

UNDERSTANDING YOUR APPEAL

The following information only gives a *general* idea of what to expect in a criminal appeal.

“WHAT IS AN APPEAL?”

An appeal is not a new trial. The purpose of an appeal is to review the trial court proceedings to see if the law was followed.

An appeal deals only with issues shown in the transcripts. The transcripts include: (1) the papers in the trial court files and (2) a court reporter’s word-for-word record of what happened in the court room. The Court of Appeal does not hear witnesses nor take new evidence.

The Court of Appeal has no power to decide questions of fact, such as to whether the defendant is guilty or innocent, or whether a certain witness was lying.

The Court of Appeal deals with legal questions. It decides whether the trial court proceedings followed the law. For example, it might decide whether certain evidence was correctly admitted, or whether the jury was properly instructed, or whether the trial judge gave adequate reasons for choosing a particular sentence, or other similar issues.

If the Court of Appeal finds that the proceedings were conducted correctly, the judgment is “affirmed,” which means the defendant’s conviction and sentence will not change.

Even if the Court of Appeal finds that a legal error was made during the trial, the judgment will be affirmed unless the court finds “prejudice” - - that the error made a difference in the trial. If there is “error” and “prejudice” the case will be “reversed” (in part or in full) and sent back to the trial court for a new trial, a new sentencing hearing, or some other proceeding to correct the error. Some mistakes can be corrected by the Court of Appeal itself, without sending the case back.

Most appeals take at least a year from the time the notice of appeal is filed, to the time the decision of the Court of Appeal becomes final.

“WHAT CAN I EXPECT TO HAPPEN DURING THE APPEAL?”

The usual steps in an appeal are:

(1) Preparation of the Transcripts. After the notice of appeal was filed, the trial court clerk and reporter began preparing the transcripts. Preparation of the transcripts can take anywhere from less than a month to over six months, depending on factors such as the length of the trial or whether it is necessary to request additional records. The attorney gets the only copy of the transcripts and they are not provided to the defendant until the end of the attorney’s representation.

(2) Appellant’s Opening Brief.

The first section of the brief is the “Statement of the Case,” which summarizes the procedural history of the case. Next is the “Statement of Facts,” which summarizes the evidence in the case - - first the prosecution, next the defense, then the prosecution rebuttal if any. On appeal, the evidence is evaluated in a light most favorable to the judgment.

Next is the “argument.” This is where the attorney argues that the trial court proceedings did not follow the law and thus the defendant should be given a new trial or sentencing hearing, or other appropriate relief.

The opening brief is due 30 days after the transcripts are filed. In most cases, however, several 30-day extensions of time are needed.

(3) Respondent’s Brief. About two to six months after appellant’s opening brief is filed, the Attorney General will answer by filing a “respondent’s brief.” Some common arguments made in this brief are: appellant’s issues are waived because they were not raised at trial; there was no error; if there was error, the error was harmless. This brief is just the prosecution’s argument; it is not the Court of Appeal’s decision.

(4) Appellant’s Reply Brief. In this brief, the attorney answers the arguments made in “respondent’s brief.” It is due 20 days after the Attorney General’s brief is filed. A reply brief is optional. Every issue does not have to be

discussed, and in many appeals it is not filed at all. It is filed when it is necessary to add to the arguments in your opening brief.

(5) Oral Argument. Usually, within a month or two after all the briefs are filed, the Court will ask the parties if they request oral argument. At oral argument the lawyers for both sides go to the court and argue in person. It usually takes only a few minutes. The defendant has no right to be present and is not brought down from prison to be there.

Oral argument is not held in most cases - - only if there is something that needs to be said that was not already said in the briefs.

(6) The Opinion. The Court of Appeal decides the issues in a written “opinion” which explains its decisions. Three judges read the briefs, review the transcripts, hear oral argument (if requested), and discuss the issues. Then they vote. At least two judges must vote the same way to reach a decision. One of the judges writes the “opinion” for the majority. Occasionally, another judge may write a separate opinion if he or she disagrees with the majority opinion. The opinion is filed after oral argument is held or waived. This may take a few days to as much as three months.

(7) Petition for Rehearing. Within fifteen days after the opinion is filed, either party may file a petition for rehearing which asks the court to reconsider its decision. Few are filed and very few are granted.

(8) Petition for Review in the California Supreme Court. Within forty days after the opinion is filed, either party may file a petition for review in the California Supreme Court. The Supreme Court primarily takes cases which present important issues of law or a conflict in decisions of different Courts of Appeal. Petitions for review are not filed in every case. Very few are granted.