Zomosa-Borboa v. United States of America Doc. 3 Att. 1

Instructions for Filing a Motion to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody (Motion Under 28 U.S.C. § 2255) in the United States District Court for the District of Arizona

1. Who May Use This Form. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You also may use this form to challenge a federal judgment that imposed a sentence to be served in the future. You are asking for relief from the conviction or the sentence. This form is your motion for relief. In this motion, you may challenge only one judgment. If you want to challenge more than one judgment, you must file a separate motion for each judgment. **This form should not be used in death penalty cases.** If you were sentenced to death, you are entitled to the assistance of counsel and you should request the appointment of counsel.

2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.5(a) requires that motions to vacate must be filed on the court-approved form.** The form must be typed or neatly handwritten. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages. The form, however, must be completely filled in to the extent applicable. You do not need to cite law. If you want to file a brief or arguments, you must attach a separate memorandum.

3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

4. No Filing Fee. No fee is required with this motion.

5. Original and Judge's Copy. You must send an **original and one copy** of your motion and of any other document submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten.

6. Where to File. You must file the form in the United States District Court that entered the judgment that you are challenging. When you have completed the form, mail the **original and one copy** to the Clerk of the United States District Court at the division where you were sentenced:

Phoenix & Prescott Divisions:	**OR**	Tucson Division:
U.S. District Court Clerk		U.S. District Court Clerk
U.S. Courthouse, Suite 130		U.S. Courthouse, Suite 1500
401 West Washington Street, SPC 10		405 West Congress Street
Phoenix, Arizona 85003-2119		Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and respondents in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

Dockets.Justia.com

8. Certificate of Service. You must provide the respondent with a copy of any document you submit to the Court (except the initial motion to vacate). Each original document (except the initial motion to vacate) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the respondent and the address to which it was mailed. Fed. R. Civ. P. 5(a), (d). Any document received by the Court that does not include a certificate of service may be stricken. A certificate of service should be in the following form:

> I hereby certify that a copy of the foregoing document was mailed
> this _____ (month, day, year) to:
> Name: _____
> Address:_____
> Attorney for Respondent
>
> _____
> (Signature)

9. Amended Motion to Vacate. If you need to change any of the information in the initial motion to vacate, you must file an amended motion. The amended motion must be written on the court-approved motion to vacate form. You may file one amended motion without leave (permission) of Court before the respondent has answered your original motion to vacate. See Fed. R. Civ. P. 15(a). After the respondent has filed an answer, you must file a motion for leave to amend and lodge (submit) a proposed amended motion to vacate. LRCiv 15.1. An amended motion may not incorporate by reference any part of your prior motion. LRCiv 15.1(a)(2). Any grounds not included in the amended motion to vacate are considered dismissed.

10. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

11. Grounds for Relief. You must raise all grounds for relief that relate to this conviction or sentence. Any grounds not raised in this motion will likely be barred from being raised at a later date.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your motion being stricken or dismissed by the Court. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the motion is being continued and number all pages.

_____
Name and Prisoner/Booking Number

_____
Place of Confinement

_____
Mailing Address

_____
City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,	)	**No. CR** _____
	)	(Enter your criminal case number)
Plaintiff,	)	
	)	**No. CV** _____
vs.	)	(To be supplied by the Clerk)
	)	
_____,	)	**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY**
(Full name of Movant. Include the name under which you were convicted.)	)	
	)	
Defendant/Movant.	)	
_____	)	

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____
_____
_____

   (b) Criminal docket or case number: _____

2. Date of judgment of conviction: _____

3. In this case, were you convicted on more than one count or crime? Yes ☐ No ☐

4. Identify all counts and crimes for which you were convicted and sentenced in this case: _____
_____
_____
_____

5. Length of sentence for each count or crime for which you were convicted in this case: _____
_____
_____
_____

6. (a) What was your plea?
   Not guilty ☐
   Guilty ☐
   Nolo contendere (no contest) ☐

   (b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details: _____
_____
_____
_____
_____
_____

   (c) If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

7. Did you appeal from the judgment of conviction? Yes ☐ No ☐

   If yes, answer the following:

   (a) Date you filed: _____

   (b) Docket or case number: _____

   (c) Result: _____

   (d) Date of result: _____

   (e) Grounds raised: _____
_____
_____
_____
_____
_____

   Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

8. Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

   If yes, answer the following:

   (a) Date you filed: _____

(b) Docket or case number: _____

(c) Result: _____

(d) Date of result: _____

(e) Grounds raised: _____
_____
_____
_____
_____
_____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

9. Other than the direct appeals listed above, have you filed any other petitions, applications or motions concerning this judgment of conviction in any court? Yes ☐ No ☐

If yes, answer the following:

(a) First petition, application or motion.

(1) Date you filed: _____

(2) Name of court: _____

(3) Nature of the proceeding: _____

(4) Docket or case number: _____

(5) Result: _____

(6) Date of result: _____

(7) Grounds raised: _____
_____
_____
_____
_____
_____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(b) Second petition, application or motion.

(1) Date you filed: _____

(2) Name of court: _____

(3) Nature of the proceeding: _____

(4) Docket or case number: _____

(5) Result: _____

(6) Date of result: _____

(7) Grounds raised: _____

_____

_____

_____

_____

_____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(c) Did you appeal the action taken on your petition, application or motion?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action your petition, application or motion, explain why you did not:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

12. For this motion, beginning on the next page, **state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States**. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.

GROUND ONE: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Did you present the issue raised in Ground One to the court of appeals? Yes ☐ No ☐

(c) If you did not raise this issue in a direct appeal, explain why: _____

GROUND TWO: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Did you present the issue raised in Ground Two to the court of appeals? Yes ☐ No ☐

(c) If you did not raise this issue in a direct appeal, explain why: _____

GROUND THREE: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Did you present the issue raised in Ground Three to the court of appeals? Yes ☐ No ☐

(c) If you did not raise this issue in a direct appeal, explain why: _____

GROUND FOUR: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Did you present the issue raised in Ground Four to the court of appeals? Yes ☐ No ☐

(c) If you did not raise this issue in a direct appeal, explain why: _____

Please answer these additional questions about this motion:

13. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☐

If yes, give the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised: _____

_____

_____

_____

_____

14. Do you have any future sentence to serve after you complete the sentence imposed by the judgment you are challenging? Yes ☐ No ☐

If yes, answer the following:

(a) Name and location of the court that imposed the sentence to be served in the future: _____

_____

(b) Date the sentence was imposed: _____

(c) Length of the sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

15. TIMELINESS OF MOTION: If your judgment of conviction challenged in this motion became final more than one year ago, you must explain why the one-year statute of limitations in 28 U.S.C. § 2255 does not bar your motion.* _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

*Section 2255 provides in part that:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

16. Movant asks that the Court grant the following relief: _____
_____
_____
_____
or any other relief to which Movant may be entitled. (Money damages are not available in § 2255 cases.)

I declare under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____(month, day, year).

_____
Signature of Movant

_____ _____
Signature of attorney, if any Date