

Convicted Defendant – Is An Appeal Or a Writ Best in Your Case?

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In this blog, you will learn:

Defendants in criminal cases who believe they have been unfairly convicted can pursue an appeal or a writ of habeas corpus. An appeals court judge will typically not be amenable to overruling a trial court judge's decision. Judges more normally maintain a perspective that they should give other judges the benefit of the doubt and that defendants should not expect a guarantee of a *perfect* trial.

So, the appellate court is only likely to *reverse a guilty verdict* if a trial judge made a mistake that appears to have impacted the outcome of the trial. The majority of errors by trial judges are of this harmless kind, which means not many convictions are overturned. But, there are sometimes mistakes that rise to constitutional violations and other impactful errors can happen in sentencing.

In types of cases in which the law assigns discretion for determining the sentence to the trial judge, an appellate judge is very unlikely to override the decision. But, when a specific sentence is required by law and a judge's decision is not consistent with that law, an appeals court judge can be expected to turn the case back to the lower court and *require a new sentence*.

What is an Appeal?

A defendant who wants to try to have a guilty verdict or sentencing decision reversed needs to file an appeal. An appeal is a request submitted to a higher court for a review and a change of the lower court's verdict. The alternative is filing a post-trial motion for a trial judge to reverse his or her judgment or to order a new jury trial, but such motions very rarely succeed.

What is a Writ?

A writ is an order handed down from a higher court to a lower court, or from a court to a government authority. There are various kinds of writs that defendants seek to obtain from judges. (See Utah Courts list of types of writs (pg 3) in the State's list.) Requesting a writ is a complex undertaking, so a defendant who is in a circumstance in which he or she may be able to obtain a writ from a higher court needs help from the best criminal defense lawyer Salt Lake City has available.

What is a Writ of Habeas Corpus?

Relief through a writ of habeas corpus is intended to protect detained people from being kept imprisoned for long periods of time when doing so is violating their legal rights. The British Parliament's habeas corpus act (1679) was spun from an ancient edict requiring courts to review the cases of detained individuals to ensure that justice was done by their imprisonment. This timeless judicial norm is formally upheld in the United States, under Article I of the U.S. Constitution, by which the government is prohibited from suspending a writ proceeding. Only in exceptional circumstances, such as in war, can it be permissible to delay the execution of a required review of the facts of a defendant's detention.

Criminal defendants who want to challenge the legal support for their incarceration, or for the conditions of it can file a petition or application with the court in an attempt to obtain a writ of habeas corpus. The writ is a court order to bring the prisoner to the court that has issued the order.

A writ of habeas corpus enables jailed defendants to ask a judge to let them go free or to order that inappropriate conditions of their imprisonment be stopped. Courts rarely grant writs, so efforts to obtain this type of writ are not necessarily always successful.

What's the Difference Between an Appeal and a Writ?

An *appeal* asks a higher court to intervene to remedy an error made in violation of the U.S. Constitution. A *writ* asks a court to order the release of a jailed defendant or to correct the conditions of his or her incarceration, by showing that the detention violates state law or a U.S. Constitutional right.

Writ — A writ is not an *ordinary* remedy for defendants. It is allowable only if there is no other sufficient solution, such as an appeal. For example, requesting a writ may be necessary if a defendant was erroneously denied bail, or was wrongly convicted, or if a judge made a faulty ruling that affected the outcome of the case. Or, perhaps the reason the verdict should be reversed involves some evidence that is not in the trial record.

Appeal — An appeal process is much slower than requesting a writ. Further, having an appeal granted is a possibility that is limited to a court decision based entirely on issues that exist *within the trial-court documents the parties have filed*. These problems for imprisoned defendants in post-trial circumstances can cause filing an appeal to be an insufficient approach to obtaining a remedy if a jailed person needs relief immediately.

Possible Remedies for Defendants After Conviction

Defendants who have been convicted have options for challenging guilty verdicts or possible violations of their constitutional rights. Filing an appeal may appear to be a more practical option in your case than requesting a writ. On the other hand, a judge might determine that seeking a writ is preferable to the much slower appeals process.

If you find yourself in such a situation, you will need to work with the best Utah criminal defense attorney available to you, to help you evaluate your alternatives. An experienced Salt Lake City criminal trial lawyer will ensure that *all* your rights are protected and that *all* legal requirements are met for filing appeals or approaching courts for writs.

Wasatch Defense Lawyers, Salt Lake City Utah

We are a criminal defense law firm in Salt Lake City, Utah. Our lawyers immediately work to get charges reduced or dismissed entirely and keep you from having to spend time in jail. Our aggressive approach gets desirable results for our clients. We will provide you with a free confidential review of your case. We have attorneys who speak fluent Spanish and German. Ask about our military discounts. We offer payment arrangements.

Call Wasatch Defense Lawyers, Salt Lake City UT at (801) 980-9965, or use our online contact request to schedule a free legal consultation with one of Utah's best criminal defense lawyers.
