

FOR THE PURPOSES OF THIS TITLE, AN ALLEGATION OF ERROR IS FINALLY LITIGATED WHEN:

(1) AN APPELLATE COURT OF THE STATE DECIDES ON THE MERITS OF THE ALLEGATION:

(I) ON DIRECT APPEAL; OR

(II) ON ANY CONSIDERATION OF AN APPLICATION FOR LEAVE TO APPEAL FILED UNDER § 7-109 OF THIS SUBTITLE; OR

(2) A COURT OF ORIGINAL JURISDICTION, AFTER A FULL AND FAIR HEARING, DECIDES ON THE MERITS OF THE ALLEGATION IN A PETITION FOR A WRIT OF HABEAS CORPUS OR A WRIT OF ERROR CORAM NOBIS, UNLESS THE DECISION ON THE MERITS OF THE PETITION IS CLEARLY ERRONEOUS.

(B) WAIVER OF ALLEGATION OF ERROR.

(1) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN ALLEGATION OF ERROR IS WAIVED WHEN A PETITIONER COULD HAVE MADE BUT INTELLIGENTLY AND KNOWINGLY FAILED TO MAKE THE ALLEGATION:

1. BEFORE TRIAL;

2. AT TRIAL;

3. ON DIRECT APPEAL, WHETHER OR NOT THE PETITIONER TOOK AN APPEAL;

4. IN AN APPLICATION FOR LEAVE TO APPEAL A CONVICTION BASED ON A GUILTY PLEA;

5. IN A HABEAS CORPUS OR CORAM NOBIS PROCEEDING BEGAN BY THE PETITIONER;

6. IN A PRIOR PETITION UNDER THIS SUBTITLE; OR

7. IN ANY OTHER PROCEEDING THAT THE PETITIONER BEGAN.

(II) 1. FAILURE TO MAKE AN ALLEGATION OF ERROR SHALL BE EXCUSED IF SPECIAL CIRCUMSTANCES EXIST.

2. THE PETITIONER HAS THE BURDEN OF PROVING THAT SPECIAL CIRCUMSTANCES EXIST.

(2) WHEN A PETITIONER COULD HAVE MADE AN ALLEGATION OF ERROR AT A PROCEEDING SET FORTH IN PARAGRAPH (1)(I) OF THIS SUBSECTION BUT DID NOT MAKE AN ALLEGATION OF ERROR, THERE IS A REBUTTABLE PRESUMPTION THAT THE PETITIONER INTELLIGENTLY AND KNOWINGLY FAILED TO MAKE THE ALLEGATION.