

WHAT IS AN APPEAL:

An appeal is a review by an appellate court of the trial court proceedings. The review by the appellate court is based entirely upon the written record of the trial court proceedings. There is no new trial in the appellate court, and it accepts no new evidence. The appellate court only considers whether the trial court proceedings were legally conducted. If they were legally conducted, the judgment of conviction will be affirmed. If they were not legally conducted, the conviction will be reversed and the case sent back to the trial court, usually for a retrial. On occasion when the law prohibits further prosecution, the charges will be dismissed. In addition, the appellate court, in this case, the Appellate Division, has the authority to declare a sentence harsh and excessive and to reduce it in the interest of justice. This rarely happens.

THE APPELLATE COURT:

In New York, there are two levels of appellate courts. Appeals will be reviewed first by the Appellate Division. The five judges of the Appellate Division panel which will hear each appeal have the authority to reverse a conviction as a matter of law or in the interest of justice. They also have the authority to reduce a sentence. If we lose at the Appellate Division, we may ask the Court of Appeals, the highest court in the state, to review our case. Very few cases are accepted for review by the Court of Appeals.

THE RECORD IN EACH CASE:

The written arguments in each case cannot be prepared until an attorney has the opportunity to review the stenographic record of that case. This record is called a "transcript". The transcript of the case is the word-for-word record of everything that happened in court in that case. The order assigning the Monroe County Public Defender's Office as the attorney also orders the Court Reporter to prepare the transcript. However, the completion of the transcript takes a considerable amount of time. It is not unusual in this county to experience a delay of at least 8 months from the date that the Administrative Court Reporter received the order to prepare the transcript, until the transcript is finally completed.

When the transcript of a case is completed, the original will be filed, along with one duplicate copy, in the Monroe County Clerk's Office. Our client will be notified when his transcript is filed. The duplicate copy of the transcript is loaned to the Monroe County Public Defender for purposes of preparing the appeal. The transcript is loaned to the Monroe County Public Defender, but it cannot be copied or loaned to our client or anyone else by the Monroe County Public Defender.

If a defendant wishes to purchase a copy of the transcript he may do so by contacting the Monroe County Clerk's Office, Civil Action, 39 West Main Street, Rochester, New York 14614. The cost for the transcript is \$.65 per page or \$40.00 for the entire transcript if it would be over \$40.00. In order for a defendant to obtain a transcript at this rate, he must include a copy of the order assigning the Monroe County Public Defender to the appeal.

PERFECTING THE APPEAL:

Your appeal is perfected by the filing of an appellant's brief. Based on the date on which the transcript is filed, the Appellate Division, Fourth Department sets deadlines within which the Monroe County Public Defender should file the brief. If, as often happens, the appeal cannot be perfected before the deadline, an application will be made for an extension of the deadline.

In order to treat all our clients, as fairly as possible, we work on the oldest cases first. Therefore, it is unlikely that an attorney will begin work on any case as soon as the transcript is filed.

We will first write briefs for those cases in which the conviction occurred earlier. When those are completed, and one of our attorneys is ready to start a new case, he or she will be assigned to write the brief. Each case is assigned to the first appeals attorney who is ready to write a brief, so that each brief may be completed as promptly as possible. Of course, each brief will be worked on before those in which the conviction occurred later.

This procedure means that while the corresponding attorney will continue to be the attorney with whom a client corresponds, in all probability another attorney will actually read the transcript and write the brief. The defendant, of course, can be assured that he or she will thoroughly review the file and will discuss the case with the corresponding attorney.

The appellant's brief will contain a written argument stating the reasons why the conviction should be reversed. The brief is based entirely upon the record of the proceedings in the trial court. Statements, documents or events which are not included in the record of the proceedings in the trial court cannot be referred to in the brief.

Following the filing of a brief, the prosecution will prepare its respondent's brief. The District Attorney, like the Monroe County Public Defender, is limited by the record. The District Attorney will argue that the conviction should be affirmed and that the sentence should not be reduced.

We send our client a copy of his brief when it is ready to be filed. After we have filed the brief on his behalf he may file a pro se supplemental brief. He does not need to request permission of the court to file such a brief. However, the pro se supplemental brief must be filed within forty-five days of the date we file the brief we have prepared on our client's behalf. He must make arrangements to obtain a copy of the transcript so that his brief may be completed in time to be filed within forty-five days of the filing of the brief we prepared on his behalf.

Once a brief is filed, the appellate court will set a date for oral argument or submission of the case. On that date, if the case is to be argued, the attorney and the District Attorney will appear before the judges of the appellate court and present our case. Our client will not be brought to the court for the oral arguments; there are no witnesses, and the court will not hear any new evidence. Not all cases are set for oral argument. Some are decided by the appellate court only on the written briefs.

THE DECISION:

After the judges of the appellate court have read the briefs and have heard the oral argument (if there was oral argument), they will decide whether the conviction should be affirmed, reversed, or modified in some way. A decision from the court may be expected two to eight weeks after oral argument. We notify our client after the decision is handed down. If the conviction is affirmed by the Appellate Division, Fourth Department, we will request permission to appeal to the Court of Appeals. As noted above, however, only very few of the decisions of the Appellate Division are accepted for review by the Court of Appeals. In most cases, permission for such review is denied.

CONCLUSION:

Although our appellate clients are encouraged to communicate with their attorney in complete candor, he should never discuss his case with anyone else. If someone divulges incriminating information to fellow prisoners or to guards and we are able to get a reversal of his conviction, he may find these people testifying as witnesses against him at a retrial. By working together on each case, we may be able to achieve the desired result. But our clients should understand that relatively few appeals are successful. Nevertheless, we will make every effort to obtain a reversal.