

RULE 33.1 New Trial Based on Claims of Actual Innocence.

- (A) Grounds. A new trial may be granted on motion of the defendant if the defendant produces relevant and admissible evidence not previously considered, which, had it been introduced at trial, would have resulted in a reasonable likelihood of acquittal.
- (B) Timing. There is no time limit for a motion under this section, and it may be considered by the court at any time.
- (C) Procedure.
- (1) The motion shall set forth specific, non-conclusory facts: (a) identifying the specific new evidence; (b) explaining how that evidence demonstrates entitlement to relief under section (A); (c) explaining why the new evidence was not previously considered; and (d) attaching appropriate affidavits.
 - (2) Unless, after reviewing the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript, the court determines that the defendant's motion is patently frivolous on its face (as defined in subsection (4) of this section), the court may appoint counsel for an indigent movant, and the 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.
 - (3) Once the briefing and any discovery is concluded, the court shall promptly set the matter for hearing.
 - (4) The court shall hold an evidentiary hearing on a motion under this section unless the defendant's motion is patently frivolous on its face. "Patently frivolous" is defined as offering no new evidence which could be tested at a hearing as to its credibility and the degree to which it undermines the theory of guilt used to convict.
- (D) Types of evidence to be considered under this section include, but are not limited to, scientific or expert evidence that discredits the evidence relied on by the State at trial or demonstrates a shift in a field of scientific or expert knowledge; recantation evidence; a witness who did not testify at trial; DNA evidence; evidence that was not disclosed and whose disclosure would be required under *Brady v. Maryland*, 373 U.S. 83 (1963); or any other evidence that undermines the State's theory of guilt or that directly contradicts the evidence used to convict the defendant.
- (E) The court shall issue written findings of fact and conclusions of law in disposing all motions under this rule.

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