

SUPREME COURT OF NEW JERSEY

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REVISED
SUPREME COURT DIRECTIVE ON
CAPITAL CAUSE APPEAL AND POST-CONVICTION RELIEF PROCEDURES

The following procedures shall apply to direct appeals from final judgments of conviction for murder and sentence of death and to all petitions and appeals involving post-conviction proceedings that relate to judgments that impose death sentences. When necessary to implement its terms, the Directive supersedes otherwise applicable provisions of the Rules of Court.

I. Pretrial/Prehearing Requirements.

A. Computer-assisted court reporters are to be assigned to all trial court proceedings in which the State has indicated its intent to seek the death penalty by serving a notice of aggravating factors, and to proceedings involving a petition for post-conviction relief from a judgment of conviction of murder and a sentence of death. The Criminal Division Manager shall notify the Supervising Court Reporter immediately on the return of a jury verdict imposing the death penalty or upon the decision denying or dismissing a petition for post-conviction relief. The Supervising Court Reporter shall direct the court reporters to prepare transcripts forthwith, and shall monitor and expedite the

preparation of the transcripts.

II. Trial Court Computer-Assisted Transcription. In all capital murder prosecutions and related post-conviction relief proceedings, the court reporter shall provide the State, defendant, and the trial court with daily diskettes of the proceedings. On the entry of a conviction and sentence, the court reporter shall prepare hard copies of the transcript as provided by Rule 2:5-3.

III. Conviction, Sentence, and Appeal.

A. On a verdict imposing a sentence of death, the trial court shall immediately enter a judgment and sentence on the capital count. R. 3:21-4(a); R. 3:21-5(a). If a later proceeding is required for sentencing on non-capital counts, the judgment shall be amended immediately on the conclusion of that proceeding. Not later than two days from the imposition of the sentence of death, the Criminal Division Manager shall transmit a copy of the judgment and sentence to the Clerk of the Supreme Court and to each of the parties.

B. An appeal shall be taken in all cases in which there is a judgment of conviction of murder and a sentence of death pursuant to N.J.S.A. 2C:11-3(c). In all such capital causes, appeals from the final judgment of conviction and sentence and all post-

conviction appeals shall be taken directly to the Supreme Court pursuant to Rule 2:2-1(a)(3). Appeals from the final judgment of conviction for murder and sentence of death shall include all other convictions and sentences resulting from charges that were prosecuted in the trial of the capital cause. The transmittal to the Clerk of the Supreme Court of a copy of the final judgment of conviction and sentence of death, or order granting or denying post-conviction relief, shall constitute the initiation of the appeal.

C. Within ten days of the imposition of the sentence of death, the Criminal Division Manager shall transmit to the Clerk of the Supreme Court and to the parties a Case History that includes:

1. A list in chronological order of all proceedings for which transcripts must be prepared; and
2. A list of all exhibits introduced at the proceedings together with all documentary exhibits enumerated on the list.

All physical exhibits that were introduced at trial shall be retained by the State, subject to further order of the Supreme Court.

D. On receipt of the copy of the judgment and sentence, the Clerk of the Supreme Court shall docket defendant's appeal and shall assign a docket number and notify the parties, the trial court, the Attorney General, and the Department of Corrections that

the appeal has been docketed.

E. On receipt of notification that the appeal has been docketed,

1. The defense attorney of record shall forthwith furnish to the Clerk and serve on the State a formal Notice of Appeal, which shall include the name of the attorney or attorneys who will represent defendant on the appeal;

2. The prosecuting attorney of record shall forthwith furnish to the Clerk and serve on the trial defense attorney the name of the attorney or attorneys who will represent the State on the appeal;

3. If the Attorney General does not represent the State on the appeal, the Attorney General shall forthwith inform the Clerk whether the Attorney General shall seek leave to participate in the appeal as amicus curiae, and if so, the Attorney General shall promptly move to participate in the appeal as amicus curiae and shall designate the name of the attorney or attorneys who will represent the Office of the Attorney General.

F. Within five days of the receipt of the Case History from the trial court, defense counsel shall order hard copies of all computer-diskette transcripts in accordance with Rule 2:5-3(a) on appropriate Transcript Order Forms with additional copies to the Supervising Court Reporter. Unless both parties stipulate otherwise, the transcripts that are ordered shall include opening and closing statements, jury voir dire examinations, and legal argument of counsel. The Supervising Court Reporter shall verify the accuracy of the dates and court reporters identified on the

Order Forms. Any discrepancies will be resolved forthwith by the Supervising Court Reporter, the attorneys for the parties, and the Criminal Division Manager.

G. Within fourteen days of the completion of the transcripts by all court reporters, defense counsel shall file, pursuant to Rule 2:6-12(d), three copies of the transcript with the Clerk of the Supreme Court. The Court, through the Clerk, may direct the filing of an incomplete record if circumstances warrant it.

H. Within fourteen days of the filing of the Notice of Appeal, the defense attorney shall file with the Clerk and serve on the State's attorney a Preliminary Case Information Statement. The Statement shall contain information sufficient to enable the Court to determine at the earliest opportunity the complexity of the appeal and the time periods that will be required in order to perfect the appeal. Such statement shall include (a) the dates and duration of the trial; (b) the dates and duration of all pretrial proceedings; (c) the estimated length of the record on appeal; (d) the items comprising the appendix; and (e) a specification of issues expected to be presented on the appeal, which, if necessary, may be based on information supplied by defendant's trial attorney.

I. Within five days of the filing of defense attorney's Preliminary Case Information Statement, the attorney for the State shall file the State's Preliminary Case Information Statement with

the Clerk of the Supreme Court and shall serve a copy on defense counsel. The State's Statement shall include (a) the State's agreement or disagreement with any matters set forth in defendant's Statement, including the specification of issues expected to be presented on appeal, and (b) any additional matters deemed relevant to the appeal.

J. After receiving both of the Preliminary Case Information Statements, the Clerk of the Supreme Court shall enter an Order establishing a Preliminary Appeal Calendar specifying the dates by which (a) transcripts must be filed and the record completed; (b) an appeal management conference will be scheduled between all appellate attorneys and a Court representative; and (c) briefs will be filed. The parties shall file any amendments to their Preliminary Case Information Statements and any requests for changes to the Preliminary Appeal Calendar with the Clerk of the Supreme Court no later than one week before the scheduled conference date.

K. The appeal management conference shall be conducted on the date set forth in the Preliminary Appeal Calendar and shall be attended by all appellate attorneys and a Court representative, unless the Clerk of the Supreme Court determines from the submissions of the parties that such a conference is not necessary. The Court shall direct the Clerk to enter a Final Appeal Calendar

that establishes a peremptory briefing schedule and oral argument date.

L. Appellate attorneys shall be obligated to meet the schedules set forth in the Final Appeal Calendar and to respond promptly to all interim requests for information on the progress of brief preparation.

M. Relaxation of the dates established in the Final Appeal Calendar shall be permitted only in extraordinary circumstances on application to the Supreme Court.

IV. Proportionality Review.

The administration of the proportionality review component of a death sentence shall be overseen by a Special Master, who shall be appointed by the Supreme Court. When a judgment of conviction for murder and sentence of death is imposed, and immediately after any necessary presentence report has been completed, the Criminal Division Manager shall provide the Administrative Office of the Courts, Criminal Division (AOC), with such information as the AOC shall require for purposes of proportionality review. The information shall include the following:

- A. Judgment of conviction;
- B. Presentence report;

- C. Notice of aggravating factor(s);
- D. Any order resulting from a motion to dismiss;
- E. Pretrial evidentiary decisions that may have impacted on the decision to pursue the case capitally;
- F. The requisite plea form, indictment, or accusation;
- G. All defendant statements provided in discovery;
- H. All investigative reports from any law enforcement agency;
- I. Defense notice of mitigating factors;
- J. Autopsy and medical examiner reports;
- K. Psychiatric evaluations and psychological reports; and
- L. Both guilt and penalty phase verdict sheets.

The AOC will prepare and distribute to the parties and the Clerk of the Supreme Court the data coding instrument (DCI), narrative summary, and salient factor table for the proportionality review component of defendant's appeal. Not later than three weeks from the receipt of the DCI, narrative summary, and salient factor table, each party shall file its comments, along with the applicable salient factor category and a list of comparable cases, with the Special Master, the Clerk of the Supreme Court, and on the other parties to the appeal. Not later than ten days after the filing of its initial comments, each party shall file a reply to the opposing party's comments with the Special Master, the Clerk of the Supreme Court, and on the other parties to the appeal. The

Special Master shall conduct hearings in respect of any unresolved issues as required and shall thereafter file a report with the Supreme Court and the partes. The comments of the parties in respect of the Master's report shall be included in their briefs on the direct appeal unless otherwise Ordered by the Supreme Court.

V. Post-Conviction Relief Petitions; Trial Court Actions.

A. Applicable Rules. Petitions for post-conviction relief shall be filed in accordance with the requirements of Rule 3:22, except as provided by this Directive. Pursuant to Rule 3:22-12, defendant's first petition for post-conviction relief shall be filed within thirty days of the completion of defendant's direct appeal, which appeal shall include action by the United States Supreme Court in respect of a petition for writ of certiorari.

B. Case Management Conference. Immediately on receipt of a first petition for post-conviction relief, the trial court shall schedule a conference with counsel for the parties. The purpose of the conference shall be to identify the specific requirements of the case to ensure that the case is resolved within the limits contained in Rule 3:22 and this Directive.

C. Briefs. Within ninety days of the filing of a petition for post-conviction relief, defense counsel shall file a brief in support of defendant's petition. The State shall file its brief in

response within seventy-five days of the receipt of defendant's brief. Defendant may file a reply brief within fourteen days of the filing of the State's brief.

D. Hearing. The trial court shall conduct and conclude any hearing(s) on the petition no later than 180 days after the filing of defendant's petition.

E. Disposition. The trial court shall render its decision, including a detailed statement of reasons, no later than thirty days after the final plenary hearing or, if the trial court concludes that a plenary hearing is not warranted, no later than fourteen days after the completion of oral arguments on defendant's application.

F. Case Tracking. The Criminal Division Manager for each Vicinage shall prepare a monthly report in respect of each pending application for post-conviction relief in the vicinage. The report shall identify the date the application was filed, the name of the case, the indictment or accusation number, the names of counsel for the State and for the defense, the date of the Case Management Conference, the due dates and filing dates for all required briefs, the date(s) of the hearing, the due date for the decision from the trial court, and the date the decision was filed. If the filing deadlines of this Directive have not been met, the Criminal Division Manager's report shall specify the reasons for the delay.

Copies of each report shall be filed with the Assignment Judge, the Criminal Presiding Judge, the trial court, the Special Master, and the Administrative Office of the Courts (Criminal Division). The Administrative Office of the Courts shall file a consolidated monthly report with the Administrative Director and the Clerk of the Supreme Court.

VI. Post-Conviction Relief Petitions; Trial Court Actions When Defendant Opposes the Application.

A. Applicable Rules. When defense counsel is informed that defendant seeks to waive his or her right to file a first post-conviction relief petition, the Public Defender or other designated counsel shall nonetheless file a petition for post-conviction relief on defendant's behalf. The trial court also shall appoint standby counsel on behalf of the defendant.

The petition shall be filed in accordance with the requirements of Rule 3:22 as supplemented and superseded by this Directive.

B. Case Management Conference. Immediately on receipt of the first petition for post-conviction relief, the trial court shall schedule a conference with counsel for the parties. The purpose of the conference is to identify the specific requirements of the case to ensure that the case is resolved within the limits contained in

this Directive.

C. Briefs. Within thirty days of the filing of a petition for post-conviction relief, defense counsel shall file the brief in support of defendant's petition. The State shall file its brief in response within thirty days of the receipt of defendant's brief. Defendant may file a reply brief within five days of the filing of the State's brief.

D. Hearing. The trial court shall conduct any hearings on the petition on an accelerated basis, concluding them within thirty days of the filing of defendant's reply brief.

E. Disposition. The trial court shall render its decision, orally or in writing, including a detailed statement of reasons within fourteen days of the completion of hearings.

F. Case Tracking. The trial court case tracking process for standard petitions for post-conviction relief shall be followed in matters that come within this section of the Directive. (See Part V, SF, supra).

VII. Post-Conviction Relief Petitions; Appeals.

A. On the denial or dismissal of defendant's petition for post-conviction relief, the trial court shall immediately enter a judgment pursuant to Rule 3:22-11. Within two days thereof, the clerk shall forward a copy of the judgment and sentence to the

Clerk of the Supreme Court and to each of the parties. The transmittal of a copy to the Clerk of the Supreme Court shall constitute the initiation of the appeal.

B. Appeals to the Supreme Court from final decisions on petitions for post-conviction relief pursuant to Part V of this Directive shall conform to the procedures set forth in Part III.

C. Appeals to the Supreme Court from final decisions on petitions for post-conviction relief that are brought under Section VI of this Directive shall be subject to acceleration. The appellant must file Supreme Court briefs within fifteen days of the decision of the trial court and respondent must file within fifteen days thereafter. The Supreme Court shall file its decision in the matter within forty-five days of the receipt of the notice of appeal or within thirty days of any scheduled oral arguments. See, State v. Martini (III), 144 N.J. 603, 614-615 (1996).

VIII. Stay of Sentence.

A. Under Rule 2:9-3(a), a sentence of death will be stayed automatically during the pendency of timely applications on behalf of defendant in respect of the following:

1. The direct appeal to the Supreme Court and, after an affirmance of the judgment and sentence by the Supreme Court, a petition for writ of certiorari;

2. A first petition for post-conviction relief, including the appeal from a decision denying or dismissing the petition, and a petition for writ of certiorari; and

3. A petition for habeas corpus relief, including the appeal to the Third Circuit Court of Appeals and a petition for writ of certiorari.

B. A stay that does not come within the foregoing shall be granted only by leave of the Supreme Court.