

Supreme Court of Florida

86,881

AMENDMENTS TO FLORIDA RULES
OF APPELLATE PROCEDURE 9.020(g)
AND 9.140(b) AND FLORIDA RULE
OF CRIMINAL PROCEDURE 3.800.

[December 21, 1995]

PER CURIAM.

It has come to our attention that scarce resources are being unnecessarily expended in appeals from guilty pleas and appeals relating to sentencing errors. Therefore, on our motion we propose to amend the Florida Rules of Criminal Procedure and the Florida Rules of Appellate Procedure in the manner set forth as Appendix A attached to this opinion. Included therewith are explanations for the amendments which would be added to the applicable committee notes.

The Clerk of this Court is hereby directed to notify all interested parties of this proceeding and to publish notification of these proposed rule changes in The Florida Bar News. The

Court would particularly appreciate receiving responses of the Appellate Rules Committee and the Criminal Rules Committee of The Florida Bar. All responses received by February 19, 1996, will be considered by this Court in its final determination as to appropriate rules to address its concerns.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

APPENDIX A

Florida Rule of Appellate Procedure 9.020(g):

(g) **Rendition (of an Order)**. An order is rendered when a signed, written order is filed with the clerk of the lower tribunal. However, unless another applicable rule of procedure specifically provides to the contrary, if a final order has been entered and there has been filed in the lower tribunal an authorized and timely motion for new trial or rehearing, clarification, or certification; to alter or amend; for judgment notwithstanding verdict or in accordance with prior motion for directed verdict, or in arrest of judgment; to correct a sentence or order of probation; or a challenge to the verdict, the following exceptions apply:

. . . .

(3) If such a motion or motions have been filed and a notice of appeal is filed before the filing of a signed, written order disposing of all such motions, all motions filed by the appealing party that are pending at the time shall be deemed abandoned, and the final order shall be deemed rendered by the filing of the notice of appeal as to all claims between parties who then have no such motions pending between them. However, a pending motion to correct a sentence or order of probation shall not be affected by the filing of a notice of appeal from a judgment of guilt.

COMMENTARY

Subdivision (g) was amended to ensure that a motion to correct sentence or order of probation would postpone rendition. Subdivision (g) (3) was amended to explain that a pending motion to correct a sentence or order of probation is not waived by an appeal from a judgment of guilt.

Florida Rule of Appellate Procedure 9.140(b):

(5) Procedure in Appeals from Guilty and Nolo Contendere Pleas.

(A) In appeals from pleas of guilty and nolo contendere that are made without reservation of dispositive issues to appeal, the record shall be limited to the following:

1. the indictment or information;
2. the transcript of the plea;
3. any written acknowledgment of the plea or condition of probation signed by the defendant and the defendant's counsel;
4. the judgment of guilt;
5. the transcript of the sentencing;
6. the sentence or order of probation;
7. the motion to withdraw the plea and the order thereon; and
8. the motion to alter or amend the sentence and the order thereon.

Upon good cause shown, the court may expand the record.

(B) The issues shall be limited to the following:

1. the subject matter jurisdiction;
2. the illegality of the sentence;
3. the failure of the State to abide by the plea agreement;

4. whether the record reflects that the plea was voluntarily and intelligently entered;
5. whether the record reflects a manifest injustice to the defendant as a result of the failure to establish an adequate factual basis for the plea; and
6. other sentencing issues.

The briefs shall be limited to twenty pages.

(6) Procedure in Appeals Involving Sentencing Issues. No issue concerning the sentence or order of probation may be raised unless the issue has been brought to the attention of the sentencing court by motion to correct the sentence or order of probation filed within ten days after the rendition of the sentence or order of probation. This subdivision shall not be applicable to sentences which are above the statutory maximum or below the statutory minimum for the crime of which the defendant is found guilty.

~~(5)~~ (7) *Procedure in All Other Cases.* Defendant's initial brief shall be served within 80 days of filing the notice. Additional briefs shall be served as prescribed by rule 9.210.

COMMENTARY

Subdivisions (5) and (6) were added and existing subdivision (5) was renumbered as subdivision (7) in order to limit the record and the issues which can be raised on appeals from pleas of guilty and nolo contendere without reservation. Grounds 1, 2, 3 and 4 of subdivision (5) (B) are preserved in Robinson v. State, 373 So. 2d 898 (Fla. 1979). Ground 5 is preserved in Williams v. State, 316 So. 2d 267 (Fla. 1975). Ground 6 is preserved in State v. Rhoden, 448 So. 2d 1013 (Fla. 1984). Subdivision (B) (6) requires that sentencing issues first be raised in the trial court.

Florida Rule of Criminal Procedure 3.800:

(b) Motion to Correct Sentencing

Error. A defendant may file a motion to correct the sentence or order of probation within ten days after the rendition of the sentence.

~~(b)~~ (c) Reduction and Modification. A court may reduce or modify to include any of the provisions of chapter 948, Florida Statutes, a legal sentence imposed by it within 60 days after such imposition, or within 60 days after receipt by the court of a mandate issued by the appellate court on affirmance of the judgment and/or sentence on an original appeal, or within 60 days after receipt by the court of a certified copy of an order of the appellate court dismissing an original appeal from the judgment and/or sentence, or, if further appellate review is sought in a higher court or in successively higher courts, then within 60 days after the highest state or federal court to which a timely appeal has been taken under authority of law, or in which a petition for certiorari has been timely filed under authority of law, has entered an order of affirmance or an order dismissing the appeal and/or denying certiorari. This subdivision of the rule shall not, however, be applicable to those cases in which the death sentence is imposed or those cases in which the trial judge has imposed the minimum mandatory sentence or has no sentencing discretion.

COMMENTARY

Subdivision (b) was added and existing subdivision (b) was renumbered as subdivision (c) in order to authorize the filing of a motion to correct a sentence or order of probation, thereby providing a vehicle in the trial court to correct sentencing errors without the necessity of appeal.

Original Proceeding - Florida Rules of Appellate & Criminal
Procedure