

CHAPTER 974

APPEALS, NEW TRIALS AND WRITS OF ERROR

974.01	Misdemeanor appeals from county court	974.04	Transcripts.
974.02	New trial	974.05	State's appeal.
974.03	Appeals to supreme court; time for taking	974.06	Post-conviction procedure

974.01 Misdemeanor appeals from county court. (1) Appeals in misdemeanor cases are to the circuit court for the county on the record.

(2) Within 15 days after judgment or entry of the order appealed from, appeal may be taken to the circuit court by filing a notice of appeal with the clerk of the trial court and by serving notice of appeal on the opposing party or his attorney. If a motion for a new trial has been made within the 15-day period, an appeal from a judgment of conviction may be taken within 15 days after entry of the order denying the motion or within 15 days after such motion is deemed overruled.

(3) Within 40 days after notice of appeal is filed the appellant shall file with the clerk either a transcript of the reporter's notes of the trial or an agreed statement on appeal, or a statement that his appeal can be supported by the case file without the transcript. The appellant shall pay the costs of preparing the transcript. The county shall in all cases where required by the U.S. or Wisconsin constitution pay the costs of preparing the transcript if the defendant is financially unable to pay the costs.

(4) Within 10 days after the transcript, or agreed statement pursuant to sub. (5), or statement that the appeal can be supported by the case file without the transcript is filed with the clerk, the clerk shall return the case file, and any transcript or agreed statement, or statement as to the appeal being supported by the case file alone, which has been filed with him to the circuit court and shall notify the parties of such filing in the circuit court.

(5) In lieu of a transcript on appeal, the oral proceedings may be presented in an agreed statement signed by all the parties to the appeal. This shall be a condensed statement in narrative form of all of such portions of the oral proceedings as are necessary to determination of the question on appeal.

(6) On appeal, the circuit court has power similar to that of the supreme court under ch. 274 to review and to affirm, reverse or modify the judgment appealed from, and in addition it may order a new trial in whole or in part, which shall be in the circuit court.

(7) At any time after the filing in the circuit court of the return on appeal, any party to the action or proceeding, upon notice under s. 269.31, may move that the judgment appealed from be affirmed, or modified and affirmed as modified, or that the appeal be dismissed, or may move for a new trial or a reversal. This motion shall state concisely the grounds upon which it is made and shall be heard on the record.

(8) Appeals by the state are subject to the limitations of s. 974.05.

974.02 New trial. (1) A defendant may move in writing or with the consent of the state on the record to set aside a judgment of conviction and for a new trial in the interest of justice, or because of error in the trial or because of error in the jury instructions, or because the judgment of conviction is not supported by the evidence or is contrary to law; but such motion must be made, heard and decided within 90 days after the judgment of conviction is entered, unless the court by order made before its expiration extends such time for cause. Such motion, if not decided within the time allowed therefor, shall be deemed overruled. Filing of a motion for a new trial shall not prevent the trial court from imposing sentence.

(2) If the trial judge is disabled or no longer in office, his successor or another judge may hear and determine the motion.

(3) Every order granting a new trial shall specify the grounds therefor. In the absence of such specification, the order shall be deemed granted for error on the trial. No order granting a new trial in the interests of justice shall be valid or effective, unless the reasons that prompted the court to make such order are set forth in detail therein or the memorandum decision setting forth such reasons incorporated by reference in such order.

(4) A new trial shall proceed in all respects as if there had been no former trial. On the new trial the defendant may be convicted of any crime charged in the indictment or information irrespective of the verdict or finding on the former trial. The former verdict or finding shall not be used or referred to on the new trial.

(5) A motion for a new trial is not necessary to review errors on a trial to the court without a jury.

974.03 Appeals to supreme court; time for taking. In lieu of prosecuting a writ of error, either party may appeal to the supreme court in the manner provided in civil cases. The service of a notice of appeal or the issuance of a writ of error shall be made within 90 days after the entry of judgment or order appealed from. If a motion for a new trial has been made within the 90-day period, an appeal from a judgment of conviction may be taken within 90 days after entry of the order denying the motion or within 90 days after such motion is deemed overruled.

974.04 Transcripts. The statutes relating to serving and approving transcripts in civil actions shall apply to criminal cases, but the time for serving a proposed transcript shall be 3 months from service of notice of appeal or 3 months from the issuance of a writ of error.

974.05 State's appeal. (1) A writ of error or appeal may be taken by the state from any:

(a) Final order or judgment adverse to the state made before jeopardy has attached or after waiver thereof.

(b) Order granting a new trial.

(c) Judgment and sentence or order of probation not authorized by law.

(d) Order or judgment the substantive effect of which results in:

1. Quashing an arrest warrant;

2. Suppressing evidence; or

3. Suppressing a confession or admission.

(e) Judgment adverse to the state, upon questions of law arising upon the trial, in the same manner and with the same effect as if taken by the defendant.

(2) Whenever the defendant appeals or prosecutes a writ of error, the state may move to review rulings of which it complains, as provided by s. 274.12.

(3) Permission of the trial court is not required for the state to appeal, but the district attorney shall serve notice of such appeal or of the procurement of a writ of error upon the defendant or his attorney.

974.06 Post-conviction procedure. (1) A prisoner in custody under sentence of a court claiming the right to be released upon the ground that the sentence was imposed in violation of the U.S. constitution or the constitution or laws of this state, that the court was without jurisdiction to impose such sentence, or that the

sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(2) A motion for such relief is a part of the original criminal action, is not a separate proceeding and may be made at any time. The supreme court may prescribe the form of the motion.

(3) Unless the motion and the files and records of the action conclusively show that the prisoner is entitled to no relief, the court shall:

(a) Cause a copy of the notice to be served upon the district attorney who shall file a written response within the time prescribed by the court.

(b) Appoint counsel pursuant to s. 971.01 (6) [970.02 (6)], if, upon the files, records of the action and the response of the district attorney it appears that counsel is necessary.

(c) Grant a prompt hearing.

(d) Determine the issues and make findings of fact and conclusions of law. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or is otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(4) All grounds for relief available to a prisoner under this section must be raised in his original, supplemental or amended motion. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the prisoner has taken to secure relief may not be the basis for a subsequent motion, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended motion.

(5) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(6) Proceedings under this section shall be considered civil in nature, and the burden of proof shall be upon the prisoner.

(7) An appeal may be taken from the order entered on the motion as from a final judgment subject to ss. 974.03 and 974.05.

(8) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained if it appears that the applicant

has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that

the remedy by motion is inadequate or ineffective to test the legality of his detention.