

RULES OF CRIMINAL PROCEDURE

CHAPTER 1208 RULES OF CRIMINAL PROCEDURE

IN THE MATTER OF THE
RULES OF CRIMINAL
PROCEDURE

}

REPORT OF THE

SUPREME COURT

TO THE 1980 REGULAR SESSION OF THE SIXTY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF IOWA:

Pursuant to sections 813.4 and 684.19, The Code, the Supreme Court of Iowa has prescribed and hereby reports to the General Assembly changes in existing Rules of Criminal Procedure as follows:

Rule 3(4)(e).

That the first sentence of rule 3(4)(e) be amended as follows:

"e. Securing witnesses and records. The clerk of the court must, when required by the foreman of the grand jury or prosecuting attorney, issue subpoenas including subpoenas duces tecum for witnesses to appear before the grand jury."

Rule 4(1).

That rule 4(1) be amended as follows:

"1. Defined. An indictment is an accusation in writing, found and presented by a grand jury legally impaneled and sworn to the court in which it is impaneled, charging that the person named therein has committed an indictable public offense, ~~punishable on indictment.~~"

Rule 4(3).

That the first sentence of rule 4(3) be amended as follows:

"3. Evidence to support. An indictment should be found when all the evidence, taken together, is such as in the judgment of the grand jury, if unexplained, would warrant a conviction by the trial jury; otherwise it ~~should~~ shall not."

Rule 4(6)(a).

That rule 4(6)(a) be amended as follows:

"a. A minute of evidence shall consist of a notice in writing stating the name, place of residence, and occupation of the witness upon whose testimony the indictment is found, and a full and fair statement of the witness' testimony before the grand jury and a full and fair statement of additional expected testimony at trial."

Rule 4(8)(a).

That rule 4(8)(a) be amended as follows:

"a. Generally. The court may, on motion of the state, and either before or during the trial, order the indictment amended so as to correct errors or omissions in matters of form or substance. Amendment ~~may be~~ is not allowed ~~before--or--during--trial--when~~ if no substantial rights of the defendant are prejudiced by the amendment, or and if a wholly new and different offense is ~~not~~ charged."

Rule 6(6).

That rule 6 be amended by denominating existing subdivision 6 as "7" and adding the following new subdivision 6:

"6. Allegations of use of a firearm. If the offense charged is one for which the defendant, if convicted, will be subject by reason of the Code to a minimum sentence because of use of a firearm, the allegation of such use, if any, shall be contained in the indictment. If use of a firearm is alleged as provided by this rule, and if the allegation is supported by the evidence, the court shall submit to the jury a special interrogatory concerning this matter, as provided in R. Cr. P. 21(2)."

Rule 10(4).

That rule 10(4) be amended as follows:

"4. Time of filing. Motions hereunder, except a motion for a bill of particulars, shall be filed within ~~thirty~~ forty days after arraignment ~~or~~ prior-to-impaneling-of-the-trial-jury, whichever event occurs earlier, unless the period of filing is extended by the court for good cause shown."

Rule 11(1)(e).

That rule 11(1)(e) be amended as follows:

"e. The warrant was illegally executed. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored to its owner or legal custodian unless otherwise subject to lawful detention, and it shall not be admissible in evidence at any hearing or trial.

The motion shall be made ~~before--trial--or--hearing--unless--opportunity~~ therefore-did-not-exist-or-the-defendant-was-unaware-of-the--factual--grounds ~~for--the--motion,--but--the--court--in--its--discretion--may--entertain--the--motion--at~~ the-trial-or-hearing,--upon--good-cause--supported--by--affidavit pursuant to R. Cr. P. 10(3) and (4)."

Rule 12(5).

That rule 12 be amended by adding the following new subdivision 5:

"5. Time of taking. Depositions taken hereunder shall be taken within thirty days after arraignment, unless the period for taking is extended by the court for good cause shown."

Rule 17(1).

That rule 17(1) be stricken and the following new rule 17(1) be substituted:

"1. Selection. The clerk shall prepare and deposit in a box separate ballots containing the names of all persons returned or added as jurors. At each jury trial he shall select sixteen jurors by closing and shaking the box to intermingle the ballots, and drawing them from the box without seeing the names. He shall list all jurors so drawn. Before drawing begins, either party may require that the names of all jurors be called, and have an attachment for those absent who are not engaged in other trials; but the court may wait for its return or not, in its discretion."

Rule 17(3).

That rule 17(3) be stricken and the following new rule 17(3) be substituted:

"3. Challenges to the panel. Before any juror is sworn, either party may challenge the panel, in writing, distinctly specifying the grounds, which can be founded only on a material departure from the statutory requirements for drawing or returning the jury. On trial thereof, any officer, judicial or ministerial, whose irregularity is complained of, and any other persons, may be examined concerning the fact specified. If the court sustains the challenge it shall discharge the jury, no member of which can serve at the trial."

Rule 17(9).

That rule 17(9) be stricken and the following new rule 17(9) be substituted:

"9. Peremptory challenges. Peremptory challenges must be made before the jury is sworn to try the case. A juror peremptorily challenged must be excused without reasons being given. After all challenges for cause are completed, the state and defendant shall alternately make or waive their peremptory challenges by appropriate notations on the jury list."

Rule 17(18).

That rule 17 be amended by adding the following new subdivision 18:

"18. Returning ballots to box. When a jury is sworn, the ballots containing the names of those absent or excused from the trial shall be immediately returned to the box. Those containing the names of jurors sworn shall be set aside, and returned to the box immediately on the discharge of that jury."

Rule 21(2).

That rule 21(2) be amended as follows:

"2. Answers to interrogatories. It must also return with the general verdict answers to special interrogatories submitted by the court upon its own motion, or at the request of the defendant in prosecutions where the defense is an affirmative one, or it is claimed any witness is an accomplice, or there has been a failure to corroborate where corroboration is required.

Where a defendant is alleged to be subject to the minimum sentence provisions of section 902.7, The Code (use of firearms), and the allegation is supported by the evidence, the court shall submit a special interrogatory concerning that matter to the jury."

New rule 26.1.

That the following rule 26.1 be adopted:

"Rule 26.1. APPOINTMENT OF APPELLATE COUNSEL IN CRIMINAL CASES.

1. An indigent defendant, as defined in section 336A.4, The Code, convicted of an indictable offense or a simple misdemeanor where defendant faces the possibility of imprisonment, is entitled to appointment of counsel on appeal or application for discretionary review to the supreme court. Application for appointment of appellate counsel shall be made to the trial court, which shall retain authority to act on such application after notice of appeal or application for discretionary review has been filed. The supreme court, or a justice thereof, shall have authority to appoint counsel in the event the trial court fails or refuses to appoint and it becomes necessary to further provide for counsel.

2. Defendant may make oral application that appellate counsel be appointed only at the time specified in R. Cr. P. 22(3)(f). Upon such oral application if the trial court determines defendant is an indigent, the court shall proceed pursuant to R. Cr. P. 22(3)(f).

3. At all subsequent times defendant shall apply for appointment of appellate counsel in writing to the trial court, which shall by order either approve or deny such application no later than seven days after it is filed.

4. If the trial court finds defendant is ineligible for appointment of appellate counsel, it shall include in the record a statement of the reasons why counsel was not appointed. Defendant may apply to the supreme court for review of a trial court order denying defendant appointed counsel. Such application must be filed with the supreme court within ten days of the filing of the trial court order denying defendant's request for appointed counsel.

5. If defendant has proceeded as an indigent in the trial court and a financial statement required by section 336B.2, The Code, has been filed pursuant to section 336B.4, The Code, such defendant, upon making application for appointment of appellate counsel, shall be presumed to be an indigent, and an additional financial statement shall not be required to be submitted to the court, unless evidence is offered that defendant is not an indigent. In all other cases defendant shall be required to submit a

financial statement to the trial court. Defendant and appointed appellate counsel shall be under a continuing obligation to inform the trial court of any change in circumstances that would make defendant ineligible to qualify as an indigent.

6. Trial counsel shall continue as defendant's appointed appellate counsel unless the trial court or supreme court orders otherwise. Selection of appointed appellate counsel shall be the responsibility of the trial court. Defendant shall not have the right to select the attorney to be assigned; however, defendant's request for particular counsel shall be given consideration by the trial court."

New rule 26.2.

That the following rule 26.2 be adopted:

"Rule 26.2. WAIVER OF RIGHT TO APPELLATE COUNSEL IN CRIMINAL CASES.

An indigent defendant may waive his or her right to have appellate counsel appointed if defendant does so in writing and the trial court finds of record that defendant has acted with full awareness of his or her rights and of the consequences of a waiver and if the waiver is otherwise made according to law. Defendant may withdraw a waiver of his or her right to appellate counsel at any time. Such withdrawal and subsequent appointment of counsel shall not affect any prior appellate proceedings in which defendant acted pro se and shall not extend any appellate deadlines, unless the appropriate appellate court otherwise orders. Notwithstanding a waiver by defendant, the trial court, after notice of appeal or application for discretionary review has been filed, may appoint counsel to advise defendant during appellate proceedings if it appears to the court that, because of the gravity of the offense and other circumstances affecting defendant, the failure to appoint counsel may result in injustice to the defendant."

New rule 26.3.

That the following rule 26.3 be adopted:

"Rule 26.3. COMPENSATION OF APPOINTED APPELLATE COUNSEL.

Appointed appellate counsel's compensation shall be determined by the trial court pursuant to the provisions of section 815.7, The Code."

Rule 27(2)(a).

That rule 27(2)(a) be amended as follows:

"a. When a person an adult is arrested for the commission of a public offense, or, in the case of a child, when the juvenile court enters an order waiving jurisdiction pursuant to section 232.45, The Code, and an indictment is not found against him within forty-five days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown or the defendant waives his right thereto."

Form 11, Appendix of Forms.

That the following new form 11 be adopted:

"FORM 11

APPLICATION FOR POSTCONVICTION RELIEF FORM
IN THE IOWA DISTRICT COURT FOR _____ COUNTY

_____, Applicant,
vs.
STATE OF IOWA, Respondent.

Law No. CL _____
Application for Post-
conviction Relief Pur-
suant to Chapter 663A,
The Code.

I.

Conviction or sentence concerning which postconviction relief is demanded:

A. Crime and statute applicant was convicted of violating:

B. Criminal Case No. _____

C. District court and judge that entered judgment of conviction or sen-
tence: _____

D. Date of entry of judgment of conviction or sentence:

E. Sentence: _____

F. Place of confinement: _____

G. Plea:
____ Guilty
____ Not Guilty

H. Trial:
____ Jury
____ Judge only

II.

Prior proceedings:

A. Conviction or sentence was _____ appealed
1. to _____ court

2. Grounds raised: _____

3. Result: _____

4. Date of result: _____

B. Other petitions, applications or motions relating to this conviction
or sentence in any court, state or federal:

1. Name of court: _____

2. Nature of proceedings: _____

3. Grounds raised: _____

- 4. Result: _____
- 5. Date of result: _____

III.

Grounds upon which application is based (grounds checked must be fully explained in space below):

- A. ___ The conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this state.
- B. ___ The court was without jurisdiction to impose sentence.
- C. ___ The sentence exceeds the maximum authorized by law.
- D. ___ There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
- E. ___ (1) Applicant's sentence has expired.
 ___ (2) Applicant's probation, parole, or conditional release has been unlawfully revoked.
 ___ (3) Applicant is otherwise unlawfully held in custody or other restraint.
- F. ___ The conviction or sentence is otherwise subject to collateral attack upon ground(s) of alleged error formerly available under any common law, statutory, or other writ, motion, proceeding, or remedy.

Specific explanation of grounds and allegation of facts:

IV.

Facts supporting application within personal knowledge of applicant:

V.

The following documents, exhibits, affidavits, records*, or other evidence supporting this application are attached to the application (list):

VI.

The following documents, exhibits, affidavits, records, or other evidence supporting this application are not attached to the application (list):

These items are not attached for the following reason(s):

VII.

Relief desired (state clearly):

VIII.

I, the undersigned applicant, am _____ able to pay court costs and expenses of representation and do _____ desire to have counsel appointed to represent me concerning this application. (If applicant indicates inability to pay court costs and expenses of representation and does desire to have counsel appointed, applicant shall attach a financial statement to this application. See ss 336B.1 and 336B.2, The Code.)

*According to enrolled copy

 VERIFICATION

I, _____, applicant, being first duly sworn, declare to the undersigned authority that the information in this application, including the facts within my personal knowledge set out in division IV and the items listed in division V, is true and correct.

Applicant's signature

Attorney (if any) for applicant

Address: _____

State of Iowa, _____ County, ss.

Subscribed, sworn and acknowledged before me by _____,
applicant, this _____ day of _____, 19__.

Notary public, or other officer
authorized to take and certify
acknowledgments and administer
oaths.

DIRECTIONS TO CLERK OF COURT

The clerk of court shall docket this application upon its receipt*and promptly*bring it to the attention of the court and deliver a copy to the county attorney and the attorney general. See s 663A.3, The Code."

Respectfully submitted,
THE SUPREME COURT OF IOWA

/s/ W. W. Reynoldson
W. W. REYNOLDSON, CHIEF JUSTICE

Des Moines, Iowa
January 28, 1980

*According to enrolled copy

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Senate of the State of Iowa, hereby acknowledge delivery to me on the twenty-eighth day of January, 1980, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Criminal Procedure.

/s/ Frank Stork
Secretary of the Senate, 1980
Regular Session of the Sixty-
Eighth General Assembly of the
State of Iowa

ACKNOWLEDGMENT

I, the undersigned, Chief Clerk of the House of Representatives of the State of Iowa, hereby acknowledge delivery to me on the twenty-eighth day of January, 1980, of the foregoing report of the Supreme Court of Iowa pertaining to the Rules of Criminal Procedure.

/s/ David L. Wray
Chief Clerk of the House of
Representatives, 1980 Regular
Session of the Sixty-Eighth
General Assembly of the State
of Iowa

CERTIFICATE

I, Terry E. Branstad, do hereby certify that I am the President of the Senate of the 1980 Regular Session of the Sixty-eighth General Assembly of the State of Iowa; and I, Frank J. Stork, do hereby certify that I am the Secretary of the Senate of the 1980 Regular Session of the Sixty-eighth General Assembly of the State of Iowa, and we do hereby jointly certify that as such President and Secretary that on the twenty-eighth day of January, 1980, the Supreme Court of the State of Iowa reported to said Senate, and filed with it, the attached and foregoing Rules of Criminal Procedure;

THAT the date of making said report to the 1980 Regular Session of the Sixty-eighth General Assembly was within the twenty days subsequent to the convening of the 1980 Regular Session of the Sixty-eighth General Assembly;

THAT no other report pertaining to the Rules of Criminal Procedure was made or filed by said Supreme Court with said Senate;

THAT no changes, modifications, amendments, revisions or additions to the Rules of Criminal Procedure were made or enacted at such 1980 Regular Session of said Sixty-eighth General Assembly.

Signed this 26th day of April, 1980, being the sine die adjournment of the 1980 Regular Session of the Sixty-eighth General Assembly.

/s/ Terry E. Branstad

TERRY E. BRANSTAD

President of the Senate

/s/ Frank J. Stork

FRANK J. STORK

Secretary of the Senate, 1980
Regular Session of the Sixty-
eighth General Assembly of the
State of Iowa.

CERTIFICATE

I, William H. Harbor, do hereby certify that I am the Speaker of the House of Representatives of the 1980 Regular Session of the Sixty-eighth General Assembly of the State of Iowa; and I, Bruce Graham, do hereby certify that I am the Assistant Chief Clerk of the House of Representatives of the 1980 Regular Session of the Sixty-eighth General Assembly of the State of Iowa, and we do hereby jointly certify that as such Speaker and Assistant Chief Clerk that on the twenty-eighth day of January, 1980, the Supreme Court of the State of Iowa reported to said House of Representatives, and filed with it, the attached and foregoing Rules of Criminal Procedure;

THAT the date of making said report to the 1980 Regular Session of the Sixty-eighth General Assembly was within the twenty days subsequent to the convening of the 1980 Regular Session of the Sixty-eighth General Assembly;

THAT no other report pertaining to the Rules of Criminal Procedure was made or filed by said Supreme Court with said House of Representatives;

THAT no changes, modifications, amendments, revisions or additions to the Rules of Criminal Procedure were made or enacted at such 1980 Regular Session of said Sixty-eighth General Assembly.

Signed this 26th day of April, 1980, being the sine die adjournment of the 1980 Regular Session of the Sixty-eighth General Assembly.

/s/ William H. Harbor

WILLIAM H. HARBOR
Speaker of the House

/s/ Bruce Graham

BRUCE GRAHAM
Assistant Chief Clerk of the House
of Representatives, 1980 Regular
Session of the Sixty-eighth
General Assembly of the State of
Iowa.