

Rules of Practice and Procedure, after plea of guilty,
verdict or finding of guilt, in Criminal Cases
brought in the District Courts of the United States
and in the Supreme Court of the District of
Columbia.

ORDER.

Pursuant to the provisions of the Act of Congress, approved March 8, 1934, amending an Act entitled "An Act to give the Supreme Court of the United States authority to prescribe Rules of Practice and Procedure with respect to proceedings in criminal cases after verdict" (Act of February 24, 1933, c. 119, U.S.C., Title 28, Sec. 723(a))—

It is ordered on this seventh day of May, 1934, that the following rules be adopted as the Rules of Practice and Procedure in all proceedings after plea of guilty, verdict of guilt by a jury or finding of guilt by the trial court where a jury is waived, in criminal cases in District Courts of the United States and in the Supreme Court of the District of Columbia, and in all subsequent proceedings in such cases in the United States Circuit Courts of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States.

It is further ordered that these rules shall be applicable to proceedings in all cases in which a plea of guilty shall be entered or a verdict or finding of guilt shall be rendered, on or after the first day of September, 1934.

I. *Sentence.* After a plea of guilty, or a verdict of guilt by a jury or finding of guilt by the trial court where a jury is waived, and except as provided in the

Act of March 4, 1925, c. 521, 43 Stat. 1259, sentence shall be imposed without delay unless (1) a motion for the withdrawal of a plea of guilty, or in arrest of judgment or for a new trial, is pending, or the trial court is of opinion that there is reasonable ground for such a motion; or (2) the condition or character of the defendant, or other pertinent matters, should be investigated in the interest of justice before sentence is imposed.

Pending sentence, the court may commit the defendant or continue or increase the amount of bail.

II. *Motions.* (1) Motions after verdict or finding of guilt, or to withdraw a plea of guilty, shall be determined promptly.

(2) Save as provided in subdivision (3) of this Rule, motions in arrest of judgment, or for a new trial, shall be made within three (3) days after verdict or finding of guilt.

(3) A motion for a new trial solely upon the ground of newly-discovered evidence may be made within sixty (60) days after final judgment, without regard to the expiration of the term at which judgment was rendered, unless an appeal has been taken and in that event the trial court may entertain the motion only on remand of the case by the appellate court for that purpose, and such remand may be made at any time before final judgment.

(4) A motion to withdraw a plea of guilty shall be made within ten (10) days after entry of such plea and before sentence is imposed.

III. *Appeals.* An appeal shall be taken within five (5) days after entry of judgment of conviction, except that where a motion for a new trial has been made within the time specified in subdivision (2) of Rule II, the appeal may be taken within five (5) days after entry of the order denying the motion.

Petitions for allowance of appeal, and citations, in cases governed by these rules are abolished.

Appeals shall be taken by filing with the clerk of the trial court a notice, in duplicate, stating that the defendant appeals from the judgment, and by serving a copy of the notice upon the United States Attorney. The notice of appeal shall set forth the title of the case, the names and addresses of the appellant and appellant's attorney, a general statement of the nature of the offense, the date of the judgment, the sentence imposed, and, if the appellant is in custody, the prison where appellant is confined. The notice shall also contain a succinct statement of the grounds of appeal and shall follow substantially the form hereto annexed.

IV. *Control by Appellate Court.* The clerk of the trial court shall immediately forward the duplicate notice of appeal to the clerk of the appellate court, together with a statement from the docket entries in the case substantially as provided in the form hereto annexed.

From the time of the filing with its clerk of the duplicate notice of appeal, the appellate court shall, subject to these rules, have supervision and control of the proceedings on the appeal, including the proceedings relating to the preparation of the record on appeal.

The appellate court may at any time, upon five (5) days' notice, entertain a motion to dismiss the appeal, or for directions to the trial court, or to vacate or modify any order made by the trial court or by any judge in relation to the prosecution of the appeal, including any order for the granting of bail.

V. *Supersedeas.* An appeal from a judgment of conviction stays the execution of the judgment, unless the defendant pending his appeal shall elect to enter upon the service of his sentence.

VI. *Bail.* The defendant shall not be admitted to bail pending an appeal from a judgment of conviction save as follows: Bail may be granted by the trial judge or by the

appellate court, or, where the appellate court is not in session, by any judge thereof or by the circuit justice.

Bail shall not be allowed pending appeal unless it appears that the appeal involves a substantial question which should be determined by the appellate court.

VII. *Directions for preparation of record on appeal.* The clerk of the trial court shall immediately notify the trial judge of the filing of the notice of appeal, and thereupon the trial judge shall at once direct the appellant or his attorney, and the United States Attorney, to appear before him and shall give such directions as may be appropriate with respect to the preparation of the record on appeal, including directions for the purpose of making promptly available all necessary transcripts of testimony and proceedings. The action and directions contemplated by this Rule may be had and given by the trial judge at any place he may designate within the judicial district where the conviction was had.

VIII. *Record on appeal without bill of exceptions.* When it appears that the appeal is to be prosecuted upon the clerk's record of proceedings, that is, upon the indictment and other pleadings and the orders, opinions, and judgment of the trial court, without a bill of exceptions, the trial judge shall direct the appellant to file with the clerk of the trial court, within a time stated, an assignment of the errors of which he complains (which may amplify or add to the grounds stated in the notice of appeal), and shall direct the clerk to forward promptly, with his certificate, to the appellate court the above-mentioned record and assignment of errors, and upon receipt thereof the appellate court shall at once set the appeal for argument as provided in these rules.

IX. *Bill of Exceptions.* In cases other than those described in Rule VIII, the appellant, within thirty (30) days after the taking of the appeal, or within such further time as within said period of thirty days may be fixed by

the trial judge, shall procure to be settled, and shall file with the clerk of the court in which the case was tried, a bill of exceptions setting forth the proceedings upon which the appellant wishes to rely in addition to those shown by the clerk's record as described in Rule VIII. Within the same time, the appellant shall file with the clerk of the trial court an assignment of the errors of which appellant complains. The bill of exceptions shall be settled by the trial judge as promptly as possible, and he shall give no extension of time that is not required in the interest of justice.

Bills of exceptions shall conform to the provisions of Rule 8 of the Rules of the Supreme Court of the United States.

Upon the filing of the bill of exceptions and assignment of errors, the clerk of the trial court shall forthwith transmit them, together with such matters of record as are pertinent to the appeal, with his certificate, to the clerk of the appellate court, and the papers so forwarded shall constitute the record on appeal.

The appellate court may at any time, on five (5) days' notice, entertain a motion by either party for the correction, amplification, or reduction of the record filed with the appellate court and may issue such directions to the trial court, or trial judge, in relation thereto, as may be appropriate.

X. *Setting the appeal for argument.* Save where good cause is shown for an earlier hearing, the appellate court shall set the appeal for argument on a date not less than thirty (30) days after the filing in that court of the record on appeal and as soon after the expiration of that period as the state of the calendar of the appellate court will permit. Preference shall be given to criminal appeals over appeals in civil cases.

XI. *Writs of certiorari.* Petition to the Supreme Court of the United States for writ of certiorari to review a judgment of the appellate court shall be made within

thirty (30) days after the entry of the judgment of that court. Such petition shall be made as prescribed in Rules 38 and 39 of the Rules of the Supreme Court of the United States.

XII. *Local rules.* Each appellate court may prescribe rules, not inconsistent with the foregoing rules, with respect to cost bonds, the procedure on the hearing of appeals, the issue of mandates, and the time and manner in which petitions for rehearing may be presented.

XIII. In the foregoing rules, the phrase "trial court" shall be deemed to refer to the District Courts of the United States and the Supreme Court of the District of Columbia; the phrase "trial judge" includes the judge before whom the case was tried or brought to judgment and, in case of his absence from the district, or disability, or death, any other judge assigned to hold, or holding, the court in which the case was tried or brought to judgment; the phrase "appellate court" shall be deemed to refer to the United States Circuit Court of Appeals and the Court of Appeals of the District of Columbia.

For the purpose of computing time as specified in the foregoing rules, Sundays and legal holidays (whether under Federal law or under the law of the State where the case was brought) shall be excluded.