RULE 9.140 | APPEAL PROCEEDINGS IN CRIMINAL CASES

(a) Applicability. Appeal proceedings in criminal cases will be as in civil cases except as modified by this rule.

(b) Appeals by Defendant.

(1) Appeals Permitted. A defendant may appeal:

(A) a final judgment adjudicating guilt;

(B) a final order withholding adjudication after a finding of guilt;

(C) an order granting probation or community control, or both, whether or not guilt has been adjudicated;

(D) orders entered after final judgment or finding of guilt, including orders revoking or modifying probation or community control, or both, or orders denying relief under Florida Rules of Criminal Procedure 3.800(a), 3.801, 3.802, 3.850, 3.851, or 3.853;

(E) an unlawful or illegal sentence;

(F) a sentence, if the appeal is required or permitted by general law; or

(G) as otherwise provided by general law.

(2) Guilty or Nolo Contendere Pleas.

(A) Pleas. A defendant may not appeal from a guilty or nolo contendere plea except as follows:

(i) Reservation of Right to Appeal. A defendant who pleads guilty or nolo contendere may expressly reserve the right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved.

(ii) Appeals Otherwise Allowed. A defendant who pleads guilty or nolo contendere may otherwise directly appeal only:

a. the lower tribunal's lack of subject matter jurisdiction;

b. a violation of the plea agreement, if preserved by a motion to withdraw plea;

c. an involuntary plea, if preserved by a motion to withdraw plea;

d. a sentencing error, if preserved; or

e. as otherwise provided by law.

(B) Record.

(i) Except for appeals under subdivision (b)(2)(A)(i) of this rule, the record for appeals involving a plea of guilty or nolo contendere will be limited to:

a. all indictments, informations, affidavits of violation of probation or community control, and other charging documents;

b. the plea and sentencing hearing transcripts;

c. any written plea agreements;

d. any judgments, sentences, scoresheets, motions, and orders to correct or modify sentences, orders imposing, modifying, or revoking probation or community control, orders assessing costs, fees, fines, or restitution against the defendant, and any other documents relating to sentencing;

e. any motion to withdraw plea and order thereon; and

f. notice of appeal, statement of judicial acts to be reviewed, directions to the clerk of the lower tribunal, and designation to the approved court reporter or approved transcriptionist.

(ii) Upon good cause shown, the court, or the lower tribunal before the record is

electronically transmitted, may expand the record.

(3) Commencement. The defendant must file the notice prescribed by rule 9.110(d) with the clerk of the lower tribunal at any time between rendition of a final judgment and 30 days following rendition of a written order imposing sentence. Copies must be served on the state attorney and attorney general.

(4) Cross-Appeal. A defendant may cross-appeal by serving a notice within 15 days of service of the state's notice or service of an order on a motion under Florida Rule of Criminal Procedure 3.800(b)(2). Review of cross-appeals before trial is limited to related issues resolved in the same order being appealed.

(c) Appeals by the State.

(1) Appeals Permitted. The state may appeal an order:

(A) dismissing an indictment or information or any count thereof or dismissing an affidavit charging the commission of a criminal offense, the violation of probation, the violation of community control, or the violation of any supervised correctional release;

(B) suppressing before trial confessions, admissions, or evidence obtained by search and seizure;

(C) granting a new trial;

(D) arresting judgment;

(E) granting a motion for judgment of acquittal after a jury verdict;

(F) discharging a defendant under Florida Rule of Criminal Procedure 3.191;

(G) discharging a prisoner on habeas corpus;

(H) finding a defendant incompetent or insane;

(I) finding a defendant intellectually disabled under Florida Rule of Criminal Procedure 3.203;

(J) granting relief under Florida Rules of Criminal Procedure 3.801, 3.850, 3.851, or 3.853;

(K) ruling on a question of law if a convicted defendant appeals the judgment of conviction;

(L) withholding adjudication of guilt in violation of general law;

(M) imposing an unlawful or illegal sentence or imposing a sentence outside the range permitted by the sentencing guidelines;

(N) imposing a sentence outside the range recommended by the sentencing guidelines;

(O) denying restitution; or

(P) as otherwise provided by general law for final orders.

(2) Commencement. The state must file the notice prescribed by rule 9.110(d) with the clerk of the lower tribunal within 15 days of rendition of the order to be reviewed; provided that in an appeal by the state under rule 9.140(c)(1)(K), the state's notice of cross-appeal must be filed within 15 days of service of defendant's notice or service of an order on a motion under Florida Rule of Criminal Procedure 3.800(b)(2). Copies must be served on the defendant and the attorney of record. An appeal by the state will stay further proceedings in the lower tribunal only by order of the lower tribunal.

(d) Withdrawal of Defense Counsel after Judgment and Sentence or after Appeal by State.

(1) The attorney of record for a defendant will not be relieved of any professional duties, or be permitted to withdraw as defense counsel of record, except with approval of the lower tribunal on good cause shown on written motion, until either the time has expired for filing an authorized notice of appeal and no such notice has been filed by the defendant or the state, or after the following have been completed:

(A) a notice of appeal or cross-appeal has been filed on behalf of the defendant or the state;

(B) a statement of judicial acts to be reviewed has been filed if a transcript will require the expenditure of public funds;

(C) the defendant's directions to the clerk of the lower tribunal have been filed, if necessary;

(D) designations to the approved court reporter or approved transcriptionist have been filed and served by counsel for appellant for transcripts of those portions of the proceedings necessary to support the issues on appeal or, if transcripts will require the expenditure of public funds for the defendant, of those portions of the proceedings necessary to support the statement of judicial acts to be reviewed; and

(E) in publicly funded defense and state appeals, when the lower tribunal has entered an order appointing the office of the public defender for the local circuit, the district office of criminal conflict and civil regional counsel, or private counsel as provided by chapter 27, Florida Statutes, that office, or attorney will remain counsel for the appeal until the record is electronically transmitted to the court. In publicly funded state appeals, defense counsel must additionally file with the court a copy of the lower tribunal's order appointing the local public defender, the office of criminal conflict and civil regional counsel, or private counsel. In non-publicly funded defense and state appeals, retained appellate counsel must file a notice of appearance in the court, or defense counsel of record must file a motion to withdraw in the court, with service on the defendant, that states what the defendant's legal representation on appeal, if any, is expected to be. Documents filed in the court must be served on the attorney general (or state attorney in appeals to the circuit court).

(2) Orders allowing withdrawal of counsel are conditional and counsel must remain of record for the limited purpose of representing the defendant in the lower tribunal regarding any sentencing error the lower tribunal is authorized to address during the pendency of

the direct appeal under Florida Rule of Criminal Procedure 3.800(b)(2).

(e) Sentencing Errors. A sentencing error may not be raised on appeal unless the alleged error has first been brought to the attention of the lower tribunal:

(1) at the time of sentencing; or

(2) by motion pursuant to Florida Rule of Criminal Procedure 3.800(b).

(f) Record.

(1) Service. The clerk of the lower tribunal must prepare and serve the record prescribed by rule 9.200 within 50 days of the filing of the notice of appeal. However, the clerk of the lower tribunal must not serve the record until all proceedings designated for transcription have been transcribed by the court reporter(s) and filed in the lower tribunal. If the designated transcripts have not been filed by the date required for service of the record, the clerk of the lower tribunal must file with the court, and serve on all parties and any court reporter whose transcript has not been filed, a notice of inability to complete the record, listing the transcripts not yet received. In cases in which the transcripts are filed after a notice of inability to complete the record, the clerk of the lower tribunal must prepare and file the record within 20 days of receipt of the transcripts. An order granting an extension to the court reporter to transcribe designated proceedings will toll the time for the clerk of the lower tribunal to serve this notice or the record on appeal.

(2) Transcripts.

(A) If a defendant’s designation of a transcript of proceedings requires expenditure of public funds, trial counsel for the defendant (in conjunction with appellate counsel, if possible) must serve, within 10 days of filing the notice, a statement of judicial acts to be reviewed, and a designation to the approved court reporter or approved transcriptionist requiring preparation of only so much of the proceedings as fairly supports the issue raised.

(B) Either party may file motions in the lower tribunal to reduce or expand the transcripts.

(C) Except as permitted in subdivision (f)(2)(D) of this rule, the parties must serve the designation on the approved court reporter or approved transcriptionist to file with the clerk of the lower tribunal the transcripts for the court and sufficient paper copies for all parties exempt from service by e-mail as set forth in Florida Rule of General Practice and Judicial Administration 2.516.

(D) Nonindigent defendants represented by counsel may serve the designation on the approved court reporter or approved transcriptionist to prepare the transcripts. Counsel adopting this procedure must, within 5 days of receipt of the transcripts from the approved court reporter or approved transcriptionist, file the transcripts. Counsel must serve notice of the use of this procedure on the attorney general and the clerk of the lower tribunal. Counsel must attach a certificate to each transcript certifying that it is accurate and complete. When this procedure is used, the clerk of the lower tribunal on conclusion of the appeal must retain the transcript(s) for use as needed by the state in any collateral proceedings and must not dispose of the transcripts without the consent of the attorney general.

(E) In state appeals, the state must serve a designation on the approved court reporter or approved transcriptionist to prepare and file with the clerk of the lower tribunal the transcripts and sufficient copies for all parties exempt from service by e-mail as set forth in Florida Rule of General Practice and Judicial Administration 2.516. Alternatively, the state may elect to use the procedure specified in subdivision (f)(2)(D) of this rule.

(F) The lower tribunal may by administrative order in publicly-funded cases direct the clerk of the lower tribunal rather than the approved court reporter or approved transcriptionist to prepare the necessary transcripts.

(3) Retention of Documents. Unless otherwise ordered by the court, the clerk of the lower tribunal must retain any original documents.

(4) Service of Copies. The clerk of the lower tribunal must serve copies of the record to the court, attorney general, and all counsel appointed to represent indigent defendants on appeal. The clerk of the lower tribunal must simultaneously serve copies of the index to all nonindigent defendants and, on their request, copies of the record or portions thereof at the cost prescribed by law.

(5) Return of Record. Except in death penalty cases, the court must return to the lower tribunal, after final disposition of the appeal, any portions of the appellate record that were not electronically filed.

(6) Supplemental Record for Motion to Correct Sentencing Error Under Florida Rule of Criminal Procedure 3.800(b)(2).

(A) Transmission.

(i) The clerk of the lower tribunal must automatically supplement the appellate record with any motion under Florida Rule of Criminal Procedure 3.800(b)(2), any response, any resulting order, and any amended sentence. If a motion for rehearing is filed, the supplement must also include the motion for rehearing, any response, and any resulting order.

(ii) The clerk of the lower tribunal must electronically transmit the supplement to the appellate court within 20 days after the filing of the order disposing of the rule 3.800(b)(2) motion, unless a motion for rehearing is filed. If an order is not filed within 60 days after the filing of the rule 3.800(b)(2) motion, and no motion for rehearing is filed, this 20-day period will run from the expiration of the 60-day period, and the clerk of the lower tribunal must include a statement in the supplement that no

order on the rule 3.800(b)(2) motion was timely filed.

(iii) If a motion for rehearing is filed, the clerk of the lower tribunal must electronically transmit the supplement to the court within 5 days after the filing of the order disposing of the motion for rehearing. If an order disposing of the motion for rehearing is not filed within 40 days after the date of the order for which rehearing is sought, this 5-day period will run from the expiration of the 40-day period, and the clerk of the lower tribunal must include a statement in the supplement that no order on the motion for rehearing was timely filed.

(B) Transcripts. If any appellate counsel determines that a transcript of a proceeding relating to such a motion is required to review the sentencing issue, appellate counsel must, within 5 days from the transmission of the supplement described in subdivision (f)(6)(A)(ii), designate those portions of the proceedings not on file deemed necessary for transcription and inclusion in the record. Appellate counsel must file the designation with the court and serve it on the approved court reporter or approved transcriptionist. The procedure for this supplementation must be in accordance with this subdivision, except that counsel is not required to file a revised statement of judicial acts to be reviewed, the approved court reporter or approved transcriptionist must deliver the transcript within 15 days, and the clerk of the lower tribunal must supplement the record with the transcript within 5 days of its receipt.

(g) Briefs.

(1) Brief on the Merits. Initial briefs, including those filed under subdivision (g)(2)(A), must be served within 30 days of transmission of the record or designation of appointed counsel, whichever is later. Additional briefs must be served as prescribed by rule 9.210.

(2) Anders Briefs.

(A) If appointed counsel files a brief stating that an appeal would be frivolous, the court must independently review the record to discover any arguable issues apparent on the face of the record. On the discovery of an arguable issue, other than an unpreserved sentencing, disposition, or commitment order error, the court must order briefing on the issues identified by the court.

(B) Upon discovery of an unpreserved sentencing, disposition, or commitment order error, the court may strike the brief and allow for a motion under Florida Rule of Criminal Procedure 3.800(b)(2) or Florida Rule of Juvenile Procedure 8.135(b)(2) to be filed. The court's order may contain deadlines for the cause to be resolved within a reasonable time.

(h) Post-Trial Release.

(1) Appeal by Defendant. The lower tribunal may hear a motion for post-trial release pending appeal before or after a notice of appeal is filed; provided that the defendant may not be released from custody until the notice of appeal is filed.

(2) Appeal by State. An incarcerated defendant charged with a bailable offense must on motion be released on the defendant's own recognizance pending an appeal by the state, unless the lower tribunal for good cause stated in an order determines otherwise.

(3) Denial of Post-Trial Release. All orders denying post-trial release must set forth the factual basis on which the decision was made and the reasons therefor.

(4) Review. Review of an order relating to post-trial release will be by the court on motion.

(i) Scope of Review. The court must review all rulings and orders appearing in the record necessary to pass on the grounds of an appeal. In the interest of justice, the court may grant any relief to which any party is entitled.

Committee Notes

1977 Amendment. This rule represents a substantial revision of the procedure in criminal appeals.

Subdivision (a) makes clear the policy of these rules that procedures be standardized to the maximum extent possible. Criminal appeals are to be governed by the same rules as other cases, except for those matters unique to criminal law that are identified and controlled by this rule.

Subdivision (b)(1) lists the only matters that may be appealed by a criminal defendant, and it is intended to supersede all other rules of practice and procedure. This rule has no effect on either the availability of extraordinary writs otherwise within the jurisdiction of the court to grant, or the supreme court's jurisdiction to entertain petitions for the constitutional writ of certiorari to review interlocutory orders. This rule also incorporates the holding in *State v. Ashby, 245 So. 2d 225 (Fla. 1971),* and is intended to make clear that the reservation of the right to appeal a judgment based on the plea of no contest must be express and must identify the particular point of law being reserved; any issues not expressly reserved are waived. No direct appeal of a judgment based on a guilty plea is allowed. It was not intended that this rule affect the substantive law governing collateral review.

Subdivision (b)(2) replaces former rule 6.2. Specific reference is made to rule 9.110(d) to emphasize that criminal appeals are to be prosecuted in substantially the same manner as other cases. Copies of the notice, however, must be served on both the state attorney and the attorney general. The time for taking an appeal has been made to run from the date judgment is rendered to 30 days after an order imposing sentence is rendered or otherwise reduced to writing. The former rule provided for appeal within 30 days of rendition of judgment or within 30 days of entry of sentence. The advisory committee debated the intent of the literal language of the former rule. Arguably, under the former rule an appeal could not be taken by a defendant during the "gap period" that occurs when sentencing is postponed more than 30 days after entry of judgment. The advisory committee concluded that no purpose was served by such an interpretation because the full case would be reviewable when the "gap" closed. This modification of the former rule promotes the policies underlying *Williams v. State, 324 So. 2d 74 (Fla. 1975),* in which it was held that a notice of appeal prematurely filed should not be dismissed, but held in abeyance until it becomes effective. This rule does not specifically address the issue of whether full review is available if re-sentencing occurs on order of a court in a collateral proceeding. Such cases should be resolved in accordance with the underlying policies of these rules. Compare *Wade v. State, 222 So. 2d 434 (Fla. 2d DCA 1969),* with *Neary v. State, 285 So. 2d 47 (Fla. 4th DCA 1973).* If a defendant appeals a judgment of conviction of a capital offense before sentencing and sentencing is anticipated, the district court of appeal (as the court then with jurisdiction) should hold the case in abeyance until the sentence has been imposed. If the death penalty is imposed, the district court of appeal should transfer the case to the supreme court for review. See § 921.141(4), Fla. Stat. (1975); Fla. R. App. P. 9.040(b).

Subdivision (b)(3) governs the service of briefs. Filing should be made in accordance with rule 9.420.

Subdivision (c)(1) lists the only matters that may be appealed by the state, but it is not intended to affect the jurisdiction of the supreme court to entertain by certiorari interlocutory appeals governed by rule 9.100, or the jurisdiction of circuit courts to entertain interlocutory

appeals of pretrial orders from the county courts. See *State v. Smith, 260 So. 2d 489 (Fla. 1972)*. No provision of this rule is intended to conflict with a defendant's constitutional right not to be placed twice in jeopardy, and it should be interpreted accordingly. If there is an appeal under item (A), a motion for a stay of the lower tribunal proceeding should be liberally granted in cases in which there appears to be a substantial possibility that trial of any non-dismissed charges would bar prosecution of the dismissed charges if the dismissal were reversed, such as in cases involving the so-called "single transaction rule." Item (E) refers to the popularly known "speedy trial rule," and items (F), (G), and (H) track the balance of state appellate rights in section 924.07, Florida Statutes (1975).

Subdivision (c)(2) parallels subdivision (b)(2) regarding appeals by defendants except that a maximum of 15 days is allowed for filing the notice. An appeal by the state stays further proceedings in the lower tribunal only if an order has been entered by the trial court.

Subdivision (c)(3) governs the service of briefs.

Subdivision (d) applies rule 9.200 to criminal appeals and sets forth the time for preparation and service of the record, and additional matters peculiar to criminal cases. It has been made mandatory that the original record be held by the lower tribunal to avoid loss and destruction of original papers while in transit. To meet the needs of appellate counsel for indigents, provision has been made for automatic transmittal of a copy of the record to the public defender appointed to represent an indigent defendant on appeal, which in any particular case may be the public defender either in the judicial circuit where the trial took place or in the judicial circuit wherein the appellate court is located. See §27.51(4), Fla. Stat. (1975). Counsel for a non-indigent defendant may obtain a copy of the record at the cost prescribed by law. At the present time, section 28.24(13), Florida Statutes (1975), as amended by chapter 77-284, § 1, Laws of Florida, prescribes a cost of $1 per page.

To conserve the public treasury, appeals by indigent defendants, and other criminal defendants in cases in which a free transcript is provided, have been specially treated. Only the essential portions of the transcript are to be prepared. The appellant must file a statement of the judicial acts to be reviewed on appeal and the parties are to file and serve designations of the relevant portions of the record. (This procedure emphasizes the obligation of trial counsel to cooperate with appellate counsel, if the two are different, in identifying alleged trial errors.) The statement is necessary to afford the appellee an opportunity to make a reasonable determination of the portions of the record required. The statement should be sufficiently definite to enable the opposing party to make that determination, but greater specificity is unnecessary. The statement of judicial acts contemplated by this rule is not intended to be the equivalent of assignments of error under former rule 3.5. Therefore, an error or inadequacy in the statement should not be relevant to the disposition of any case. In such circumstances, the appropriate procedure would be to supplement the record under rule 9.200(f) to cure any potential or actual prejudice. Either party may move in the lower tribunal to strike unnecessary portions before they are prepared or to expand the transcript. The ruling of the lower tribunal on such motions is reviewable by motion to the court under rule 9.200(f) if a party asserts additional portions are required.

Subdivision (e) replaces former rule 6.15. Subdivision (e)(1) governs if an appeal is taken by a defendant and permits a motion to grant post-trial release pending appeal to be heard although a notice of appeal has not yet been filed. The lower tribunal may then grant the motion effective

on the notice being filed. This rule is intended to eliminate practical difficulties that on occasion have frustrated the cause of justice, as in cases in which a defendant's attorney has not prepared a notice of appeal in advance of judgment. Consideration of such motions shall be in accordance with section 903.132, Florida Statutes (Supp. 1976), and Florida Rule of Criminal Procedure 3.691. This rule does not apply if the judgment is based on a guilty plea because no right to appeal such a conviction is recognized by these rules.

Subdivision (e)(2) governs if the state takes an appeal and authorizes release of the defendant without bond, if charged with a bailable offense, unless the lower tribunal for good cause orders otherwise. The "good cause" standard was adopted to ensure that bond be required only in rare circumstances. The advisory committee was of the view that because the state generally will not be able to gain a conviction unless it prevails, the presumed innocent defendant should not be required to undergo incarceration without strong reasons, especially if a pre-trial appeal is involved. "Good cause" therefore includes such factors as the likelihood of success on appeal and the likelihood the defendant will leave the jurisdiction in light of the current status of the charges against the defendant.

Subdivision (e)(3) retains the substance of former rules 6.15(b) and (c). The lower tribunal's order must contain a statement of facts as well as the reasons for the action taken, in accordance with *Younghans v. State, 90 So. 2d 308 (Fla. 1956)*.

Subdivision (e)(4) allows review only by motion so that no order regarding post-trial relief is reviewable unless jurisdiction has been vested in the court by the filing of a notice of appeal. It is intended that the amount of bail be reviewable for excessiveness.

Subdivision (f) interacts with rule 9.110(h) to allow review of multiple judgments and sentences in 1 proceeding.

Subdivision (g) sets forth the procedure to be followed if there is a summary denial without hearing of a motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850. This rule does not limit the right to appeal a denial of such a motion after hearing under rule 9.140(b)(1)(C).

1980 Amendment. Although the substance of this rule has not been changed, the practitioner should note that references in the 1977 committee notes to supreme court jurisdiction to review non-final orders that would have been appealable if they had been final orders are obsolete because jurisdiction to review those orders no longer reposes in the supreme court.

1984 Amendment. Subdivision (b)(4) was added to give effect to the administrative order entered by the supreme court on May 6, 1981 (6 Fla. L. Weekly 336), which recognized that the procedures set forth in the rules for criminal appeals were inappropriate for capital cases.

1992 Amendment. Subdivision (b)(3) was amended to provide that, in cases in which public funds would be used to prepare the record on appeal, the attorney of record would not be allowed to withdraw until substitute counsel has been obtained or appointed.

Subdivision (g) was amended to provide a specific procedure to be followed by the courts in considering appeals from summary denial of Florida Rule of Criminal Procedure 3.800(a) motions. Because such motions are in many respects comparable to Florida Rule of Criminal Procedure 3.850 motions, it was decided to use the available format already created by existing subdivision (g) of this rule. Because a Florida Rule of Criminal Procedure 3.800(a) motion does not have the same detailed requirements as does a Florida Rule of Criminal Procedure 3.850

motion, this subdivision also was amended to require the transmittal of any attachments to the motions in the lower court.

1996 Amendment. The 1996 amendments are intended to consolidate and clarify the rules to reflect current law unless otherwise specified.

Rule 9.140(b)(2)(B) was added to accurately reflect the limited right of direct appeal after a plea of guilty or nolo contendere. See *Robinson v. State, 373 So. 2d 898 (Fla. 1979),* and *Counts v. State, 376 So. 2d 59 (Fla. 2d DCA 1979).*

New subdivision (b)(4) reflects *Lopez v. State, 638 So. 2d 931 (Fla. 1994)*. A defendant may cross-appeal as provided, but if the defendant chooses not to do so, the defendant retains the right to raise any properly preserved issue on plenary appeal. It is the committee's intention that the 10-day period for filing notice of the cross-appeal should be interpreted in the same manner as in civil cases under rule 9.110(g).

Rule 9.140(b)(6)(E) adopts Florida Rule of Criminal Procedure 3.851(b)(2) and is intended to supersede that rule. See Fla. R. Jud. Admin. 2.135. The rule also makes clear that the time periods in rule 9.140(j) do not apply to death penalty cases.

The revised rules 9.140(e)(2)(D) and 9.140(e)(2)(E) are intended to supersede Brown v. State, 639 So. 2d 634 (Fla. 5th DCA 1994), and allow non-indigent defendants represented by counsel, and the state, to order just the original transcript from the court reporter and to make copies. However, the original and copies for all other parties must then be served on the clerk of the lower tribunal for inclusion in the record. The revised rule 9.140(e)(2)(F) also allows chief judges for each circuit to promulgate an administrative order requiring the lower tribunal clerk's office to make copies of the transcript when the defendant is indigent. In the absence of such an administrative order, the court reporter will furnish an original and copies for all parties in indigent appeals.

Rule 9.140(j)(3) imposes a two-year time limit on proceedings to obtain delayed appellate review based on either the ineffectiveness of counsel on a prior appeal or the failure to timely initiate an appeal by appointed counsel. The former was previously applied for by a petition for writ of habeas corpus in the appellate court and the latter by motion pursuant to Florida Rule of Criminal Procedure 3.850 in the trial court. Because both of these remedies did not require a filing fee, it is contemplated that no fee will be required for the filing of petitions under this rule. Subdivision (j)(3)(B) allows two years "after the conviction becomes final." For purposes of the subdivision a conviction becomes final after issuance of the mandate or other final process of the highest court to which direct review is taken, including review in the Florida Supreme Court and United States Supreme Court. Any collateral review shall not stay the time period under this subdivision. Subdivision (j)(3)(C) under this rule makes clear that defendants who were convicted before the effective date of the rule will not have their rights retroactively extinguished but will be subject to the time limits as calculated from the effective date of the rule unless the time has already commenced to run under rule 3.850.

Rule 9.140(j)(5) was added to provide a uniform procedure for requesting belated appeal and to supersede *State v. District Court of Appeal of Florida, First District, 569 So. 2d 439 (Fla. 1990).* This decision resulted in there being two procedures for requesting belated appeal: Florida Rule of Criminal Procedure 3.850 when the criminal appeal was frustrated by ineffective assistance of trial counsel, id.; and habeas corpus for everything else. See *Scalf v. Singletary, 589*

So. 2d 986 (Fla. 2d DCA 1991). Experience showed that filing in the appellate court was more efficient. This rule is intended to reinstate the procedure as it existed prior to *State v. District Court of Appeal, First District*. See *Baggett v. Wainwright, 229 So. 2d 239 (Fla. 1969)*; *State v. Meyer, 430 So. 2d 440 (Fla. 1983)*.

In the rare case where entitlement to belated appeal depends on a determination of disputed facts, the appellate court may appoint a commissioner to make a report and recommendation. 2000 Amendment. Subdivision (b)(1)(B) was added to reflect the holding of *State v. Schultz, 720 So. 2d 247 (Fla. 1998)*. The amendment to renumber subdivision (b)(1)(D), regarding appeals from orders denying relief under Florida Rules of Criminal Procedure 3.800(a) or 3.850, reflects current practice.

The committee added language to subdivision (b)(6)(B) to require court reporters to file transcripts on computer disks in death penalty cases. Death penalty transcripts typically are lengthy, and many persons review and use them over the years. In these cases, filing lengthy transcripts on computer disks makes them easier to use for all parties and increases their longevity.

The committee deleted the last sentence of subdivision (b)(6)(E) because its substance is now included in rule 9.141(a). The committee also amended and transferred subdivisions (i) and (j) to rule 9.141 for the reasons specified in the committee note for that rule.

2005 Amendment. New subdivision (L) was added to (c)(1) in response to the Florida legislature's enactment of section 775.08435(3), Florida Statutes (2004), which provides that "[t]he withholding of adjudication in violation of this section is subject to appellate review under chapter 924."

2020 Amendment. The reference to appeals to the circuit court of nonfinal orders by the State was removed following the repeal of section 924.08, Florida Statutes (2019), to clarify that final and nonfinal appellate jurisdiction in criminal cases is vested in the district courts of appeal.

Court Commentary

1996. Rule 9.140 was substantially rewritten so as to harmonize with the Criminal Appeal Reform Act of 1996 (CS/HB 211). The reference to unlawful sentences in rule 9.140(b)(1)(D) and (c)(1)(J) means those sentences not meeting the definition of illegal under *Davis v. State, 661 So. 2d 1193 (Fla. 1995),* but, nevertheless, subject to correction on direct appeal.