

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

JUL 13 2011

Clerk of the Courts

**IN RE: RULE 28, SECTION 10(B),
RULES OF THE TENNESSEE SUPREME COURT**

No. M2011-01500-SC-RL2-RL - Filed: July 13, 2011

ORDER

Section 40-30-117(c), Tennessee Code Annotated, sets out the statutory procedure for appealing a trial court's denial of a motion to reopen a post-conviction proceeding. That statute previously provided that an application for permission to appeal must be filed in the Court of Criminal Appeals within ten (10) days of the trial court's denial of the motion. The General Assembly recently amended the statute, changing the period for filing an application for permission to appeal from ten (10) days to thirty (30) days, and also changing the deadline for the State to file a response to the application from ten (10) days to thirty (30) days. 2011 Tenn. Pub. Acts, Chapter 290.

Due to the amendment of the statute, the Court hereby amends Rule 28, Section 10(B), Rules of the Tennessee Supreme Court, to reflect the changes in the time period for filing an application for permission to appeal from the trial court's denial of a motion to reopen and the time period for the State to file a response to the application. The Court hereby amends Rule 28, Section 10(B) to read as follows:

(B) Denials of Motions to Reopen — A petitioner whose motion to reopen is denied shall have thirty (30) days to seek permission to appeal by filing an application, accompanied by the order denying the motion, in the Court of Criminal Appeals. The state shall have thirty (30) days to respond. The Court of Criminal Appeals may allow the parties to file additional briefs, argue the case, or both. In the event the Court of Criminal Appeals finds that the trial court abused its discretion by denying the motion to reopen, the court shall, by order, remand the case to the trial court for further proceedings.

When the Court of Criminal Appeals affirms the trial court's decision denying the motion to reopen, the petitioner shall have sixty (60) days from the date of the Court of Criminal Appeals decision to seek permission to appeal in the Tennessee

Supreme Court by filing an application pursuant to Rule 11, Tenn. R. App. P. The application shall be accompanied by copies of all documents filed by both parties in the trial court and the orders denying the motion in the trial court and the Court of Criminal Appeals. The State shall have fifteen (15) days to file a response. The Supreme Court may allow the parties to file additional briefs, argue the case, or both. Permission to appeal will be denied unless it appears that the trial court abused its discretion by denying the motion to reopen. In the event the Supreme Court determines that the trial court abused its discretion by denying the motion, the Supreme Court, by order, shall remand the case to the trial court for further proceedings.

This amendment shall take effect upon the filing of this order.

The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters. In addition, this order shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM