

Post-conviction remedies



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How post-conviction remedies differ from direct appeals In relation to the crime and the judgment made, individuals decide on the most suitable method to appeal for their cases. Normally, there are two methods which are commonly used: post conviction remedies and direct appeals filed by a defendant after his conviction in a trial court. Direct appeals are requests to an appellate court for it to review and change the decision of a lower court. The defendant may dispute the conviction itself or appeal the trial courts sentencing judgment without actually challenging the fundamental conviction. Some of the most common post conviction appeals include: appeal to State appellate Court which contends that trial judge made some legal error, State Supreme Court appeal that requests that highest court in the state review and overturn the decision of the mid-level appeals court, U. S. Supreme Court appeal that makes a request to the highest court in the nation to intervene and correct an error on the part of the state courts that violated the U. S. Constitution, appeal of Federal Habeas Corpus Petition to Circuit Court which requests the mid-level federal court to review the federal trial courts decision denying the writ and lastly, appeal of Federal Habeas Corpus Petition to U. S. Supreme Court which requests the premier court in the land to examine the mid-level federal courts verdict denying the writ. On the other hand, Post conviction remedies include a variety of liberation sought by a convicted criminal to have his or her sentence vacated, set aside, or corrected because such a sentence was based upon some defiance of the U. S. Constitution. Among the most common post-conviction remedies available are the writ of Habeas Corpus and the writ of Coram Nobis.

However, Writ of Habeas Corpus is the mostly used. It involves issuing of a court order that orders a person or a government official who has prevented

another to produce the prisoner at a designated time and place so that the court can determine the authenticity of charge and decide whether to demand the prisoners discharge.

Development of writ of habeas corpus can be traced back in 1215 whereby the habeas corpus concept was first expressed in the Magna Charta at Runnymede on June 15, 1215. Among the liberties affirmed in the Magna Charta was that " No free man shall be detained, or jailed, or diseased, or forbidden, or exiled, or wounded in any way (Neubauer, 2004). The writ of habeas corpus was initially used by the common-law courts in thirteenth and fourteenth century in England. From the late fifteenth to the seventeenth centuries, the common-law courts made use of the writ to demand the liberation of persons held by royal courts, such as the Chancery, admiralty courts, and the Chamber. The only reference to the writ of habeas corpus in the U. S. Constitution is contained in Article I, Section 9, and Clause 2. In 1867, Congress approved the Habeas Corpus Act of February 5 (ch. 28, 14 Stat. 385 [28 U. S. C. A. §§ 2241 et seq.]). This statute gave federal courts the authority to issue habeas corpus writs for any individual restrained in violation of the Constitution, or of any agreement or law of the United States.

In conclusion, post conviction remedies are considered to be extraordinary solutions which are permitted when a defendant has no other adequate remedy. In other words, a defendant may take a writ to contest a point that he/she is not entitled to raise on appeal. Therefore, post-conviction remedies are sought for in events where appeals cannot be used.

Reference

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