

## **Appellate Court Dispositions C Conforming Judgments**

Directive #9-75  
Directive #11-76  
Issued by:

November 21, 1975  
March 4, 1977  
Edwin H. Stern

Recently, a number of problems have arisen by virtue of the feeling that an appellate opinion constitutes a judgment and that, therefore, when an appellate opinion favoring defendant is "dispositive" of a matter, no conforming judgment of the trial court is necessary.

State Correctional Officials cannot rely upon typed opinions to amend signed and sealed judgments and commitments. Moreover, in order to notify prisons and the State Police "rap sheet" Unit (State Bureau of Identification) of the appellate disposition, conforming judgments must be entered by the trial court which entered the original judgment. As noted in an April 24, 1975 memorandum:

while the opinion of the appellate court is a judgment, *R. 2:11-3(b)*, the opinion is not sent to the State Police so that "rap sheets" can be amended, and the institutions are not officially advised of the appellate court disposition.

Accordingly, amended judgments of conviction must be entered when appellate review has been exhausted and the appellate disposition is dispositive and favorable to the defendant. (footnote omitted)

There is a related problem which has also become apparent. The April 24, 1975 procedure was designed to permit some flexibility in terms of entry of conforming judgments depending upon whether or not further proceedings were going to be pursued in the Supreme Court. In other words, for example, if the Appellate Division amends a sentence or dismisses a complaint, the State might want to appeal (if there is a dissent) or seek certification, and apply for a stay. Thus, despite the fact that the Appellate Division opinion is itself a judgment, the State nevertheless must have an opportunity to make a timely application for Supreme Court review and to seek a stay of the Appellate Division judgment. Therefore, the procedure embodied in the April 24, 1975 memorandum gives you the responsibility (as an aid to the Trial Court) of assuring that papers are filed if further proceedings are to be taken to the Supreme Court, and that appropriate follow-up is given to each matter in the absence thereof or upon disposition in the Supreme Court.

In summary, it is the trial court's obligation to enter conforming judgments following appellate disposition, and the Trial Court Administrator (providing a double-check on counsel and as an aid to the trial court) has the responsibility for making sure that it is done forthwith unless he or she is assured that further proceedings are being taken, that the proceedings have in fact been taken in a timely manner, and that the appropriate follow-up is given after the Supreme Court denies certification or disposes of the appeal (if there is a direct appeal or if certification is granted).

As an aid to you in this function, the Department of Corrections has arranged for you to send all amended judgments and appropriate communications to central locations as follows:

For State Prison Inmates: Senior Classification Officer  
Prison Reception  
Youth Reception and Correction Center  
Yardville, New Jersey 08620

For Youthful Offenders: Senior Classification Officer  
Youth Reception  
Youth Reception and Correction Center  
Yardville, New Jersey 08620

As indicated in my memo of October 27, 1975 to the Trial Court Administrators, "If the defendant is partially or completely successful on his or her appeal to the Appellate Division, and the State is seeking further review in the Supreme Court, absent a stay, the Trial Court Administrator will have undoubtedly completed follow-up action necessitated by the Appellate Division's decision before a petition for certification is decided." The October 27, 1975, memo was designed to advise Trial Court Administrators that they would receive copies of orders on petitions for certification. Prior to October 27, 1975, the Trial Court Administrators had to orally ascertain the status of matters on petition for certification. It should also be noted that, while the Trial Court Administrators also have the responsibility of assuring surrender and execution of sentence where the defendant is not in custody pending appeal or where he or she received a non-custodial sentence, in such instances the timing for entering conforming judgments may be more flexible and may await final action by the Supreme Court if timely proceedings are filed in that Court.

Chief Probation Officers should be receiving notice of appellate court disposition so that probationary terms, which are stayed pending appellate proceedings, *R. 2:9-3(d)*, can be commenced. Giving notice to the Chief Probation Officers of such disposition after action by the Appellate Division, and thereafter at the Supreme Court level if further proceedings are taken, will provide a double check for the Chief Probation Officers. Moreover, if the case involves a custodial sentence and the defendant is out on bail pending appeal, *R. 2:9-4*, the Chief Probation Officers must receive notice of the disposition so that they know to furnish copies of the presentence report to the institution upon surrender.

Trial Court Administrators should now be receiving copies of orders denying certification as well as opinions of the Supreme Court (if certification is granted or there is an appeal as of right) as well as Appellate Division decisions. If further bail is granted following Appellate Division disposition, the trial court and trial court clerk will receive a copy of the appropriate order under *R. 2:9-4*, amended effective September 8, 1975, and Chief Probation Officers can check with the trial court judge, the trial court clerk or the prosecutor to ascertain if there is continued bail after Appellate Division disposition and pending action by the Supreme Court.

### **EDITOR-S NOTE**

All of the attachments to the original directives have been deleted, and the substantive information from them has been extracted and incorporated in this directive. The language has been amended to render it gender neutral.