

Alabama Rules of Criminal Procedure

Rule 15. Preparation for trial; pleadings and motions.

Rule 15.7. Pre-trial appeals by the state.

(a) **GENERALLY.** In any case involving a felony, a misdemeanor, or a violation, an appeal may be taken by the state to the Court of Criminal Appeals from a pre-trial order of the circuit court (1) suppressing a confession or admission or other evidence, (2) dismissing an indictment, information, or complaint (or any part of an indictment, information, or complaint), or (3) quashing an arrest or search warrant. Such an appeal may be taken only if the prosecutor certifies to the Court of Criminal Appeals that the appeal is not brought for the purpose of delay and that the order, if not reversed on appeal, will be fatal to the prosecution of the charge. A municipality may appeal any pre-trial order entered by the circuit court on trial de novo of any municipal ordinance violation, in like manner.

(b) **NOTICE OF APPEAL; TIME FOR TAKING PRE-TRIAL APPEAL.** The notice of appeal shall be filed both with the clerk of the circuit court and with the clerk of the Court of Criminal Appeals within seven (7) days after the order has been entered, but in any case before the defendant has been placed in jeopardy under established rules of law. The notice of appeal shall specify the charge or charges as to which, and the defendant or defendants as to whom, the appeal is taken. In a case in which multiple offenses or multiple defendants have been joined for trial, such specification on appeal shall be jurisdictional.

(c) **PREFERENCE.** All appeals and petitions for writs of certiorari pursuant to this rule shall have preference in the appropriate appellate court and shall be diligently prosecuted.

(d) **EFFECT ON TRIAL COURT PROCEEDINGS.** The filing of a notice of appeal in the circuit court pursuant to this rule shall stay the proceedings in the circuit court as to any charge with respect to which, and any defendant against whom, the appeal is taken.

(e) **BRIEFS AND ARGUMENTS ON APPEAL.** Briefs and arguments in the Court of Criminal Appeals shall be in accordance with the Alabama Rules of Appellate Procedure, except that, with regard to briefs and arguments, that court may make such exceptions to those rules as it deems necessary or desirable in a particular case.

(f) **RECORD ON APPEAL.** The record on appeal shall be filed with the Court of Criminal Appeals in accordance with the Alabama Rules of Appellate Procedure, except that that court may require the filing of such a different record and may

impose such a different schedule as that court may deem necessary or desirable in a particular case.

(g) REHEARINGS AND CERTIORARI. When the Court of Criminal Appeals has rendered a judgment in a pre-trial appeal taken pursuant to this rule, a party may, within seven (7) days, apply to that court for a rehearing. Applications for rehearing shall be subject to the provisions of Rule 40, A.R.App.P., as amended, to accommodate pre-trial appeals pursuant to this rule. Either party, whether or not that party has applied for a rehearing, may, within seven (7) days of the judgment of the Court of Criminal Appeals, or within seven (7) days of that court's order overruling an application for rehearing, file in the Supreme Court a petition for writ of certiorari to review any decision of the Court of Criminal Appeals rendered in a pre-trial appeal pursuant to this rule. Petitions for writs of certiorari shall be subject to the provisions of Rule 39, A.R.App.P., as amended, to accommodate pre-trial appeals pursuant to this rule.

(h) EFFECT OF RULING IN PRE-TRIAL APPEAL. If the trial court's ruling is upheld following a pre-trial appeal taken pursuant to this rule, then that affirmance shall operate as a bar to any further prosecution of the defendant or defendants as to whom the appeal was taken for any crime involved in the charge or charges as to which the appeal was taken, unless the trial court shall find that the subsequent prosecution is primarily based upon significant new evidence not reasonably available to the state when the pre-trial appeal was taken.

[Amended eff. 8-1-97.]

Committee Comments

The seven-day period for filing the notice for appeal specified in Rule 15.7(b) runs from the date of the original order, irrespective of any post-judgment motion to amend or modify the order. *State v. Reiner*, 530 So.2d 903 (Ala.Crim.App.1988).