 the petitioner or his or her attorney and could not have been  
19 ascertained by the exercise of due diligence, or the  
20 fundamental constitutional right asserted was not established  
21 within the period provided for in this subsection and has been  
22 held to apply retroactively.

23           2. A successive motion for collateral relief or other  
24 postconviction relief may not be considered unless the  
25 conditions set forth in subparagraph 1. are satisfied and the  
26 facts underlying the claim, if proven and viewed in light of  
27 the evidence as a whole, are sufficient to establish by clear  
28 and convincing evidence that, but for constitutional error, a  
29 reasonable factfinder would not have found the defendant  
30 guilty of the underlying offense.

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1           ~~3.2.~~ An expert witness may not be called to testify  
2 unless approved by the court.

3           ~~(8)(7)~~ In a direct appeal or a collateral proceeding,  
4 the party challenging the judgment or order of the trial court  
5 has the burden of demonstrating that a prejudicial error  
6 occurred in the trial court. A conviction or sentence may not  
7 be reversed absent an express finding that a prejudicial error  
8 occurred in the trial court.

9           (9) A postconviction proceeding under this chapter may  
10 not be stayed based upon a claim that the defendant is  
11 mentally ill, mentally deficient, mentally incompetent, or  
12 insane, unless such stay is issued under s. 922.07.

13           (10) Upon demand by the state in a collateral  
14 proceeding, the defendant must timely provide the state copies  
15 of all documents to be introduced into evidence by the defense  
16 and the names and addresses of all defense witnesses in the  
17 collateral proceeding.

18           (11) A trial court judgment in a criminal case or  
19 juvenile delinquency case is final until overturned on appeal  
20 or collateral review. A judgment that is being appealed or  
21 that is under collateral review must be treated as final and  
22 may be used to enhance or reclassify any other conviction,  
23 sentence, adjudication, or disposition, including, but not  
24 limited to, the following uses:

25           (a) In computing a sentence under chapter 921;

26           (b) As an aggravating circumstance;

27           (c) As grounds for revoking probation or community  
28 control; and

29           (d) As a predicate conviction for purposes of imposing  
30 a penalty provided for habitual offenders or repeat offenders  
31 or for imposing another enhanced or reclassified sentence.

1           ~~(12)(8)~~ It is the intent of the Legislature that all  
2 terms and conditions of direct appeal and collateral review be  
3 strictly enforced, including the application of procedural  
4 bars, to ensure that all claims of error are raised and  
5 resolved at the first opportunity. It is also the  
6 Legislature's intent that all procedural bars to direct appeal  
7 and collateral review be fully enforced by the courts of this  
8 state.

9           ~~(13)(9)~~ Funds, resources, or employees of this state  
10 or its political subdivisions may not be used, directly or  
11 indirectly, in appellate or collateral proceedings unless the  
12 use is constitutionally or statutorily mandated.

13           Section 2. Section 924.055, Florida Statutes, is  
14 amended to read:

15           924.055 Time limitations for postconviction  
16 proceedings in capital cases.--

17           (1) The Legislature recognizes that unjustified delay  
18 in postconviction proceedings in capital cases frustrates  
19 justice and diminishes public confidence in the criminal  
20 justice system. It is the intent of the Legislature that  
21 postconviction proceedings in capital cases progress in a fair  
22 but timely fashion and that, absent extreme circumstances, the  
23 participants in such proceedings abide by the time limitations  
24 set forth in this section.

25           (2) Within 1 year after the date the Supreme Court  
26 issues a mandate on a direct appeal or the United States  
27 Supreme Court denies a petition for certiorari, whichever is  
28 later, all postconviction motions and petitions that challenge  
29 the judgment, sentence, or appellate decision must be properly  
30 filed in the appropriate court. As used in this section, the  
31 term "properly filed" means that a postconviction motion or

1 petition is complete, is accompanied by sworn affidavits  
2 substantiating any factual allegations therein, and is not  
3 subject to amendment. A postconviction motion or petition that  
4 is not properly filed does not toll the time limitations in  
5 this section.

6 (3) Within 90 days after the date the state files a  
7 response to a postconviction motion that challenges the  
8 judgment or sentence, the circuit court shall conduct all  
9 necessary hearings and render a decision.

10 (4) Within 200 days after the date a notice is filed  
11 appealing an order of the trial court or an extraordinary writ  
12 is filed in a postconviction proceeding, the Supreme Court  
13 shall render a decision.

14 (5) A convicted person must file any petition for  
15 habeas corpus in the district court of the United States  
16 within 90 days after the date the Supreme Court issues a  
17 mandate in a postconviction proceeding.

18 Section 3. If any provision of this act or the  
19 application thereof to any person or circumstance is held  
20 invalid, the invalidity does not affect other provisions or  
21 applications of the act which can be given effect without the  
22 invalid provision or application, and to this end the  
23 provisions of this act are declared severable.

24 Section 4. This act shall take effect July 1, 1999.  
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SENATE SUMMARY

Revises various standards of evidence and grounds for appeal in criminal cases. Specifies standards under which the appellate court is required to sustain a conviction. Provides standards of review for the Supreme Court in determining whether harmless error was committed on appeal. Limits circumstances under which a defendant may file a successive motion for collateral relief or other postconviction relief. Limits circumstances under which a postconviction proceeding may be stayed based upon a claim that the defendant has certain mental deficiencies. Authorizes the court to use a judgment under appeal or collateral review to enhance or reclassify another sentence or disposition. Provides that an improperly filed postconviction motion or petition does not toll certain time limitations in a capital case. (See bill for details.)