

URAP020. Repeal

The Utah Supreme Court's Advisory Committee on the Rules of Appellate Procedure recommends repealing Rule 20 because its existence is superfluous and confusing and could prejudice a criminal defendant's opportunity to seek relief under the Post-Conviction Remedies Act (PCRA). The recent opinion in *Patterson v. State*, 2021 UT 52, does not change the committee's conclusion.

Rule 20 provides a procedure for filing a petition for writ of habeas corpus directly in an appellate court to challenge an allegedly unlawful detention. *See* Rule 20(a). But Rules 65B and 65C of the civil rules, together with the PCRA, Utah Code § 78B-9-101 to -110, already provide mechanisms to challenge the lawfulness of any official detention.

Rule 65C and the PCRA govern all challenges to a detention resulting from a criminal conviction and sentence that has been affirmed on appeal or that was not challenged in a timely appeal. *See* Utah R. Civ. P. 65C(a). The rule recognizes the PCRA as establishing "the manner and extent to which a person may challenge the legality of a criminal conviction and sentence" after direct appeal. *Id.*

Rule 65B governs extraordinary relief generally. Subsection (b) of that rule governs challenges to official detention based on anything other than a criminal conviction or sentence. "Except for instances governed by Rule 65C, this paragraph shall govern all petitions claiming that a person has been wrongfully restrained of personal liberty." Utah R. Civ. P. 65B(b)(1). Subsection (d) of Rule 65B governs claims that the Board of Pardons has exceeded its jurisdiction or violated a person's constitutional rights.

The subcommittee could not think of any official detention that could not be challenged under these two rules. Appellate Rule 20 is therefore superfluous.

Moreover, Rule 20's existence can cause confusion that could prejudice a criminal defendant's opportunity to seek post-conviction relief. The PCRA has a one-year statute of limitations. *See* Utah Code § 78B-9-107. Filing a petition for writ of habeas corpus under appellate Rule 20 does not toll the statute. *See id.*

The PCRA also bars subsequent petitions that raise claims that could have been raised in a prior petition. *See* Utah Code § 78B-9-106(d). Thus, a criminal defendant who files a petition under appellate rule 20 could be procedurally barred from filing additional claims in a PCRA petition.

The Utah Supreme Court's recent decision in *Patterson v. State*, 2021 UT 52, does not change the subcommittee's conclusion. The *Patterson* court held that the Utah Constitution delegates to the judicial branch the power to grant extraordinary relief in the form of a writ of habeas corpus. *See id.* ¶¶85, 143-44. The court further held that this writ power is not limited to examining only detentions other than those that are based on a criminal conviction, but includes the power to examine challenges to criminal

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convictions after direct appeal (post-conviction challenges). *See id.* ¶¶129, 135, 143-44. But the court also clarified that it has chosen to exercise its constitutional writ authority to consider post-conviction challenges “in total harmony” with the PCRA’s provisions, and consequently adopted civil rule 65C to incorporate the PCRA. *See id.* ¶¶174, 218.

In short, *Patterson* clarifies that the court has chosen to exercise through the PCRA and rule 65C its constitutional authority to issue a writ of habeas corpus in response to a post-conviction challenge. Rule 65B governs all other circumstances in which habeas relief might be appropriate. Therefore, *Patterson* does not require maintaining a separate procedure for seeking habeas relief outside of rules 65B and 65C.

Rule 20. Habeas corpus proceedings.

~~(a) Application for an original writ; when appropriate. If a petition for a writ of habeas corpus is filed in the appellate court or submitted to a justice or judge thereof, it will be referred to the appropriate district court unless it is shown on the face of the petition to the satisfaction of the appellate court that the district court is unavailable or other exigent circumstances exist. If a petition is initially filed in a district court or is referred to a district court by the appellate court and the district court denies or dismisses the petition, a refiling of the petition with the appellate court is inappropriate; the proper procedure in such an instance is an appeal from the order of the district court.~~

~~(b) Procedure on original petition.~~

~~(1) A habeas corpus proceeding may be commenced by filing a petition with the clerk of the appellate court or, in emergency situations, with a justice or judge of the court. For matters pending in the Supreme court, an original petition and seven copies shall be filed in the Supreme Court. For matters pending in the Court of Appeals, an original petition and four copies shall be filed in the Court of Appeals. The petitioner shall serve a copy of the petition on the respondent pursuant to any of the methods provided for service of process in Rule 4 of the Utah Rules of Civil Procedure but, if imprisoned, the petitioner may mail by United States mail, postage prepaid, a copy of the petition to the Attorney General of Utah or the county attorney of the county if imprisoned in a county jail. Such service is in lieu of service upon the named respondent, and a certificate of mailing under oath that a copy was mailed to the Attorney General or county attorney must be filed with the clerk of the appellate court. In emergency situations, an order to show cause may be issued by the court, or a single justice or judge if the court is not available, and a stay or injunction may be issued to preserve the court's jurisdiction until such time as the court can hear argument on whether a writ should issue.~~

~~(2) If the petition is not referred to the district court, the attorney general or the county attorney, as the case may be, shall answer the petition or otherwise plead within ten days after service of a copy of the petition. When a responsive pleading or motion is filed or an order to show cause is issued, the court shall set the case for hearing and the clerk shall give notice to the parties.~~

~~(3) The clerk of the appellate court shall, if the petitioner is imprisoned or is a person otherwise in the custody of the state or any political subdivision thereof, give notice of the time for the filing of memoranda and for oral argument, to the attorney general, the county attorney, or the city attorney, depending on where the petitioner is held and whether the petitioner is detained pursuant to state, county or city law. Similar notice shall be given to any other person or an association detaining the petitioner not in custody of the state.~~

~~(c) Contents of petition and attachments. The petition shall include the following:~~

~~(1) A statement of where the petitioner is detained, by whom the petitioner is detained, and the reason, if known, why the respondent has detained the petitioner.~~

~~(2) A brief statement of the reasons why the detention is deemed unlawful. The petition shall state in plain and concise language:~~

~~(A) the facts giving rise to each claim that the confinement or detention is in violation of a state order or judgment or a constitutional right established by the United States Constitution or the Constitution of the State of Utah or is otherwise illegal;~~

~~(B) whether an appeal was taken from the judgment or conviction pursuant to which a petitioner is incarcerated; and~~

~~(C) whether the allegations of illegality were raised in the appeal and decided by the appellate court.~~

~~(3) A statement indicating whether any other petition for a writ of habeas corpus based on the same or similar grounds has been filed and the reason why relief was denied.~~

~~(4) Copies of the court order or legal process, court opinions and findings pursuant to which the petitioner is detained or confined, affidavits, copies of orders, and other supporting written documents shall be attached to the petition or it shall be stated by petitioner why the same are not attached.~~

~~(d) Contents of answer. The answer shall concisely set forth specific admissions, denials, or affirmative defenses to the allegations of the petition and must state plainly and unequivocally whether the respondent has, or at any time has had, the person designated in the petition under control and restraint and, if so, the cause for the restraint. The answer shall not contain citations of legal authority or legal argument.~~

~~(e) Other provisions.~~

~~(1) If the respondent cannot be found or if the respondent does not have the person in custody, the writ and any other process issued may be served upon anyone having the petitioner in custody, in the manner and with the same effect as if that person had been made respondent in the action.~~

~~(2) If the respondent refuses or avoids service, or attempts wrongfully to carry the person imprisoned or restrained out of the county or state after service of the writ, the person serving the writ shall immediately arrest the respondent or other person so~~

~~resisting, for presentation, together with the person designated in the writ, forthwith before the court.~~

~~(3) At the time of the issuance of the writ, the court may, if it appears that the person detained will be carried out of the jurisdiction of the court or will suffer some irreparable injury before compliance with the writ can be enforced, cause a warrant to issue, reciting the facts and directing the sheriff to bring the detained person before the court to be dealt with according to law.~~

~~(4) The respondent shall appear at the proper time and place with the person designated or show good cause for not doing so. If the person designated has been transferred, the respondent must state when and to whom the transfer was made, and the reason and authority for the transfer. The writ shall not be disobeyed for any defect of form or misdescription of the person restrained or of the respondent, if enough is stated to show the meaning and intent.~~

~~(5) The person restrained may waive any rights to be present at the hearing, in which case the writ shall be modified accordingly. Pending a determination of the matter, the court may place such person in the custody of an individual or association as may be deemed proper.~~