WEST VIRGINIA CODE CHAPTER 8 ARTICLE 34

WV Legislature

§8-34-1. General right of appeal; recordation of jury trial; preparation of record.

(a) Every person sentenced under this chapter by any mayor, acting in a judicial capacity, or municipal court judge to confinement or to the payment of a fine may appeal that sentence to the circuit court as provided in this section. When the municipality is located in more than one county, the appeal shall be taken to the circuit court of the county in which the major portion of the territory of the municipality is located.

(b) For purposes of appeal, when a jury trial is had before a mayor or in municipal court, that court shall be a court of limited record. Trials before a mayor or municipal court when a jury is empaneled shall be recorded electronically. A magnetic tape or other electronic recording medium on which a trial is recorded shall be indexed and securely preserved by the court. When requested by the municipal prosecutor or by the defendant, or by any interested person, that court shall provide a duplicate copy of the tape or other electronic recording medium of each trial held. For evidentiary purposes, a duplicate of such electronic recording prepared by the court shall be a "writing" or "recording" as those terms are defined in rule 1001 of the West Virginia rules of evidence, and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an "original" under such rule. Unless the requesting party is a defendant proceeding as an indigent, the party shall pay to the court an amount equal to the actual cost of the tape or other medium or the sum of $5, whichever is greater.

(c) If the defendant in such a proceeding waives the right to trial by jury or if no jury trial is required by law, the matter shall be tried by the mayor or municipal court judge sitting without a jury. For purposes of appeal, when a nonjury trial is had before a mayor or municipal court judge that court shall not be a court of limited record and the proceedings shall not be electronically recorded.

(d) Any person convicted of an offense by a mayor or municipal court judge may appeal such conviction to circuit court as a matter of right by requesting such appeal within twenty days after the sentencing for such conviction. The mayor or municipal court judge may require the posting of bond with good security conditioned upon the appearance of the defendant as required in circuit court, but such bond may not exceed the maximum amount of any fine which could be imposed for the offense. The bond may be upon the defendant's own recognizance. If no appeal is perfected within such twenty-day period, the circuit court may, not later than ninety days after the sentencing, grant an appeal upon a showing of good cause why such appeal was not filed within the twenty-day period. The filing or granting of an appeal shall automatically stay the sentence of the mayor or municipal court judge.

(e) In the case of an appeal of such a proceeding tried before a jury, the hearing on the appeal before the circuit court shall be a hearing on the record. In the case of an appeal of such a proceeding tried before the mayor or municipal court judge without a jury, the hearing on the appeal before the circuit court shall be a trial de novo, triable to the court, without a jury.

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(f) In the case of an appeal of such a proceeding tried before a jury, the following provisions shall apply:

(1) To prepare the record for appeal, the defendant shall file with the circuit court a petition setting forth the grounds relied upon, and designating those portions of the testimony or other matters reflected in the recording, if any, which he or she will rely upon in prosecuting the appeal. The municipal prosecutor may designate additional portions of the recording. Unless otherwise ordered by the circuit court, the preparation of a transcript of the portions of the recording designated by the defendant, and the payment of the cost thereof shall be the responsibility of the defendant: Provided, That such costs may be waived due to the defendant's indigence. The circuit court may, by general order or by order entered in a specific case, dispense with preparation of a transcript and review the designated portions of the recording orally.

(2) The designated portions of the recording or the transcript thereof, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal, and shall be made available to the defendant and the municipal prosecutor.

(3) After the record for appeal is filed in the office of the circuit clerk, the court may, in its discretion, schedule the matter for oral argument or require the parties to submit written memoranda of law. The circuit court shall consider whether the judgment or order of the mayor or municipal court judge is:

(A) Arbitrary, capricious, an abuse of discretion or otherwise not in conformance with the law;

(B) Contrary to Constitutional right, power, privilege or immunity;

(C) In excess of statutory jurisdiction, authority or limitations or short of statutory right;

(D) Without observance of procedure required by law;

(E) Unsupported by the evidence; or

(F) Unwarranted by the facts.

(4) The circuit court may take any of the following actions which may be necessary to dispose of the questions presented on appeal, with justice to the defendant and the municipality:

(A) Dismiss the appeal;

(B) Reverse, affirm or modify the judgment or order being appealed;

(C) Remand the case for further proceedings, with instructions to the mayor or municipal

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court judge;

(D) Finally dispose of the action by entering judgment on appeal; or

(E) Retain the matter and retry the issues of fact, or some part or portions thereof, as may be required by the provisions of subdivision (5) of this subsection.

(5) If the circuit court finds that a record for appeal is deficient as to matters which might be affected by evidence not considered or inadequately developed, the court may proceed to take such evidence and make independent findings of fact to the extent that questions of fact and law may merge in determining whether the evidence was such, as a matter of law, as to require a particular finding. If the circuit court finds that the proceedings below were subject to error to the extent that the defendant was effectively denied a jury trial, the circuit court may, upon motion of the defendant, empanel a jury to reexamine the issues of fact, or some part or portions thereof.

(6) The review by the court and a decision on the appeal shall be completed within ninety days after the appeal is regularly placed upon the docket of the circuit court.

(g) In the case of an appeal of a municipal court proceeding tried without a jury, the defendant shall file with the circuit court a petition for appeal and trial de novo. The exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal and shall be made available to the parties.

(h) Notwithstanding any other provision of this code to the contrary, there shall be no appeal from a plea of guilty where the defendant was represented by counsel at the time the plea was entered: Provided, That the defendant shall have an appeal from a plea of guilty where an extraordinary remedy would lie or where the mayor or municipal court judge lacked jurisdiction.

(i) The designation in this section of a mayor, acting as municipal court judge, or of municipal courts as "courts of limited record" shall not be construed to give standing or eligibility to mayors or municipal court judges to participate or be included in the retirement system for judges of courts of record established under the provisions of article nine, chapter fifty-one of this code.

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