

THE APPELLATE PROCESS

Going Through the Motions

by: Chester "Chuck" Brost

As promised, this month I wanted to try and explain the appellate process and the writ of habeas corpus. However, after much rumination, I decided that a commentary, or personal narrative of the reality of these steps was also in order. Working as a paralegal, over the years I have read literally hundreds of cases. Some good, most bad. And though my findings in the law reporters are grim, what's even more disturbing are the diluted opinions in the unpublished orders, that only the few will ever read, that evade the concept of fundamental fairness, and make a mockery of this Country's Constitution, which are churned out by the dozens on a daily basis.

As most convicts know, or will soon discover, you DO still have Rights, one of them being "meaningful" access to the courts. However, most state legislatures have basically circumvented this Right by creating such stringent statutes, such as tight, unforgiving filing deadline, that you almost have to have a degree in criminal law to even understand that you have a deadline.

The appeals process usually begins with the filing of a Notice of Appeal. This generally gets filed by your trial attorney after you are sentenced. If you are indigent, the Notice will be accompanied by a request for appointed counsel. Within the next six months or so, you should receive a form letter from your new attorney giving you the rundown on why it is going to take so long to proceed. Whatever their reasoning, the fact of the matter remains that the attorney simply has more clients than she can handle.

As you try and settle into your new life, the next thing you may receive is a copy of your Appellate Brief and Argument, which, more than likely, will not contain any of the arguments that you thought were important. This, in turn, will be followed by a pleasant letter, responding to your inquiry (the letter you'll write asking about the issues you thought were important) explaining that even though the attorney sees your point, she feels strongly about what she has filed; that every plausible issue can't be raised; and that the State has already been ordered to answer what has been filed, or something on those lines. And though I recommend attempting to file a supplemental brief to try and preserve your other issues for federal review, don't count on the court to allow your pro se brief in.

The first think that you need to understand, is that appellate judges resist overruling court judgements. Many courts have even opined that you are not guaranteed a "perfect" trial. Normally, the appellate court will overturn a guilty verdict ONLY if the trial court made an error of law that significantly contributed to the finding of guilt. Other than that, its "HARMLESS ERROR!" Oh, and when it comes to the discretion of the sentencing court, as long as the court remains within the statutory guidelines, the appellate court usually won't touch the sentence either.

If you happen to find yourself at the receiving end of an appeal that has been denied, you MUST proceed further. Most states have a high court. But, before you find yourself hopeful, you must understand that the state's higher court is generally reserved to resolve conflicting decisions amongst the different lower courts within your state, and unless your sitting on Death Row, don't count on the high court to hear your case. But, you must exhaust that remedy nevertheless, before proceeding into federal court.

Now that you've come this far (2 to 5 years), and assuming everything has been denied, hopefully, during this time, you've been in your prison's law library studying statutes and the case law that interprets them, because any further litigation will be your responsibility. Most states have a remedy or two to resolve your Constitutional violations. But, these remedies are usually reserved for issues OTHER THAN trial error, ie..., illegal sentence, actual innocence claims based upon new evidence, etc.

The most important thing, above all else, that you must remember, is that these post conviction remedies MUST be filed on time! I can not stress this enough, because if you file untimely and become time barred, you will find yourself in procedural default litigation for years to come, and unless the reason for the untimely filing was based upon your being in a coma, your Constitutional violations won't likely be addressed in federal court. Which brings me to the "Great Writ."

Federal law dictates that the writ of habeas corpus is unsuspendible except in times of great turmoil. However, the Antiterrorism Effective Death Penalty Act does a pretty good job of suspending the writ from the layman, and because a late habeas corpus petition will surely destroy your chances, it is imperative that you understand exactly how the one year statute of limitations works (you have only one year after your direct appeal is denied to file your habe), and what can stop the clock on that statute. And certainly, you must come to understand exhaustion and the standard(s) of review.

Whether your guilty or not, the bottom line is that they throw you in a cage and you have to learn, in a matter of months, what the writers of these laws spent a lifetime learning themselves. And as you sit in your cage, and you hear time and again of corrupt officials or the elite getting mistrials and reversed convictions in 30 days while out on an appeal bond, while year after year you wait on word about your appeal, and the fog of class separation dissipates, you have to understand that, like most institutions in America, prisons, too, have become an industry, and you a commodity.

Have you ever wondered why they build so many new prisons and pass so many new no parole laws, but yet never erect any new court houses to handle the litigation? Could it be that new courts are unnecessary because no growth industry would consider relinquishing its investments, and that these procedural and no release laws are merely insurance policies to protect these investments?

Either way, other than not committing felonious acts, the best advice I can offer is not to allow yourself to become time barred. And, if you find yourself reading this just prior to experiencing it for yourself do to your own recent banishment, and are having a hard time believing that the system is this corrupt, I applaud you for your patriotism and belief in democracy, but get a good grip, because you in for a bumpy ride; you've just become a umber, and if you do not dedicate your life to learning these procedures to regain what you knew as freedom, you'll only be going through the motions.

Chuck

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