

Federal Appeals and Other Post-Conviction Relief

Right to Appeal

A client who has been convicted in the District of Arizona has a right to appeal the conviction and sentence. Many plea agreements in this district require the client to waive their right to appeal the conviction and sentence in their case. The notice of appeal must be filed within 14 days of the judgment. The appeal will be decided by the United States Court of Appeals for the Ninth Circuit in San Francisco, CA. The appeals process generally takes minimum of one year and depending on the complexity of the case may take substantially longer.

A defendant has the right to an attorney on appeal. If Federal Defenders represented a client in the district court, we will also handle the appeal unless we have a conflict. (In that case, if the client cannot afford a lawyer, the court will appoint an attorney from outside this office.) If the client had a private lawyer in the district court but ran out of money, the client may ask to have counsel appointed for the appeal.

Remember

Appeals are limited to the evidence that was presented in district court. A client cannot add new evidence on appeal. In addition, the reason for an appeal is to correct legal errors. The appeals court will not decide whether the jury was right.

Plea Bargains and Appeals

If the client pled guilty, he or she normally loses the right to appeal any rulings that the judge made before the plea. If the client lost a motion to suppress evidence, for example, the client can only appeal the judge's ruling if a special "conditional plea agreement" allows the client to appeal that issue. If the client went to trial, on the other hand, the client generally can appeal any rulings the judge made before, during, or after the trial.

Many plea agreements in this district have "waivers" where the defendant gives up the right to appeal any or all issues. What can and cannot be appealed depends on the language in the waiver. A client should consult with his or her lawyer about the "waiver of appeal" in the plea agreement.

Release Pending Appeal

If the client has been sentenced to prison, the client will probably start serving the sentence even if he or she appeals. The judge who imposed sentence has authority to grant release until the appeal is decided. If the judge refuses, the client may have a basis to ask the appeals court to grant release pending appeal. However, a client will be released during an appeal only if the court finds two things (1) that the client is not dangerous and won't flee, and (2) that the client has a good issue for appeal. Courts rarely grant release pending appeal.

Appeal to the Supreme Court

If a client loses in the Ninth Circuit, he or she has the right to seek review by the Supreme Court of the United States. However, the Supreme Court takes only a few very important cases for review every year. If counsel files a "petition for writ of certiorari," which asks the Court to consider a case, and if "cert" is granted, the Supreme Court will make the final decision in the case. If "cert" is denied, the Ninth Circuit's decision will stand.

Other Post-Conviction Relief

Just as state prisoners can file habeas corpus petitions, federal prisoners can file motions in district court attacking the conviction or sentence under 28 U.S.C. § 2255. A § 2255 motion usually claims that the petitioner's constitutional rights were violated. The petition generally must be filed within one year of the date that the conviction becomes final. There is no right to appointed counsel. A petitioner must file by himself or herself and then ask the district court to appoint a lawyer. If counsel is not appointed, the petitioner will have to proceed without a lawyer.