

petitioner, in a prior petition under this subtitle, or in any other proceeding actually instituted by said petitioner, unless the failure to make such allegation shall be excused because of special circumstances. The burden of proving the existence of such special circumstances shall be upon the petitioner.

(2) When an allegation of error could have been made by a petitioner before trial, at trial, on direct appeal (whether or not said petitioner actually took such an appeal), in an application for leave to appeal a conviction based on a guilty plea, in any habeas corpus or coram nobis proceeding actually instituted by said petitioner, in a prior petition under this subtitle, or in any other proceeding actually instituted by said petitioner, but was not in fact so made, there shall be a rebuttable presumption that said petitioner intelligently and knowingly failed to make such allegation.

(d) For the purposes of this subtitle and notwithstanding any other provision hereof, no allegation of error shall be deemed to have been finally litigated or waived where, subsequent to any decision upon the merits thereof or subsequent to any proceeding in which said allegation otherwise may have been waived, any court whose decisions are binding upon the lower courts of this State holds that the Constitution of the United States or of Maryland imposes upon State criminal proceedings a procedural or substantive standard not theretofore recognized, which such standard is intended to be applied retrospectively and would thereby affect the validity of the petitioner's conviction or sentence.

(e) The remedy herein provided is not a substitute for, nor does it affect any remedies which are incident to the proceedings in the trial court or any remedy of direct review of the sentence or conviction. [A] EXCEPT AS PROVIDED IN SUBSECTION (A)(3) OF THIS SECTION, A petition for relief under this subtitle may be filed at any time, except that where an appeal has been taken from the judgment of conviction to the Court of Special Appeals, it shall not be necessary to appoint counsel or conduct a hearing or take any action whatsoever on the petition, until the judgment of conviction becomes final in the Court of Special Appeals. No appeals to the Court of Appeals or the Court of Special Appeals in habeas corpus or coram nobis cases, or from other common-law or statutory remedies which have heretofore been available for challenging the validity of incarceration under sentence of death or imprisonment shall be permitted or entertained, except appeals in such cases pending in the Court of Appeals on June 1, 1958, shall be processed in due course. Provided, however, that nothing in this subtitle shall operate to bar an appeal to the Court of Special Appeals (1) in a habeas corpus proceeding instituted under § 2-210 of Article 41 of this Code or (2) in any other proceeding in which a writ of habeas corpus is sought for any purpose other than to challenge the legality of a conviction of a crime or sentence of death or imprisonment therefor, including confinement as a result of a proceeding under Article 31B of this Code.

(f) (1) [A] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A petitioner is entitled to the assistance of counsel and a hearing on [the first] A petition filed [by the petitioner] under this section.

(2) [The] IF A DEFENDANT SEEKS TO REOPEN A POSTCONVICTION PROCEEDING UNDER SUBSECTION (A)(2)(II) OF THIS SECTION, THE court shall determine [if] WHETHER assistance of counsel or a hearing should be granted [on a subsequent petition filed by a petitioner].