

AMENDED IN SENATE JUNE 22, 2015

AMENDED IN ASSEMBLY MAY 14, 2015

AMENDED IN ASSEMBLY MAY 7, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 813

Introduced by Assembly Member Gonzalez

February 26, 2015

An act to add Section 1473.7 to the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 813, as amended, Gonzalez. Criminal procedure: postconviction relief.

Under existing law, although persons not presently restrained of liberty may seek certain types of relief from the disabilities of a conviction, the writ of habeas corpus is generally not available to them. Existing law creates an explicit right for a person no longer unlawfully imprisoned or restrained to prosecute a motion to vacate a judgment based on newly obtained evidence of fraud or misconduct by a government official, as specified.

This bill would create an explicit right for a person no longer imprisoned or restrained to prosecute a motion to vacate a conviction or sentence based on a prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere, or based on newly discovered evidence of

actual innocence, as specified. The bill would require a court to grant the motion if the moving party establishes a ground for relief, by a preponderance of the evidence. *The bill would require a court granting or denying the motion to specify the basis for its conclusion.*

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1473.7 is added to the Penal Code, to
 2 read:

3 1473.7. (a) A person no longer imprisoned or restrained may
 4 prosecute a motion to vacate a conviction or sentence for either of
 5 the following reasons:

6 (1) The conviction or sentence is legally invalid due to a
 7 prejudicial error damaging the moving party’s ability to
 8 meaningfully understand, defend against, or knowingly accept the
 9 actual or potential adverse immigration consequences of a plea of
 10 guilty or nolo contendere.

11 (2) Newly discovered evidence of actual innocence exists that
 12 requires vacation of the conviction or sentence as a matter of law
 13 or in the interests of justice.

14 (b) A motion pursuant to ~~this section~~ *paragraph (1) of*
 15 *subdivision (a)* shall be filed with reasonable diligence after the
 16 later of the following:

17 (1) The date the moving party receives a notice to appear in
 18 immigration court or other notice from immigration authorities
 19 that asserts the conviction or sentence as a basis for removal.

20 (2) The date a removal order against the moving party, based
 21 on the existence of the conviction or sentence, becomes final.

22 ~~(3) The date the moving party discovered, or could have~~
 23 ~~discovered with the exercise of due diligence, the evidence that~~
 24 ~~provides a basis for relief under this section.~~

25 ~~(4) The effective date of this section.~~

26 (c) *A motion pursuant to paragraph (2) of subdivision (a) shall*
 27 *be filed without undue delay from the date the moving party*
 28 *discovered, or could have discovered with the exercise of due*
 29 *diligence, the evidence that provides a basis for relief under this*
 30 *section.*

31 (e)

1 (d) All motions shall be entitled to a hearing. At the request of
2 the moving party, the court may hold the hearing without the
3 personal presence of the moving party if counsel for the moving
4 party is present and the court finds good cause as to why the
5 moving party cannot be present.

6 ~~(d)~~

7 (e) When ruling on the motion:

8 (1) The court shall grant the motion to vacate the conviction or
9 sentence if the moving party establishes, by a preponderance of
10 the evidence, the existence of any of the grounds for relief specified
11 in subdivision (a).

12 (2) In granting or denying the motion, the court shall ~~make~~
13 ~~specific findings of fact and conclusions of law on all issues~~
14 ~~presented.~~ *specify the basis for its conclusion.*

15 (3) If the court grants the motion to vacate a conviction or
16 sentence obtained through a plea of guilty or nolo contendere, the
17 court shall allow the moving party to withdraw the plea.

18 ~~(e)~~

19 (f) An order granting or denying the motion is appealable under
20 subdivision (b) of Section 1237 as an order after judgment affecting
21 the substantial rights of a party.