

Cite as 2018 Ark. 302
SUPREME COURT OF ARKANSAS

Opinion Delivered October 18, 2018

IN RE ARKANSAS SUPREME COURT
COMMITTEE ON CRIMINAL
PRACTICE; ARK. R. CRIM. P. 33.6;
ARK. SUP. CT. R. 3-4; AND ARK. R.
APP. P. -CRIM. 2

PER CURIAM

The court published for comment recommendations of the Arkansas Supreme Court Committee on Criminal Practice to amend Ark. R. Crim. P. 33.6, Ark. Sup. Ct. R. 3-4, and Ark. R. App. P.-Crim. 2. See *In re Arkansas Supreme Court Committee on Criminal Practice*; Ark. R. Crim. P. 33.6, 2018 Ark. 240 (per curiam).

The court adopts the amendments, effective January 1, 2019, and republishes the rules as set out below.

Rule of Criminal Procedure 33.6.

Rule 33.6 Instructions and Verdict Forms.

(a) In the trial of all cases in courts of record wherein juries are employed, upon request of counsel for any party, or of a juror, it shall be the duty of the presiding judge to deliver to the jury immediately prior to its retirement for deliberation, a written copy of the oral instructions read to the jury. The written jury instructions shall be returned to the court by the foreman of the jury when the jury is dismissed.

(b) The verdict forms and written jury instructions shall be filed in the clerk's case file at the conclusion of the jury's deliberations.

(c) Any proffered jury instructions, which were requested by parties and rejected by the court, shall be delivered to the court reporter and made an exhibit to the court reporter's transcript.

Reporter's Notes, 2019 Amendment. Subdivisions (b) and (c) were added.

Rules of the Supreme Court and Court of Appeals

Rule 3-4. Record in criminal cases.

(a) *Order of record.* In all criminal cases, after the caption set forth in Rule 3-1, the record shall be organized in the following sequence:

1. Return of the indictment or information;
2. Defendant's pleadings;
3. Subsequent pleadings and orders in chronological order;
4. Final judgment and commitment or order appealed;
5. Verdict forms and written jury instructions;
6. Motion for new trial, to set aside, amend, etc.;
7. Order granting or denying above motions;
8. Notice of appeal and designation of record;
9. Extensions of time to file record on appeal;
10. Reporters' transcription of testimony;
11. Appeal bond;
12. Certificate, duly acknowledged.

(b) *Record of jury matters.* (1) The record shall not include the impaneling or swearing of the jury, the names of the jurors, or any motion, affidavit, order, or ruling in reference thereto unless expressly called for by a party's designation of the record.

(2) Verdict forms, written jury instructions, and proffered jury instructions shall be inserted in the record when expressly identified by a party's designation of the record.

(c) *Exhibits.* Photographs, charts, drawings and other documents that can be inserted into the record shall be included. Documents of unusual bulk or weight shall

not be transmitted by the clerk of the circuit court unless the clerk is directed to do so by a party or by the Clerk of the Court. Physical evidence, other than documents, shall not be transmitted unless directed by an order of the Court.

Reporter’s Notes, 2019 Amendment. Subdivision (b)(2) was added to provide for verdict forms, written jury instructions, and proffered jury instructions to be inserted in the record.

Arkansas Rules of Appellate Procedure - Criminal

Rule 2. Time and method of taking appeal.

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(e) *Failure to pursue appeal.* Failure of the appellant to take any further steps to secure the review of the appealed conviction shall not affect the validity of the appeal but shall be grounds only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. The Supreme Court may act upon and decide a case in which the notice of appeal was not given or the transcript of the trial record was not filed in the time prescribed, when a good reason for the omission is shown by affidavit. However, no motion for belated appeal shall be entertained by the Supreme Court unless application has been made to the Supreme Court within eighteen (18) months of the date of entry of judgment or entry of the order denying postconviction relief from which the appeal is taken. If no judgment of conviction was entered of record within ten (10) days of the date sentence was pronounced, application for belated appeal must be made within eighteen (18) months of the date sentence was pronounced. The court may equitably toll this 18-month deadline if the defendant has pursued his or her rights diligently and some extraordinary circumstance stood in his or her way.

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Reporter’s Notes, 2019 Amendment. The last sentence in subdivision (e) is new, drawing the standard from *Holland v. Florida*, 560 U.S. 631, 649 (2010) (A “petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way and prevented timely filing.”) (internal quotations and citations omitted).