

## **After Conviction.**

A criminal case does not necessarily end after conviction and sentence in the trial court. If the conviction resulted from a trial, then an APPEAL may be filed. If the APPEAL is unsuccessful, then a PETITION FOR POST-CONVICTION RELIEF (PCR), often called a “Rule 32,” may be filed.

If the conviction resulted from a guilty plea, then a PCR may be filed to review the sentence or to challenge the guilty plea.

### **Appeal.**

An APPEAL is an action to a higher court to review a lower court’s decisions and rulings on pretrial motions and during the trial. An APPEAL may be taken from a conviction and sentence following a trial. The notice must be filed within 20 days of sentencing. There are two levels of APPEAL.

The first level takes the case from the trial court to the court of appeals. The appeals court reviews the trial court record — including transcripts of in-court proceedings, such as opening and closing arguments, the testimony of witnesses, and motions and objections, that occurred on the record — for legal errors that may have violated the accused’s constitutional rights or the rules and laws that the judge applied during the trial.

Certain rights that protect an accused during the trial do not apply to an APPEAL. The right to be presumed innocent, the right to confront witnesses, the right to a jury, and the right to a speedy trial only apply at the trial stage. Other rights continue to apply during the appeal. These include the right to counsel and the right to due process.

Most APPEALS are handled entirely through written pleadings consisting of briefs and motions. The lawyer for the Appellant — who was the Defendant at trial — files an opening brief. The opening brief contains a statement of the facts, the procedural history of the case, and arguments asking the court of appeals to reverse the convictions or sentences. The Attorney General’s Office represents the Appellee — which is the State of Arizona — on appeal. In response to the opening brief, the Attorney General’s Office files an answering brief. The answering brief also includes a statement of facts and a history of the case. It then presents counter arguments to the issues raised in the opening brief. The Appellant then has the option to file a Reply Brief to rebut the arguments in the state’s answering brief.

After the briefs are filed, the court of appeals reviews the entire trial court record along with the briefs and files a written decision that either affirms or reverses the convictions and sentences. If the court

reverses, then the case is sent back to the trial court for a new trial or a new sentencing hearing. The first part of the appeal lasts about 12 – 18 months.

If the court of appeals affirms the convictions and sentence, then the case may be appealed further by seeking review in the Arizona Supreme Court. This step is not mandatory, and there are specific criteria in the court rules that govern when supreme court review is appropriate. Review in the supreme court is requested by filing a petition for review. With limited exceptions, review in the supreme court is discretionary, which means the court decides whether to accept jurisdiction over the case. The supreme court only grants review in a relatively small number of the criminal cases each year. If review is granted, the appeal may be extended an additional one or two years.

After the appellate courts have made their final decision, the court of appeals will issue a MANDATE, which is an order that declares the decision of the appellate courts to be final, and the APPEAL is over.

Petition for Post-Conviction Relief.

Post-conviction relief—under Arizona Criminal Rule of Procedure 32, which is why PCRs are often called “Rule 32s”—takes place in the trial court. Following a change of plea, it is the Rule 32 process that is used to challenge and seek a remedy for certain constitutional violations, such as an unlawful sentence, or from a guilty plea where counsel provided ineffective assistance. A notice of post-conviction relief starts the process and must be filed within 90 days of sentencing to exercise this right.

If a jury has found the defendant guilty after a trial, a conviction may be challenged based on newly-discovered evidence, ineffective assistance of counsel, and other constitutional violations. The Rule 32 notice in this situation is usually, but not always, filed after the appeal has proved unsuccessful. The notice must be filed within 30 days of the issuance of the MANDATE or the right to seek relief is lost.

In each circumstance, if the trial court finds that a colorable claim for relief has been presented, it will grant a hearing. After the hearing, the trial court will decide whether to grant relief. Relief is usually in the form of a new trial or a new sentencing hearing.

If the trial court finds that no colorable claim for relief has been granted, then the court may summarily deny the claim.

If the court denies relief, then further review can be sought by filing a petition for review in the court of appeals.

As with the appeal process, once you have been convicted of a felony, certain constitutional rights are no longer in effect, while others continue to apply. But you retain the right to court-appointed counsel if you are unable to hire your own lawyer.