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High court hones rules for appeals

Time limits for filings to be enforced; lawyers to get leeway on arguments

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In two decisions issued yesterday, the New Jersey Supreme Court tightened the time limits for criminals to appeal their convictions and sentences, and relieved their lawyers of a duty to argue frivolous claims.

The two unanimous rulings were partial victories for prosecutors but did not go as far as they had hoped toward fixing a criminal appeals system that they called "broken." Assistant Middlesex County Prosecutor Simon Rosenbach lost his argument for the justices to overhaul the way claims of ineffective assistance of counsel are considered.

The state Public Defender's Office was satisfied with both rulings. The high court also sent both its suits to its Criminal Practice Committee for further study, which means they could be amended in the future.

In one case, the court announced it will more rigorously enforce a rule requiring criminal appeals to be filed within 45 days, with a possible extension of 30 days for good cause. According to the state Attorney General's Office, those time limits are routinely ignored and late appeals have become the rule rather than the exception.

Justice Roberto Rivera-Soto traced the problem to rulings in 1977 and 1981 that relaxed the standards for filing late appeals.

"Now, 25 years later, we find that adjustment to that framework is warranted," Rivera-Soto wrote. The justices designed a form to be given to all defendants at sentencing stating they will lose their right to appeal if they do not do so by the deadline. The defendants and their lawyers must sign the form.

First Assistant Public Defender William Smith had proposed a variation on that form -- a script that judges would read aloud -- to advise defendants of their right to appeal and the deadline for doing so.

"We're very satisfied with the ruling," Smith said.

The court said its new rules apply only to future cases, and it upheld appellate court rulings allowing four defendants to file late appeals. One had missed the deadline by five years.

In the second case, the high court relaxed a requirement imposed on lawyers handling a convicted criminal's last bid for freedom, known as post-conviction relief. A 2002 ruling by the high court required those lawyers to raise all issues the client wanted, regardless of merit, and to "make the best available arguments in support of them."

The new rule allows lawyers to exercise their judgment in arguing only those claims they believe have merit. They are required to list all other claims the client wants to raise but "no argument need be made."

Because the lawyer for convicted murderer Clayton Webster had not listed nine issues he wanted argued, the justices gave Webster a new hearing.

Public Defender Yvonne Smith Segars called it "a very balanced decision" that "clarifies the obligations of our attorneys" while protecting the rights of defendants.

In sending the issue to its Criminal Practice Committee, the high court belatedly adopted a suggestion made four years ago by then- Justice Peter Verniero. He wrote that the 2002 rule required lawyers to raise an issue "so lacking in merit that it constitutes the functional equivalent of a fraud upon the court." Such a rule, he said, needed further study.

The justices took no action on a proposal by Rosenbach that would have forced defendants to raise any complaints about their lawyers' performance soon after sentencing. As it is, he said, such claims get heard years later, when memories have faded.

"We had an opportunity to fix a broken system," Rosenbach said. "They didn't take it."

Jeff Lamm, a spokesman for Attorney General Zulima Farber, had no comment on either ruling.

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