SCLCrR 7.8 Post-Conviction Motions

Comments

Commenter: Snohomish County Prosecutor's Office
Date Received: 6/8/2021
Comment:

The 7.8 procedure is significantly different from what we proposed. It appears to contemplate an initial review with no input from us. The defendant is allowed to select any date for that review – which may not leave us any time to respond. Then, "Unless the Court transfers the matter to the Court of Appeals for consideration as a Personal Restraint Petition, the Court will issue an Order to Show cause why the requested relief should not be granted." With regard to the initial review, it seems appealing on the surface to have cases transferred without input from us. But we may be able to explain why cases shouldn't be transferred. And we don't gain that much from being excused from responding at that point – it increases the likelihood that we'll have to respond in the COA.

The bigger problem is what happens after a show cause hearing is set. Under CrR 7.8(c), a show cause hearing only occurs after the court decides not to transfer the case. Does that mean that the option to transfer is taken off the table before we have any chance to respond? That will result in a lot of unnecessary appointments of counsel and unnecessary appeals (with counsel at public expense).

I don't understand why the court would want to make an initial decision with no input from the prosecutor. The procedure that we initially proposed seems better for everyone: Give us the chance to respond to the motion, and then the court can decide what to do. We informally followed that procedure for years. It worked – cases got heard with a minimum of procedural obstacles, judges could make fully-informed decisions, and they could still hear oral argument if they considered it helpful.

The only real problem with the former procedure is that it was unwritten, so pro se defendants didn't know what to do. So we asked the court to codify it in a local rule. Instead of codifying a procedure that worked, the court is now proposing one that will impose additional procedural obstacles, slow down the process, and lead to less informed decisions. At a minimum, the rule should clarify that at the show cause hearing, the court may determine whether the case should be transferred to the Court of Appeals.

The basic problem is the lack of any prescribed time interval between the filing of the motion and the initial hearing. Initial consideration could be set for the day after the motion is filed, leaving us no time to respond.

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The court needs to bear in mind that these motions relate to closed cases. So unlike motions in pending cases, no one is familiar with the case when the motion comes in. At a minimum, a DPA in Appeals will need to review the existing record. Depending on the claims raised, review of case files or other investigation may be required. We all have appellate cases pending with existing deadlines. It is not reasonable to expect us to drop everything whenever a CrR 7.8 motion comes in.

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In the past, we have asked for 30 days to respond to CrR 7.8 motions. This is half of the amount of time allowed by the appellate rules for responding to a brief (RAP 10.2(b)). So it's already a tight schedule, but doable in most cases. Anything less than that essentially guarantees that we won't have time to respond.

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I believe that what we suggested is taking the deadlines under (c) and (d) and moving them back to (b). This is essentially what's been done in the past. It allows the court to make its initial consideration based on adequate briefing by both sides.