WEST VIRGINIA CODE: §15-1E-62

§15-1E-62. Appeal by the state.

(a)(1) In a trial by court-martial in which a punitive discharge may be adjudged, the state may appeal the following, other than a finding of not guilty with respect to the charge or specification by the members of the court-martial, or by a judge in a bench trial so long as it is not made in reconsideration:

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(C) An order or ruling which directs the disclosure of classified information.

(D) An order or ruling which imposes sanctions for nondisclosure of classified information.

(E) A refusal of the military judge to issue a protective order sought by the state to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in paragraph (E) that has previously been issued by appropriate authority.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within seventy-two hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this section shall be diligently prosecuted as provided by law.

(b) An appeal under this section shall be forwarded to the court prescribed in section sixty-seven-a of this article. In ruling on an appeal under this article, that court may act only with respect to matters of law.

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

WV Legislature