

STATE OF VERMONT
VERMONT SUPREME COURT
AUGUST TERM, 2015

ORDER PROMULGATING AMENDMENTS TO THE
VERMONT RULES OF APPELLATE PROCEDURE

Pursuant to the Vermont Constitution, Chapter II, Section 37 and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 3(b)(2) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 3. APPEAL AS OF RIGHT—HOW TAKEN

(b) Filing and Serving the Notice of Appeal

* * * * *

(2) Sentence of Life Imprisonment.

(A) ~~No notice of appeal is necessary in~~ In a criminal case resulting in a sentence of life imprisonment, ~~an appeal will be entered without the filing of a notice of appeal, except that a notice of appeal must be filed by the defendant in a case in which~~

(i) the defendant has, with the advice of counsel, waived his right to appeal on the record in open court, or

(ii) the defendant, with the advice of counsel, entered a plea of guilty or nolo contendere to the underlying charge.

(B) When an appeal is entered without the filing of a notice of appeal in accordance with subparagraph (A), the following procedures will apply:

(i) The date of entry of judgment will be treated as the date from which all time periods will run that would otherwise be triggered by the filing of the notice of appeal ~~of filing the notice of appeal for all purposes under these rules.~~

(ii) (C) Unless the defendant has, with the advice of counsel, waived appeal on the record in open court, the ~~The~~ judge will direct the clerk to mail a copy of the notice of entry of judgment required by V.R.Cr.P. 56(d), and a copy of the docket entries, to the Supreme Court clerk.

(iii) (D) ~~(D)~~ The appeal will be docketed in the Supreme Court and the record and transcript prepared and forwarded as provided in these rules for appeals in other criminal cases. The Supreme

Court will review the record in the interests of justice and consider any claim of error as if a notice of appeal has been filed.

Reporter's Notes–2015 Amendment

Rule 3(b)(2) is amended to eliminate the automatic entry of appeal provision for cases in which a defendant who is represented by counsel has entered a plea of guilty or nolo contendere and has been sentenced to life imprisonment. The amendment comports with the concurring opinion (Johnson, J.) given in *State v. Sheperd*, 2011 VT 44, ¶ 2, 189 Vt. 636, 21 A.3d 694 (mem.). The only substantive change is to add the provisions under which appeal would not be automatic in case of either explicit record waiver of right of appeal, or entry of a plea of guilty or nolo contendere resulting in a life sentence, in either instance with advice of counsel. A defendant still has a right to appeal, but in the case of a plea of guilty or nolo contendere, entry of appeal would not be automatic; defendant or counsel would be required to file a timely notice of appeal to preserve the right. The existing rule has been construed to require that in all cases in which life imprisonment is the sentence, a defendant must personally appear, with counsel, to explicitly waive appeal rights after an appeal has been automatically entered, even if judgment of conviction results from a plea of guilty or nolo contendere rather than a verdict, and even if an appeal is not contemplated by the defendant. In such cases, personal appearance, explicit colloquy and waiver of right of appeal is not necessary.

Subsection 3(b)(2)(B)(ii) provides that the clerk of the unit of the Superior Court having the case transmits the necessary appeal documents to the clerk of the Supreme Court as directed by the court in cases of automatic appeal. Otherwise, transmittal of appeal documents in life sentence cases occurs only upon timely filing of a notice of appeal by defendant or counsel consistent with the provisions of subsection 3(b)(1).

2. That Rule 10(b)(3) of the Vermont Rules of Appellate Procedure be amended to read as follows (new matter underlined):

RULE 10. THE RECORD ON APPEAL

* * * * *

(b) Transcript

(3) *Life Imprisonment Cases*. In any criminal case resulting in a sentence of life imprisonment where the defendant has not waived appeal or entered a plea of guilty or nolo contendere to the underlying charge, the superior court clerk must, within 10 days of the entry of judgment, order from a Court-approved transcription service a complete transcript of the proceedings.

* * * * *

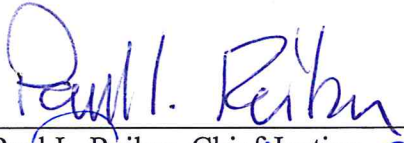
Reporter's Notes–2015 Amendment

Rule 10(b)(3) is amended consistent with a contemporaneous amendment of Rule 3(b)(2), which eliminates provision for automatic entry of appeal in cases in which a defendant who is represented by counsel has entered a plea of guilty or nolo contendere and has been sentenced to life imprisonment. The present amendment serves to clarify that the clerk is obligated to order a complete transcript of proceedings within 10 days of judgment in life imprisonment cases only where there has not been a waiver of appeal, or a plea of guilty or nolo contendere to the underlying charge, consistent with the provisions of amended Rule 3(b)(2). Even in such cases, a defendant has a right to file a timely notice of appeal, in which event the manner of securing a transcript of proceedings is governed by the other provisions of Rule 10(b), as applicable, and by Rule 24(d) (preparation of transcripts for appellants proceeding in forma pauperis).

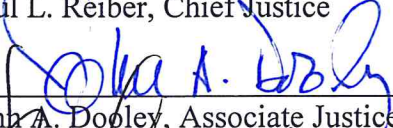
3. That this rule, as amended, is prescribed and promulgated to become effective October 5, 2015. The Reporter's Notes are advisory.

4. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

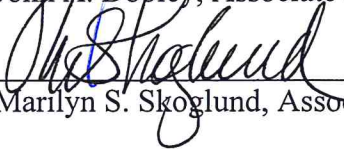
Dated in Chambers at Montpelier, Vermont this 5th day of August, 2015.



Paul L. Reiber, Chief Justice



John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice

Beth

Beth Robinson, Associate Justice

Harold E. Eaton, Jr.

Harold E. Eaton, Jr., Associate Justice