

**Criminal Rule 33.1 – Motion to vacate a conviction or grant a new trial on grounds of actual innocence.**

**(A) Purpose.** This rule recognizes that notwithstanding honorable efforts, certain errors, omissions or prior use of dated technology may produce an unjust result. This rule provides the procedural mechanism for evaluating post-trial colorable claims of innocence and wrongful convictions. This rule seeks to balance the desire for finality of conviction against the recognition that notwithstanding honorable efforts, certain errors, omissions or prior use of dated technology may produce an unjust result.

**(B) Grounds.** A person convicted of a criminal offense in the State of Ohio may move the court to vacate the conviction or to grant a new trial on grounds of actual innocence based on new evidence.

**(C) Time.** Notwithstanding the time limits in any other provision of law, a motion for relief under this section may be made at any time.

**(D) Form.** The motion shall set forth specific, non-conclusory facts:

- (1) Identifying the specific new evidence;
- (2) Establishing how that evidence demonstrates that the movant is actually innocent despite having been convicted at trial or having pled guilty; and
- (3) Establishing why the new evidence is not cumulative or impeaching.

**(E) Affidavit.**

(1) The motion shall include an affidavit by the movant, under penalty of perjury, stating that movant is actually innocent of the crime that is the subject of the motion, and that the new evidence was not deliberately withheld by the movant for purposes of strategic advantage.

(2) The denial of a motion for relief under this section shall not be admissible in any prosecution based on the filing of a false affidavit.

**(F) Procedure.**

(1) Unless the motion and files and records of the case conclusively show that the movant is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto.

(2) The court may appoint counsel for an indigent movant under this rule.

(3) The court may entertain and determine the motion without requiring production of the movant at the hearing.

(4) A movant shall be entitled to invoke the processes of discovery available under Ohio Rules of Criminal Procedure or Civil Procedure, or elsewhere in the usages and principles of law if, and to the extent that, the judge, in the exercise of the judge's discretion and for good cause shown, grants leave to do so, but not otherwise.

**(G) Grounds for Dismissal.** A motion for relief made pursuant to this section may be dismissed if the government demonstrates that it has been materially prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the movant could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

**(H) Consideration of Motion.**

(1) In determining whether to grant relief, the court may consider any relevant evidence, but shall consider the following:

(a) The new evidence;

(b) How the new evidence demonstrates actual innocence;

(c) Why the new evidence is or is not cumulative or impeaching;

(d) If the conviction resulted from a trial, and if the movant asserted a theory of defense inconsistent with the current claim of innocence, the specific reason the movant asserted an inconsistent theory at trial; and

(e) If the conviction resulted from a guilty plea, the specific reason the movant pleaded guilty despite being actually innocent of the crime.

(2) If, after considering the factors in paragraph (1) of this subsection, the court concludes that it is more likely than not that the movant is actually innocent of the crime, the court shall grant a new trial.

(3) If, after considering the factors in paragraph (1) of this subsection, the court concludes by clear and convincing evidence that the movant is actually innocent of the crime, the court shall vacate the conviction and dismiss the relevant count with prejudice.

(4) If the conviction resulted from a plea of guilty, and other charges were dismissed as part of a plea agreement, the court shall reinstate any charges of which the defendant has not demonstrated that the defendant is actually innocent.

**(I) Subsequent Motion.** The court shall not be required to entertain a second or successive motion for similar relief on behalf of the same movant.

**(J) Appeal.** An order entered on the motion is a final order for purposes of appeal.