

RULE 4. APPEAL — WHEN TAKEN

(b) Appeals in Criminal and Habeas Corpus Postconviction Cases.

(1) Time for Filing a Notice of Appeal.

(A) Appeal by Defendant or Petitioner. Except as otherwise provided in NRS 34.560(2), NRS 34.575(1), NRS 176.09183(6), NRS 177.055, and Rule 4(c), the notice of appeal by a defendant or petitioner in a criminal case shall be filed with the district court clerk within 30 days after ~~the entry of the judgment or order being appealed~~ the later of:

(i) the entry of ~~either the judgment or the order being appealed~~; or

(ii) the filing of the ~~state's~~ notice of appeal.

(B) Appeal by the State. Except as otherwise provided in NRS 34.575(2), NRS 176.09183(4), and NRS 177.015(2), when an appeal by the state is authorized by statute, the notice of appeal shall be filed with the district court clerk within 30 days after the ~~later of:~~

(i) the entry of ~~either the judgment or the order being appealed~~; or

(ii) the filing of a notice of appeal by any defendant or petitioner.

~~entry of the judgment or order being appealed.~~

(2) Filing Before Entry of Judgment. A notice of appeal filed after the announcement of a decision, sentence, or order — but before entry of the judgment or order — shall be treated as filed after such entry and on the day thereof.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely ~~makes any of the following motions, the notice of appeal from a judgment of conviction must be filed within 30 days after the entry of the order disposing of the last such remaining motion, or within 30 days after the entry of the judgment of conviction, whichever period comes later.~~ This provision applies to a timely motion:

Commented [CLF1]: For consistency with the sections below

Commented [DW2]: FRAP 4(b)(1)(A) provides the defendant with only 14 days to file a notice of appeal while FRAP 4(b)(1)(B) provides the government with 30 days to file a notice of appeal. In fairness to both parties, the Rule 4 Criminal Subcommittee recommends retaining the 30-day filing deadline that currently exists in the rule.

Commented [CLF3]: If we use state, for consistency we should keep it lowercase as it is elsewhere.

Commented [DW4]: Rule 4 Criminal Subcommittee recommends adding this language to bring the rule into conformity with FRAP 4

Commented [DW5]: Rule 4 Criminal Subcommittee recommends adding this language to bring the rule into conformity with FRAP 4.

Commented [DW6]: No change needed; this rule is already identical to FRAP 4(b)(2).

(i) for judgment of acquittal under NRS 175.381(2);

(ii) for a new trial under NRS 176.515, but if based on newly discovered evidence, only if the motion is made no later than 30 days after the entry of the judgment; or

(iii) for arrest of judgment under NRS 176.525. files a motion in arrest of judgment or a motion for a new trial on any ground other than newly discovered evidence and the motion has not been denied by oral pronouncement or entry of a written order when the judgment of conviction is entered, the notice of appeal from the judgment of conviction may be filed within 30 days after the entry of an order denying the motion.

(B) A notice of appeal filed after the court announces a decision, sentence, or order—but before it disposes of any of the motions referred to in Rule 4(b)(3)(A)—becomes effective upon the later of **the following**:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction. ~~If a defendant files a motion for a new trial based on the ground of newly discovered evidence before entry of the judgment of conviction and the motion has not been denied by oral pronouncement or entry of a written order when the judgment of conviction is entered, the notice of appeal from the judgment of conviction may be filed within 30 days after the entry of an order denying the motion. If a defendant makes such a motion within 30 days after the entry of the judgment of conviction, the time for the defendant to file the notice of appeal from the judgment of conviction will be similarly extended.~~

(C) A valid notice of appeal is effective—without amendment—to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

Commented [DW7]: Rule 4 Criminal Subcommittee redrafted NRAP 4(b)(3) to align with FRAP 4(b)(3), keeping the current 30-day timeframes from our existing rule, to see what the new rule would look like and to evaluate whether we prefer it to the old version. No recommendation yet.

(4) Entry Defined. A judgment or order is entered for purposes of this Rule when it is signed by the judge and filed with the clerk.

Commented [DW8]: Rule 4 Criminal Subcommittee recommends moving NRAP 4(b)(4), and renumbering it NRAP 4(b)(6), like the analogous federal rule. Also notes that the language in the NV rule seems more tailored to Nevada practice than the federal rule, which says “A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.”

(4) Motion for Extension of Time. Except when an appeal period is set by statute, Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule.

Commented [DW9]: This language clarifies that, in accordance with *Hamer v. Neighborhood Housing Servs. of Chicago*, jurisdictional appeals deadlines that are established by statute are not impacted by this court rule.

(5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under NRS 176.555 or NRS 176.565, nor does the filing of a motion under those statutes affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under NRS 176.555 or NRS 176.565 does not suspend the time for filing a notice of appeal from a judgment of conviction.

Commented [DW10]: The majority of the Rule 4 Criminal Subcommittee recommends adding this provision from FRAP 4(b)(4), but omitting the federal-specific language that is not applicable in NV. Consensus was that this language could reduce the number of postconviction appeal deprivation claims that have to be filed and simplify matters.

(6) Entry Defined. A judgment or order is entered for purposes of this Rule when it is signed by the judge and filed with the clerk.

Commented [DW11]: Rule 4 Criminal Subcommittee recommends adding this provision from FRAP 4(b)(5), with modifications to reflect Nevada’s statutes that are analogous to Federal Rule of Criminal Procedure 35a (e.g., NRS 176.555, NRS 176.565).

Commented [DW12]: Rule 4 Criminal Subcommittee recommends moving this provision, which was previously NRAP 4(b)(4), here because this is where the analogous federal provision is located.

(57) Time for Entry of Judgment; Content of Judgment or Order in Postconviction Matters.

(A) Judgment of Conviction. The district court judge shall enter a written judgment of conviction within 14 days after sentencing.

(B) Order Resolving Postconviction Matter. The district court judge shall enter a written judgment or order finally resolving any postconviction matter.

If the district court judge first makes an oral pronouncement of a final decision in such a matter, the written judgment or order shall be issued within 21 days

after the district court judge's oral pronouncement ~~of a final decision in such a matter~~. The judgment or order in any postconviction matter must contain specific findings of fact and conclusions of law supporting the district court's decision.

Commented [DW13]: Rule 4 Criminal Subcommittee recommends a minor revision to reflect the fact that, in many cases, district court judges will not make an oral pronouncement before issuing a written order; and the 21-day period only applies when the judge has made such a pronouncement.

(C) Sanctions; Counsel's Failure to Timely Prepare Judgment or Order. The court may impose sanctions on any counsel instructed by the district court judge to draft the judgment or order and who does not submit the proposed judgment or order to the district court judge within the applicable time periods specified in Rule 4(b)(~~75~~).

(68) Withdrawal of Appeal. If an appellant no longer desires to pursue an appeal after the notice of appeal is filed, counsel for appellant shall file with the clerk of the Supreme Court a notice of withdrawal of appeal. The notice of withdrawal of appeal shall substantially comply with Form 8 in the Appendix of Forms.

(c) Untimely Direct Appeal From a Judgment of Conviction and Sentence.

(1) When an Untimely Direct Appeal From a Judgment of Conviction and Sentence May Be Filed. An untimely notice of appeal from a judgment of conviction and sentence may be filed only under the following circumstances:

(A) A postconviction petition for a writ of habeas corpus has been timely and properly filed in accordance with the provisions of NRS 34.720 to 34.830, asserting a viable claim that the petitioner was unlawfully deprived of the right to a timely direct appeal from a judgment of conviction and sentence; and

(B) The district court in which the petition is considered finds that the petitioner has established a valid appeal deprivation claim and is entitled to a direct appeal.

(C) In compliance with Rule 4(b)(7), the district court shall enter a written order containing:

- (i) specific findings of fact and conclusions of law finding that the petitioner has established a valid appeal-deprivation claim and is entitled to a direct appeal with the assistance of appointed or retained appellate counsel;
- (ii) if the petitioner is indigent, directions for the appointment of appellate counsel, other than counsel for the defense in the proceedings leading to the conviction, to represent the petitioner in the direct appeal from the conviction and sentence; and
- (iii) directions to the district court clerk to prepare and file — within 7 days of the entry of the district court’s order — a notice of appeal from the judgment of conviction and sentence on the petitioner’s behalf in substantially the form provided in Form 1 in the Appendix of Forms.

(D) If a federal court of competent jurisdiction issues a final order directing the state to provide a direct appeal to a federal habeas corpus petitioner, the petitioner or his or her counsel shall file the federal court order within 30 days of entry of the order in the district court in which petitioner’s criminal case was pending. The clerk of the district court shall prepare and file — within 30 days of filing of the federal court order in the district court — a notice of appeal from the judgment of conviction and sentence on the petitioner’s behalf in substantially the form provided in Form 1 in the Appendix of Forms.

(2) Service by the District Court Clerk. The district court clerk shall serve certified copies of the district court’s written order and the notice of appeal

Commented [DW14]: Rule 4 Criminal Subcommittee recommends adding this language to clarify that the defendant’s right to an untimely direct appeal is tied to the district court’s *finding* that the appellant has stated a valid appeal deprivation claim, not whether the district court has issued a compliant order.

required by Rule 4(c) on the petitioner and petitioner's counsel in the postconviction proceeding, if any, the respondent, the Attorney General, the district attorney of the county in which the petitioner was convicted, the appellate counsel appointed to represent the petitioner in the direct appeal, if any, and the clerk of the Supreme Court.

(3) Notice of Appeal Filed by Petitioner's Counsel or Petitioner. If the district court has entered an order containing the findings required by Rule 4(c)(1)(B) and the district court clerk has not yet prepared and filed the notice of appeal on the petitioner's behalf, the petitioner or petitioner's counsel may file the notice of appeal from the judgment of conviction and sentence.

(4) Motion to Dismiss Appeal. The state may challenge a district court's written order granting an appeal-deprivation claim by filing a motion to dismiss the appeal with the clerk of the Supreme Court within 30 days after the date on which the appeal is docketed in the Supreme Court. The state's motion to dismiss shall be properly supported with all documents relating to the district court proceeding that are necessary to the Supreme Court's or Court of Appeals' complete understanding of the matter.

(5) Effect on Procedural Bars. When a direct appeal of a criminal conviction and sentence is conducted under this Rule, the timeliness provisions governing any subsequent habeas corpus attack on the judgment shall begin to run upon the termination of the direct appeal, as provided in NRS 34.726(1) and NRS 34.800(2). A habeas corpus petition filed after a direct appeal conducted under this Rule shall not be deemed a "second or successive petition" under NRS 34.810(2).

(d) Appeal by an Inmate Confined in an Institution. If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is delivered to a prison official for mailing on or before the last day for filing. If the institution has a notice-of-appeal log or another system designed for legal mail, the inmate must use that log or system to receive the benefit of this Rule.

(e) Mistaken Filing in the Supreme Court. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the Supreme Court rather than the district court, the clerk of the Supreme Court must note on the notice the date when it was received and send it to the district court clerk. The notice is then considered filed in the district court on the date so noted.

(f) Expediting Criminal Appeals. The court may, with or without motion by the parties, by a majority of its members, make orders to expedite the handling of criminal appeals, including without limitation the following:

- (1) Elimination of steps in preparation of the record and the briefs.
- (2) Expediting preparation of stenographic transcripts.
- (3) Priority of calendaring for oral argument.
- (4) Utilization of court opinions or per curiam orders.
- (5) Other lawful measures reasonably calculated to expedite the appeal and promote justice.

Commented [DW15]: Rule 4 Criminal Subcommittee recommends adding this language to clarify that the parties may move to expedite criminal appeals and need not wait for the court to act. Subcommittee is divided on whether this section is actually necessary given NRAP 2, although no one objects to it remaining.