

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
DEC 18 2012
Clerk of the Courts

IN RE: AMENDMENTS TO TENNESSEE
RULES OF CRIMINAL PROCEDURE

No. M2012-01977-SC-RL2-RL

ORDER

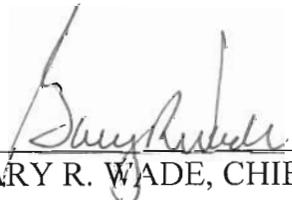
The Court adopts the attached amendments effective July 1, 2013, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 28 INTERPRETERS;
RULE 36.1 CORRECTION OF ILLEGAL SENTENCE;
RULE 37 APPEAL.

The text of each amendment is set out in the attached Appendix.

IT IS SO ORDERED.

FOR THE COURT:



GARY R. WADE, CHIEF JUSTICE

APPENDIX

2013 AMENDMENTS TO THE TENNESSEE RULES OF CRIMINAL PROCEDURE

In the attached amended rules, ~~overstriking~~ indicates deleted text
and underlining indicates added text.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 28

INTERPRETERS

[Amend Rule 28 by adding the underlined text and deleting the overstricken text below, and by deleting the 2006 Advisory Commission Comment:]

The court may appoint an interpreter pursuant to section 3 of Tennessee Supreme Court Rule 42. ~~Reasonable~~ Costs associated with an interpreter's services shall be assessed pursuant to Supreme Court Rule 42. ~~may be assessed against the indigent defense fund pursuant to Tennessee Supreme Court Rule 13 if the party is indigent and is involved in a proceeding in which he or she has a statutory or constitutional right to appointed counsel. In all other proceedings the court may fix the reasonable compensation of an interpreter, and such compensation~~ All interpreter costs not covered by Supreme Court Rule 42 shall be taxed as costs.

~~Advisory Commission Comments [2006]~~

~~———— This revised rule distinguishes between indigent and other litigants. It also cross-references the procedure judges should follow in selecting interpreters pursuant to Supreme Court Rule 42.~~

Advisory Commission Comment [2013]

Tenn. Sup. Ct. R. 42 was revised (effective July 1, 2012) to govern the payment of costs for services of interpreters used in proceedings covered by that rule. Rule 28 was amended to provide that payment for interpreters' services is governed by Tenn. Sup. Ct. R. 42, but that any such costs not covered by that rule shall be taxed as costs.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 36.1

CORRECTION OF ILLEGAL SENTENCE

[Adopt new Rule 36.1 – which is a separate rule from Rule 36 – as follows:]

(a) Either the defendant or the state may, at any time, seek the correction of an illegal sentence by filing a motion to correct an illegal sentence in the trial court in which the judgment of conviction was entered. For purposes of this rule, an illegal sentence is one that is not authorized by the applicable statutes or that directly contravenes an applicable statute.

(b) Notice of any motion filed pursuant to this rule shall be promptly provided to the adverse party. If the motion states a colorable claim that the sentence is illegal, and if the defendant is indigent and is not already represented by counsel, the trial court shall appoint counsel to represent the defendant. The adverse party shall have thirty days within which to file a written response to the motion, after which the court shall hold a hearing on the motion, unless all parties waive the hearing.

(c)(1) If the court determines that the sentence is not an illegal sentence, the court shall file an order denying the motion.

(2) If the court determines that the sentence is an illegal sentence, the court shall then determine whether the illegal sentence was entered pursuant to a plea agreement. If not, the court

shall enter an amended uniform judgment document, *see* Tenn. Sup. Ct. R. 17, setting forth the correct sentence.

(3) If the illegal sentence was entered pursuant to a plea agreement, the court shall determine whether the illegal provision was a material component of the plea agreement. If so, the court shall give the defendant an opportunity to withdraw his or her plea. If the defendant chooses to withdraw his or her plea, the court shall file an order stating its finding that the illegal provision was a material component of the plea agreement, stating that the defendant withdraws his or her plea, and reinstating the original charge against the defendant. If the defendant does not withdraw his or her plea, the court shall enter an amended uniform judgment document setting forth the correct sentence.

(4) If the illegal sentence was entered pursuant to a plea agreement, and if the court finds that the illegal provision was not a material component of the plea agreement, then the court shall enter an amended uniform judgment document setting forth the correct sentence.

(d) Upon the filing of an amended uniform judgment document or order otherwise disposing of a motion filed pursuant to this rule, the defendant or the state may initiate an appeal as of right pursuant to Rule 3, Tennessee Rules of Appellate Procedure.

Advisory Commission Comment [2013]

Rule 36.1 was adopted to provide a mechanism for the defendant or the State to seek to correct an illegal sentence. With the adoption of this rule, Tenn. R. App. P. 3 also was amended to provide for an appeal as of right from the trial court's ruling on a motion filed under Rule 36.1 to correct an illegal sentence.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 37

APPEAL

[Amend paragraph (b)(2)(A) and (b)(2)(D) by adding the underlined text and deleting the overstricken text below; paragraphs (a) and (c) - (e) are unchanged:]

(a) DEFINITION OF AN APPEAL. — An “appeal” refers to direct appellate review available as a matter of right, appeals in the nature of writs of error, and all other direct appeals in criminal cases.

(b) WHEN AN APPEAL LIES. — The defendant or the state may appeal any order or judgment in a criminal proceeding when the law provides for such appeal. The defendant may appeal from any judgment of conviction:

(1) on a plea of not guilty; or

(2) on a plea of guilty or nolo contendere, if:

(A) the defendant entered into a plea agreement under Rule ~~11(a)(3)~~ 11(c) but explicitly reserved—with the consent of the state and of the court—the right to appeal a certified question of law that is dispositive of the case, and the following requirements are met:

(i) the judgment of conviction or order reserving

the certified question that is filed before the notice of appeal is filed contains a statement of the certified question of law that the defendant reserved for appellate review;

(ii) the question of law as stated in the judgment or order reserving the certified question identifies clearly the scope and limits of the legal issue reserved;

(iii) the judgment or order reserving the certified question reflects that the certified question was expressly reserved with the consent of the state and the trial court; and

(iv) the judgment or order reserving the certified question reflects that the defendant, the state, and the trial court are of the opinion that the certified question is dispositive of the case; or

(B) the defendant seeks review of the sentence and there was no plea agreement under Rule 11(c); or

(C) the errors complained of were not waived as a matter of law by the guilty or nolo contendere plea, or otherwise waived, and if such errors are apparent from the record of the earlier proceedings; or

(D) if there is no plea agreement pursuant to Rule 37(b)(2)(A), the defendant—with the consent of the court—explicitly reserved the right to appeal a certified question of law that is dispositive of the case, and the requirements of Rule 37(b)(2)(A)(i)-(ii) are otherwise met, ~~except the judgment or order reserving the certified question need not reflect the state's consent to the appeal or the state's opinion that the question is dispositive.~~

(c) * * * *

Advisory Commission Comment [2013]

Rule 37(b)(2) was amended to clarify the provisions regarding the appeal of cases in which the defendant reserves a certified question of law. *See State v. Joseph L. Lands*, No. W2011-00386-CCA-R3-CD, 2012 Tenn. Crim. App. LEXIS 203 (Tenn. Crim. App. March 29, 2012) (discussing history of Rule 37(b)(2) and apparent drafting error in earlier revision of the rule).