

FEDERAL DEFENDER
APPEALS AND OTHER POST-CONVICTION RELIEF

RIGHT TO APPEAL: In general, you have a right to appeal your conviction and/or your sentence. You need to file a notice of appeal within 14 days of the judgment against you. Your appeal will be decided by the Tenth Circuit Court of Appeals in Denver, Colorado.

You have the right to an attorney on appeal. If the Federal Defender's Office represented you in district court, we will also handle your appeal unless we have a conflict. (In that case, if you cannot afford a lawyer, the court will appoint an attorney from outside this office.) If you had a private lawyer before but have run out of money, you may ask to have counsel appointed for your appeal.

REMEMBER: The reason for an appeal is to correct legal errors. The appeals court will not decide whether the jury was right, or whether the sentence is fair. Being unhappy with the outcome of your case is not grounds for appeal. **You will win your appeal only if the appeals court decides that the judge made a serious legal error in your case.**

Also, appeals are limited to the evidence that was presented in district court. You can't add new evidence in an appeal.

PLEA BARGAINS AND APPEALS: If you pled guilty, you gave up the right to appeal any rulings that the judge made before your plea. If you lost a motion to suppress evidence, for example, you can only appeal the judge's ruling if you have a special "conditional plea agreement" that allows you to appeal that issue. If you went to trial, on the other hand, you can appeal any rulings the judge made before, during, or after the trial.

Many plea agreements in this district have "waivers" saying that you give up your right to appeal some issues. What you can and can't appeal depends on the language in your waiver. **Talk to your lawyer about the "waiver of appeal" in your plea agreement.** There may be some things that you can try to appeal even after a waiver. Your attorney will figure out what issues may be appealable.

RELEASE PENDING APPEAL: If you have been sentenced to prison, you will probably start serving your sentence even if you appeal. You can ask the judge who sentenced you to release you until your appeal is decided. If s/he refuses, you can ask the appeals court. Your lawyer will file these motions for you. However, you will only be released during your appeal if the court finds two things: (1) that you are not dangerous and won't flee, and (2) that you are likely to win your appeal. This does not happen very often.

APPEAL TO THE U. S. SUPREME COURT: If you lose in the Tenth Circuit, we can try to take your case to the U.S. Supreme Court. However, the Supreme Court does not have to take your case. The Justices only accept a few very important cases for review every year. If your attorney files a "petition for writ of certiorari," which asks the Court to consider your case, and if "cert" is granted, the Supreme Court will make the final decision in your case. If "cert" is denied, the Tenth Circuit's decision will stand.

The entire appeals process can take two years or more.

OTHER POST-CONVICTION RELIEF: Just as state prisoners can file habeas corpus petitions, federal prisoners can file "motions attacking the sentence" under 28 U.S.C. § 2255. A § 2255 motion usually comes after an appeal, and usually claims that your constitutional rights were violated. You must file within one year of the date that your conviction becomes final. There is no right to appointed counsel. You must file by yourself and ask the court to appoint a lawyer for you. If counsel is not appointed, you will have to represent yourself.