

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: AMENDMENTS TO TENNESSEE
RULES OF APPELLATE PROCEDURE

No. M2012-01977-SC-RL2-RL



ORDER

On December 18, 2012, the Court filed an order adopting amendments to the Rules of Appellate Procedure. Those amendments, subject to approval by resolutions of the General Assembly, will take effect on July 1, 2012.

The Court has been informed that the amendment to Tenn. R. App. P. 3(c) contains a drafting error regarding the State's authority to appeal the trial court's ruling on a request for expunction. (The pertinent language provided that the State could appeal "from a final order *denying* a request for expunction[,] " when it should have read "from a final order *granting* a request for expunction." (Emphasis added.)) When that error was brought to the Court's attention, the Court decided to adopt the same language ("from a final order on a request for expunction") in both Tenn. R. App. P. 3(b) and (c) and thereby clarify the scope of the amendments.

Accordingly, the revised amended Tenn. R. App. P. 3 set out in the Appendix is hereby substituted, nunc pro tunc, for the amendment contained in the Appendix to the order filed on December 18, 2012.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

REVISED AMENDMENT TO TENN. R. APP. P. 3

Overstriking indicates deleted text and underlining indicates added text.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 3

APPEAL AS OF RIGHT: AVAILABILITY; METHOD OF INITIATION

[Amend Rule 3(b) and (c) by adding the underlined text and deleting the overstricken text below; paragraphs (a) and (d) - (g) are unchanged:]

(a) * * * *

(b) Availability of Appeal as of Right by Defendant in Criminal Actions. – In criminal actions an appeal as of right by a defendant lies from any judgment of conviction entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) on a plea of not guilty; and (2) on a plea of guilty or nolo contendere, if the defendant entered into a plea agreement but explicitly reserved the right to appeal a certified question of law dispositive of the case pursuant to and in compliance with the requirements of Rule 37(b)(2)(A) or (D) of the Tennessee Rules of Criminal Procedure, or if the defendant seeks review of the sentence and there was no plea agreement concerning the sentence, or if the issues presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent from the record of the proceedings already had. The defendant may also appeal as of right from an order denying or revoking probation, an order or judgment entered pursuant to Rule 36 or Rule 36.1, Tennessee Rules of Criminal Procedure, ~~and~~ from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding, and from a final order on a request for expunction.

(c) Availability of Appeal as of Right by the State in Criminal Actions. – In criminal actions an appeal as of right by the state lies only from an order or judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) the substantive effect of which results in dismissing an indictment, information, or complaint; (2) setting aside a verdict of guilty and entering a judgment of acquittal; (3) arresting judgment; (4) granting or refusing to revoke probation; or (5) remanding a child to the juvenile court. The state may also appeal as of right from a final judgment in a habeas corpus, extradition, or post-conviction proceeding, or from an order or judgment entered pursuant to Rule 36 or Rule 36.1, Tennessee Rules of Criminal Procedure, and from a final order on a request for expunction.

(d) * * * *

Advisory Commission Comment [2013]

Tenn. R. Crim. P. 36.1 was adopted in 2013 to provide a mechanism for the defendant or the State to seek to correct an illegal sentence. With the adoption of that rule, this rule (Tenn. R. App. P. 3) was amended to provide for an appeal as of right, by either the defendant (see paragraph 3(b)) or the State (see paragraph 3(c)), from the trial court's ruling on a motion filed under Tenn. R. Crim. P. 36.1 to correct an illegal sentence.

Paragraphs (b) and (c) also were amended to permit appeals as a matter of right for the defendant and the State in expunction requests. The amendments were designed to address the decision in *State v. Adler*, 92 S.W.3d 397 (Tenn. 2002), which held that rulings on expunction requests could only be appealed by use of the writ of certiorari, pursuant to Tenn. Code Ann. § 27-8-101 (2000). Since these matters can be appealed, they now are included under Tenn. R. App. P. 3 as a matter that can be appealed as of right.