

Alabama Rules of Criminal Procedure

Rule 33. Contempt.

Rule 33.6. Review of contempt proceedings.

(a) WHERE CONTEMNOR IS IN CUSTODY. A case in which a contemnor is being held in custody pursuant to an order of a court finding contemnor in contempt is reviewable by appeal filed in the appropriate court, except in those cases in which the writ of habeas corpus is an available remedy.

(b) WHERE CONTEMNOR IS NOT IN CUSTODY. In cases in which a contemnor by order has been found to be in contempt and sentenced, or in which he is not in custody, review of the action of the court shall be by appeal to the appropriate appellate court.

Committee Comments

This is the current law and practice in Alabama. See Ala.Code 1975, § 15-21-23, which provides that a lawful commitment for contempt cannot be attacked collaterally by petition for habeas corpus.

However, an illegal order, not just an irregular or erroneous one, outside the court's power can be the subject of habeas corpus. *Ex parte Pearce*, 111 Ala. 99, 20 So. 343 (1896).

Where the contemnor is not in custody his remedy is appeal. Even if he is in custody the remedy is appeal and supersedeas. See Ala.Code 1975, § 12-1-11. The statute granting right of appeal to attorneys and court officials for contempt is expanded to cover all persons. It is a separate proceeding, wholly apart from the proceeding in which the contumacious conduct occurred. *Ex parte Dickens*, 162 Ala. 272, 50 So. 218 (1909).