

Cite as 2011 Ark. 58

## SUPREME COURT OF ARKANSAS

IN RE ARKANSAS RULE OF  
CRIMINAL PROCEDURE 37.2;  
ARKANSAS RULE OF APPELLATE  
PROCEDURE –CRIMINAL 3; AND  
ADMINISTRATIVE ORDER NO. 8

**Opinion Delivered:** February 9, 2011

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### PER CURIAM

We published for comment recommendations of the Supreme Court Committee on Criminal Practice for various rules changes. See *In re Supreme Court Committee on Criminal Practice—Proposed Rule Changes*, 2010 Ark. 395 (per curiam). Today, we adopt amendments to Ark. R. Crim. P. 37.2(c), Ark. R. App. P.—Crim. 3, and Administrative Order Number 8 (III)(a), as set out below, and republish the rules and order. These amendments shall be effective April 1, 2011.

We are not adopting the proposed amendment to Ark. R. Crim. P. 27.3. In connection with the change to Administrative Order Number 8, the committee endorsed revisions to the current Judgment and Disposition Order Form, as well as the possible creation of other reporting form(s), and these matters will be referred to the Administrative Office of the Courts for further consideration.

We thank everyone who reviewed the proposed changes and submitted comments. We again express our gratitude to the members of the Criminal Practice Committee for their work.

**Arkansas Rules of Criminal Procedure**

**Rule 37.2. Commencement of proceedings; pleadings.**

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(c)(i) If a conviction was obtained on a plea of guilty, or the petitioner was found guilty at trial and did not appeal the judgment of conviction, a petition claiming relief under this rule must be filed in the appropriate circuit court within ninety (90) days of the date of entry of judgment. If a petition is filed before the entry of judgment, the petition shall be treated as filed on the day after the entry of judgment.

(ii) If an appeal was taken of the judgment of conviction, a petition claiming relief under this rule must be filed in the circuit court within sixty (60) days of the date the mandate is issued by the appellate court. If a petition is filed after a conviction is affirmed by the appellate court but before the mandate is issued, the petition shall be treated as filed on the day after the mandate is issued.

(iii) In the event an appeal was dismissed, the petition must be filed in the appropriate circuit court within sixty (60) days of the date the appeal was dismissed.

(iv) If the appellate court affirms the conviction but reverses the sentence, the petition must be filed as provided in subsection (ii) within sixty (60) days of a mandate following an appeal taken after resentencing. If no appeal is taken after resentencing, then the petition must be filed as provided in subsection (i) with the appropriate circuit court within ninety (90) days of the entry of the judgment.

**Reporter’s Notes, 2011.** In addition to minor, nonsubstantive editorial revisions, the 2011 amendments made two major changes to the period within which a Rule 37 petition must be filed. First, the amendments struck confusing language in subsection (c)(i) pursuant to which the 90-day period for filing a petition commenced from the date sentence was “pronounced” when judgment

was not entered within 10 days of the date sentence was pronounced. Second, the amendments adopted the “deemed filed” rule that Arkansas Rule of Appellate Procedure–Criminal 2(b)(1) applies to a premature notice of appeal. Thus, the amendment changes the result announced in *Tapp v. State*, 324 Ark. 176, 920 S.W.2d 482 (1996) (“[Rule 37] does not allow for holding allegations in abeyance for future consideration when the [circuit] court obtains jurisdiction.”)

Note that the “deemed filed” rule only applies to appealed cases if the petition is filed with the circuit court after the conviction is affirmed, but before the mandate is issued. If the Rule 37 petition is filed before the appellate court has issued its decision on the appeal, then the circuit court is limited to dismissing the petition as untimely.

**Arkansas Rules of Appellate Procedure–Criminal Rule 3. Appeal by state.**

(a) An interlocutory appeal on behalf of the state may be taken only from a pretrial order in a felony prosecution which (1) grants a motion under Ark. R. Crim. P. 16.2 to suppress seized evidence, (2) suppresses a defendant’s confession, or grants a motion under Ark. Code Ann. § 16-42-101(c) to allow evidence of the victim’s prior sexual conduct. The prosecuting attorney shall file, within ten (10) days after the entering of the order, a notice of appeal together with a certificate that the appeal is not taken for the purposes of delay and that the order substantially prejudices the prosecution of the case. Further proceedings in the trial court shall be stayed pending determination of the appeal.

(b) Where an appeal, other than an interlocutory appeal, is desired on behalf of the state following either a misdemeanor or felony prosecution, the prosecuting attorney shall file a notice of appeal within thirty (30) days after entry of a final order by the trial judge.

(c) When a notice of appeal is filed pursuant to either subsection (a) or (b) of this rule, the clerk of the court in which the prosecution sought to be appealed took place shall immediately cause a transcript of the trial record to be made and transmitted to the attorney general, or delivered

to the prosecuting attorney, to be by him delivered to the attorney general. If the attorney general, on inspecting the trial record, is satisfied that error has been committed to the prejudice of the state, and that review by the Supreme Court is desirable under this rule, he may take the appeal by filing the transcript of the trial record with the clerk of the Supreme Court within sixty (60) days after the filing of the notice of appeal.

(d) The Supreme Court will not consider an appeal filed under either subsection (a)(1) or (2) or subsection (b) of this rule unless the correct and uniform administration of the criminal law requires review by the court.

(e) A decision by the Arkansas Supreme Court sustaining in its entirety an order appealed under subsections (a)(1) and (a)(2) shall bar further proceedings against the defendant on the charge; however, a decision sustaining an order appealed under subsection (a)(3) shall not bar further proceedings against the defendant on the charge.

**Reporter's Notes, 2011.** The 2011 amendment added subsection (d) of the rule to make clear that the “correct and uniform administration of the criminal law” requirement applies only to appeals permitted under subsections (a)(1), (a)(2), and (b) of this rule. *Compare State v. Parker*, 2010 Ark. 173, where the court refused to apply the requirement to an interlocutory appeal under Ark. Code Ann. § 16-42-101(c).

## Administrative Orders

### Administrative Order Number 8. Forms for Reporting Case Information in All Arkansas Trial Courts

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#### Section III. Procedure.

a. *Criminal cases.* The office of the prosecuting attorney shall be responsible for completion of the criminal information form and for filing it in the Office of the Circuit Clerk who shall forward a copy to the AOC pursuant to SECTION (II)(b).

Upon conviction and sentencing to the Arkansas Department of Correction, the office of the prosecuting attorney shall be responsible for completion of the Judgment and Commitment Order. The Order shall be submitted to the circuit judge for signature and filed in the Office of the Circuit Clerk. The clerk shall forward a copy to the AOC pursuant to SECTION (II)(b) and to counsel of record for the defendant.

Where the final disposition does not result in a commitment to the Arkansas Department of Correction but may include any of the following—an order of probation, suspended imposition of sentence, commitment to the Department of Community Punishment or to the county jail, a fine, restitution, and/or court costs—the office of the prosecuting attorney shall be responsible for completion of the Order of Probation, Order of Suspended Imposition of Sentence, or Judgment and Disposition Order consistent with the disposition of the case, applicable statutes, and intent of the court, which shall be submitted to the circuit judge for signature and filed in the Office of the Circuit Clerk. The clerk shall forward a copy to the AOC pursuant to SECTION (II)(b). and to counsel of record for the defendant.

Where the case is dismissed or nolle prossed because of the speedy trial rule, the case is transferred, or the defendant is acquitted, the office of the prosecuting attorney shall be responsible

for completion of the Reporting Form for Defense-Related Dispositions which shall be submitted to the circuit judge for signature and filed in the Office of the Circuit Clerk. The clerk shall forward a copy to the AOC pursuant to SECTION (II)(b). and to counsel of record for the defendant.