IN THE

SUPREME COURT OF INDIANA

ORDER AMENDING RULES OF CRIMINAL PROCEDURE

Under the authority vested in this Court to provide by rule for the rules of procedure employed in all courts of this state, ***Rules 11, 12, 13, and 24*** of the ***Rules of Criminal Procedur***e are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

Rule 11. Instructions by Judge After Felony Trial Sentencing

Upon entering a conviction, whether the acceptance of a guilty plea or by finding or by verdict, the court shall sentence a defendant convicted in a criminal case within thirty (30) days of the plea or the finding or verdict of guilty, unless an extension for good cause is shown.

Following the sentence of a defendant convicted of a felony after trial on a plea of not guilty, and following a judgment revoking probation of a defendant found to have violated the terms of his probation after a contested felony probation revocation proceeding, the judge shall immediately advise the defendant as follows:

(1) that he is entitled to take an appeal or file a motion to correct error;

(2) that if he wishes to file a motion to correct error, it must be done within thirty (30) days of the sentencing;

(3) that if he wishes to take an appeal from the judgment, he must file a notice of appeal designating what is to be included in the record ~~of the proceedings~~ on appeal within thirty (30) days of the sentencing or within thirty (30) days after the court's ruling on the motion to correct error, if one is filed; if the notice of appeal is not timely filed, the right to appeal will be forfeited;

(4) that if he is financially unable to employ an attorney, the court will appoint counsel for defendant at public expense for the purpose of filing the motion to correct error and for taking an appeal.

Provided further that when a trial court imposes a death sentence, it shall also advise the defendant at sentencing that the court reporter and clerk will begin immediate preparation of the record ~~of proceedings~~ on appeal.

The court shall then inquire of the defendant whether or not he wishes to appeal or file a Motion to Correct Error. If the defendant states that he does desire to do so, the court shall forthwith instruct trial counsel for defendant that it is his duty to consult with defendant and with defendant's appeal counsel, if any, on the action to be taken.

The court shall then inquire of the defendant whether or not he is a pauper and has insufficient funds to employ an attorney. If the court finds that he is financially unable to employ counsel for an appeal and the defendant states that he desires an attorney for appeal, the court shall thereupon promptly appoint an attorney to represent the defendant in an appeal and notify the defendant at said time of said action.

The judge shall cause the court reporter to record the entire proceedings in connection with such sentencing or probation revocation, including questions, answers, statements made by the defendant and his attorney, if any, the prosecuting attorney and the judge, and promptly thereafter to transcribe the same in form similar to that in general use as a transcript of evidence in a trial.

~~When so transcribed, the same shall be submitted to the judge, who shall certify that it is a true and complete transcript of the proceedings, and shall order the same filed as a part of the record in the case and cause an order book entry of the filing thereof to be made by the clerk.~~ Thereafter in any subsequent inquiry into the events occurring at these proceedings, such transcript shall be considered as part of the record ~~of the proceedings~~ on appeal. When properly certified ~~to~~ by the clerk, such transcript or a copy thereof may be incorporated as a part of the record in any appeal.

Rule 12. Change of venue in criminal cases.

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(G) Procedure for Change of Venue from County.

(1) Whenever a change of venue from the county is granted, if the parties to such action shall agree in open court, within three (3) days from the granting of the motion or affidavit for the change of venue, upon the county to which the change of venue shall be changed, it shall be the duty of the court to transfer such action to such county. In the absence of such agreement, it shall be the duty of the court within two (2) days thereafter to submit to the parties a written list of all of the counties adjoining the county from which the venue is changed; provided, however, if it appears to the regular judge or the

presiding judge before whom an application for a change of venue from the county is pending that the grounds for such change also exist in one or more of the adjoining counties to which the case may be venued, such judge shall have the right to eliminate such county or counties from the list of counties to be submitted for striking and to substitute another county or counties where such grounds, in his opinion, do not exist in order that the defendant shall have a fair and impartial trial.

(2) The parties within seven (7) days thereafter, or within such time, not to exceed fourteen (14) days, as the court shall fix, shall each alternately strike off the names of such counties. The party first filing such motion shall strike first, and the action shall be sent to the county remaining not stricken under such procedure. If a moving party fails to so strike within said time, such party shall not be entitled to a change of venue, and the court shall resume general jurisdiction of the cause. If a non-moving party fails to strike off the names of such counties within the time limited, then the clerk shall strike off such names for such party.

(3) Whenever a court has granted an order for a change of venue to another county and the costs thereof have been paid where an obligation exists to pay such costs for such change, either party to the cause may file a certified copy of the order making such change in the court to which such change has been made, and thereupon such court shall have full jurisdiction of said cause, regardless of the fact that the transcript and papers have not yet been filed with such court to which such change is taken. Nothing in this rule shall be construed as divesting the original court of its jurisdiction to hear and determine emergency matters between the time that a motion for change of venue to another county is filed and the time that the court grants an order for the change of venue.

(4) Notwithstanding any provision of these rules or the Indiana Rules of Trial Procedure to the contrary, whenever a court has granted an order for a change of venue to another county, the judge granting the change of venue may be appointed as special judge for that cause in the receiving county if the judge granting the change, the receiving judge, and all of the parties to the cause agree to such appointment.

Rule 13. Case reassignment and special judges; selection

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(C) Selection under Local Rule Adopted by Counties. In counties where four (4) or more judges receive assignment of felony or misdemeanor cases under Ind.Crim.Rule 2.2, upon the granting of a change of judge, a successor judge shall be assigned in the same manner as the initial judge. In counties where there are fewer than four (4) judges, the local rule required by Ind.Crim.Rule 2.2 shall include an alternative assignment list with judges of contiguous counties and senior judges assigned to the court for use in the event a change of judge is granted. Except for those serving pursuant to Criminal Rule 12(G)(4), ~~Judges~~ judges previously assigned to the case are ineligible for reassignment.

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Criminal Rule 24. Capital Cases

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(I) Initiation of Appeal. When a trial court imposes a death sentence, it shall on the same day sentence is imposed order the court reporter and clerk to begin immediate preparation of the record on appeal.~~of proceedings.~~

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(L) Briefing on Appeal. In capital cases, counsel may place the verbatim judgment of the trial court and verbatim instructions and the verbatim objections thereto required by Appellate Rule 50B in ~~a separately bound attachment. Such attachment~~ an Addendum to Brief, and these documents shall not count against the word limit of the brief.

These amendments shall take effect April 1, 2002.

The Clerk of this Court is directed to forward a copy of this order to the Clerk of each Circuit Court in the state of Indiana, Attorney General of Indiana. Legislative Services Agency and its Office of Code Revision, Administrator, Supreme Court of Indiana, Administrator, Indiana Court of Appeals, Indiana Tax Court, Public Defender of Indiana, Indiana Supreme Court Disciplinary Commission, Indiana Supreme Court Commission for Continuing Legal Education, Indiana Board of Law Examiners, Indiana Judicial Center, Division of State Court Administration, the libraries of all law schools in this state, the Michie Company, and the West Group.

The Clerks of the Circuit Courts are directed to bring this order to the attention of all judges within their respective counties and to post this order for examination by the Bar and general public.

The West Group is directed to publish this Order in the advance sheets of this Court.

DONE this ____ day of December, 2001.

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Randall T. Shepard
Chief Justice of Indiana

All Justices concur.