

Frequently Asked Questions



Direct Appeals

What is an appeal?

After being convicted, a defendant may appeal to the Mississippi Supreme Court, claiming there was some legal error made during trial which affected the fairness of the trial. The Mississippi Supreme Court will keep the case or assign it to the Mississippi Court of Appeals.

Some typical claims of error made by defendants include:

- That the State did not present enough evidence to prove each element of the crime;
- That there was a violation of the rules of jury selection;
- That the lower court wrongfully allowed or did not allow certain evidence to be admitted;
- That there was a flaw in the instructions of law given to the jury; or
- That the prosecutor said something unfair during closing argument.

The appeal is not a new trial, and the facts found during the trial which support the guilty verdict will apply to the Court's decisions regarding the legal issues raised. The Court's decision is based upon the contents of the record on appeal. No new evidence can be added.

How long does an appeal take?

From the time the Supreme Court receives the defendant's notice of appeal to the point where the Court issues its mandate ending the appeal, the typical appeal will take about 12 to 18 months. More complex cases may potentially take longer. Both appellate courts issue decisions within 270 days after the final briefs have been filed with the Court.

What happens in an appeal?

The following steps occur in an appeal:

Notice of Appeal: A defendant has 30 days from the date entry of judgment or order appealed from to file a notice of appeal in the trial Court. That notice will be sent by the trial court to the Supreme Court Clerk's Office.

Record on Appeal: The defendant (now referred to as an appellant) will file the record on appeal. The record on appeal consists of a legal file (documents filed with the trial court during the original proceeding) and the transcripts of the trial, sentencing hearings, and any other hearings which are needed to resolve

the issues on appeal. The Court may grant the appellant an extension of time if the appellant has a reason for asking, such as if there is a delay in the court reporter completing the transcript.

Appellant's Brief: The appellant's brief, which is filed first, raises the issues he or she wants to raise on appeal. The appeal will almost always be limited to legal issues. The appellant has 40 days after the date on which the record is filed to file the brief, although the Court may extend that amount of time if requested.

Appellee's Brief: The State (also referred to as the respondent) will file a brief answering the claims raised by the appellant. The Attorney General represents the state in all felony appeals. In appeals from misdemeanors, the prosecutor from the county where the case was tried will represent the state. This brief is due 30 days after the appellant's brief is filed, although the Court may extend that amount of time if requested.

Appellant's Reply Brief: The appellant may file a brief replying to arguments made in the appellee's brief. A reply brief is not required. This brief is due 14 days after the appellee's brief is filed, although the Court may extend that amount of time if requested.

Submission of the Case: Following the completion of all the briefs, the case is submitted one of two ways. The Court can schedule an oral argument where attorneys for each side will present a brief argument about the points raised on appeal and the Court will ask the attorneys any questions it has about the issues. The case can also be submitted the "on the briefs," meaning the Court will make its decision based on the arguments raised in the briefs without any oral argument.

Opinion: After the case is submitted, the judges take the case under consideration and decide how to resolve the case. One judge then writes an opinion, which explains the legal reasons for the Court's decision. The entire Court votes on the opinions. If a majority is reached, the Court then issues the opinion, notifying the parties of its decision and reasoning. The Supreme Court issues opinions every Thursday at 1:30 pm, and the Court of Appeals issues opinions every Tuesday at 1:30 pm. The opinions can be found on the Court's website at <https://court.ms.gov>.

Post-Opinion Motions: The party who loses the appeal may file post-opinion motions. First, the party can file a motion for rehearing. This is not usually granted, but if it is, the Court will typically issue a new opinion with no other

briefs or argument being made. Second, if a defendant is denied relief in the Court of Appeals and his or her motion for rehearing is denied by the Court of Appeals, the defendant may file a writ of certiorari in the Supreme Court. This also applies to the State. If the Supreme Court grants certiorari, it shall issue a decision within 180 days after the final briefs have been filed with the Court.

Mandate: After the time ends for filing a motion for rehearing or the Supreme Court denies certiorari, the Court issues a mandate, which officially ends the appeal. Mandates are issued 21 days after the entry of judgment in the Supreme Court. In cases before the Court of Appeals, mandates issue 21 days after the entry of judgment, the disposition of a motion for rehearing, or the denial/dismissal of a writ of certiorari by the Supreme Court.

If I am a crime victim, how may I be kept informed of the progress of an appeal?

Victims of crime are entitled to be kept informed of the progress of an appeal. If the case is a misdemeanor, contact the office of the prosecutor who tried the case to notify them that you want to be kept informed. If the case is a felony, you should notify the Attorney General's Office in writing that you want to be kept informed. You can do so by completing an online form available on our website at:

<https://www.ago.state.ms.us/divisions/bureau-of-victim-assistance/crime-victim-criminal-appeal-process-notification-form/>

You can also keep track of the case progress through the Supreme Court's website (<https://courts.ms.gov/>). The site includes a search box under "General Docket" where you can enter the defendant's name or case number. Select the appropriate case and you will be able to view the docket entries to see what has occurred during the appeal so far.

As a crime victim, may I attend the oral argument in the Supreme Court or Court of Appeals? May I make a statement?

Oral arguments are open to the public, so you may attend. You will be notified of the time and place of the argument if you have made a written request to be kept informed about the case.

Statements from people other than the attorneys and judges are not permitted at oral argument. If you made a statement at trial or sentencing, however, that is included in the trial transcript, which the Court will read.

Will the defendant be at the oral argument?

If the defendant is free on bond or received a sentence of probation, he or she may attend oral argument. If the defendant is incarcerated, however, he or she will not be at the oral argument.

Can the state appeal if the defendant wins at trial?

Generally, no. The state can appeal in three specific circumstances as set out in Mississippi Code Annotated section 99-35-103. The state can appeal: 1) from a judgment sustaining a demurrer to, or a motion to quash an indictment or an affidavit charging a crime; 2) from a judgment acquitting the defendant where a question of law has been decided adversely to the state; and 3) from a ruling adverse to the state where the defendant is convicted and files an appeal. In the first scenario, the appeal does not preclude another prosecution of the defendant for the same offense. In the second, the appeal does preclude another prosecution of the defendant for the same offense. In the third, the state's appeal is treated as a cross-appeal.

Post-Conviction Actions

What is a motion for post-conviction relief?

After the direct appeal is over, or if the defendant pleaded guilty, a defendant may file a motion for post-conviction relief in the trial court. If the defendant's direct appeal was ruled upon by the Supreme Court or Court of Appeals, the defendant is required to seek permission from the Supreme Court to file a PCR motion in the trial court. The defendant is limited to the types of claims he or she may raise. Most often, this is a proceeding where the defendant may challenge the actions of his or her attorney during trial and on direct appeal.

Where does the post-conviction action take place?

The post-conviction proceeding will occur in the county where the defendant was tried or pled guilty. The state is represented by the prosecutor who handled the trial or plea.

What happens in a post-conviction action?

Pro se Motion: The defendant files a motion for post-conviction relief. This first motion is called a pro se (pronounced "pro SAY") motion, as it is almost always filed by the defendant himself rather than through an attorney.

The trial court can either dismiss the petition or require a response or other action from the state. The trial court can also decide that an evidentiary hearing is needed. The defendant may or may not attend this hearing.

If the trial court dismisses or denies the defendant's PCR motion, the defendant has 30 days to file an appeal to the Supreme Court. The appeal process is the same as for the direct appeal described above.

If I am a crime victim, how may I be kept informed of the progress of a post-conviction proceeding?

To be kept informed of the post-conviction proceeding, you will need to contact the prosecutor's office which handled the original trial or plea. If there is an appeal, the state is represented by the Attorney General. If you wish to be kept informed of the progress of that appeal, you will need to submit a new request to the Attorney General's Office, even if you sent in such a request for a direct appeal.

<https://www.ago.state.ms.us/divisions/bureau-of-victim-assistance/crime-victim-criminal-appeal-process-notification-form/>

Federal Habeas

What is federal habeas?

A federal habeas action is a civil action in which a petitioner (in most cases a state prisoner) may challenge the constitutionality of his detention or conviction after completing a full round of state appellate review.

In what court is a federal habeas petition filed?

Federal habeas petitions for persons challenging their detention or conviction in the state courts of Mississippi are filed in the United States District Courts of Mississippi.

Who files a response to federal habeas petitions on behalf of the State of Mississippi?

The Mississippi Attorney General's Office responds to federal habeas petitions filed by persons awaiting trial in the State of Mississippi or who are in custody pursuant to a judgment of a state court of Mississippi.

Approximately how many new federal habeas petitions are filed each year?

While the numbers vary each year, the Federal Habeas Division responds to approximately 100 new petitions annually.

What types of issues are raised in a federal habeas action?

The issues raised in federal habeas cases vary depending on the petitioner's custodial status and the basis for his constitutional challenge, i.e. whether it is a challenge to pretrial custody, parole – both release and revocation, loss of earned time, the conviction on the merits, or some other basis for his confinement.

