

Post Conviction Collateral Relief Act

In Mississippi, individuals convicted of felony crimes may file for relief (appeal) under the Post Conviction Collateral Relief Act. This procedure is most commonly used when the defendant has *pled guilty*, but this is not the only situation when this procedure may be used. These actions are filed and heard in the circuit court where the conviction was obtained. However, if a case has been appealed, the defendant must request and receive permission from the Mississippi Supreme Court before filing a motion under the post conviction collateral relief act. These cases may be appealed to the Supreme Court of Mississippi

Death Penalty Cases

There are special attorneys in the Criminal Division of the Attorney General's Office who represent the State in all death penalty proceedings in the Mississippi Supreme Court and in all federal courts. In addition, these attorneys handle post-conviction evidentiary hearings in state circuit courts in death penalty cases, and also provide advice and limited research to prosecutors, law enforcement officers and other public officials in the area of death penalty law.

For more information about the appeal process or death penalty cases, please contact the Office of the Attorney General, Criminal Division at 601.359.3808 or 601.359.3687.

STATE OF MISSISSIPPI



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STATE OF MISSISSIPPI OFFICE OF THE ATTORNEY GENERAL

CRIME PREVENTION AND VICTIM SERVICES

POST CONVICTION PROCEDURES





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Appeals

Defendants have the right to appeal their cases. Several different courts have authority over appeals, and several factors determine where a defendant must file his or her appeal.

Cases which were handled in municipal or justice court must file an appeal with the county court. If the county does not have a county court, the appeal must be filed in circuit court. Appeals from municipal and justice courts are to start at the beginning, as if no proceedings were held in lower court. Appeals of cases which occurred in county courts must generally be filed with the circuit court.

Appeals of cases which occurred in circuit, chancery or youth court must be filed with the Supreme Court of Mississippi. The Supreme Court decides which cases stay in the Supreme Court and which are sent to the Court of Appeals. Certain cases, such as death penalty cases, always remain with the Supreme Court. The Supreme Court or the Court of Appeals will review the proceedings that happened in the court that originally handled the case. The court generally only considers the issues that have been presented for review. Each party submits a written statement of the issues presented for review and the legal argument in support of each issue. The Supreme Court also receives a copy of the transcript of the original court proceedings. The courts do not hear from witnesses

or receive evidence, they only review the record presented to the court.

Appeals generally involve issues of facts as well as issues of law. Issues of fact usually challenge the evidence presented at trial. Issues of law vary and include such matters as: constitutional violations, wrongful admission of evidence, improper use of a legal standard or the use of incorrect legal standard. Appellate courts (any court which handles appeals) closely consider issues involving trial court proceedings and only reverse where “reversible error” is present. Even though the proceedings may have contained an error, not every error justifies a reversal. If an appellate court “affirms” a case, the conviction is upheld. If the appellate court finds “reversible error,” the case will either be “reversed and remanded” or “reversed and rendered”. “Reversed and remanded” is when the conviction is overturned and the case is returned to the lower court for further proceedings. “Reversed and rendered” is when the conviction is overturned, but the final decision is made by the appellate court and no further proceedings will be held on the case.

Any type of appeal can take a long time. An appeal handled by the Supreme Court or the Court of Appeals will typically be decided in six to eighteen months. The victim has the right to be informed of the status of any post-conviction court review or appellate proceedings or any decisions arising from those proceedings.

Bail Pending Appeal

Defendants who are granted bail pending their appeal may not have to begin serving their sentence immediately. In these circumstances, the circuit court will set an appeal bond and the defendant will be released after meeting the requirements of that bond. Once the appeal has been decided and if the conviction is upheld, the defendant will begin serving his or her sentence.

The decision to grant bond while an appeal is pending is solely within the discretion of the circuit judge. Certain persons convicted of a felony may apply to the court for release on bail while their case is pending an appeal. Crimes excluded from the bail pending appeal include felony child abuse and any offense in which the death sentence or life imprisonment is imposed. The convicted offender must show to the court clear and convincing evidence that the release would not present a special danger to any person or to the community.

The victim has a right to submit a written statement objecting to the release of the offender on bail pending appeal.

