

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: AMENDMENT TO RULE 28
RULES OF THE SUPREME COURT OF TENNESSEE**

Filed May 8, 2001

ORDER

Both Tennessee Code Annotated Section 40-30-213 and Rule 28, Section 9 of the Rules of the Supreme Court provide for relief in the form of a delayed appeal for convicted petitioners who were denied the right to appeal from their original conviction in violation of the Constitution of the United States or the Constitution of Tennessee. Neither provision, however, addresses how the remaining issues in the post-conviction petition are to be handled pending the outcome of the delayed appeal.

Accordingly, we amend Rule 28, Rules of the Supreme Court, as stated below.

Section 9(D) of Rule 28, Rules of the Supreme Court, is hereby amended to read:

Upon determination by the trial court or the Court of Criminal Appeals that the petitioner was deprived of the right to request an appeal pursuant to Rule 11, Tennessee Rules of Appellate Procedure, the petitioner shall have sixty (60) days from the entry of the court's order granting the delayed appeal to seek Rule 11 review. In such cases, the trial court or the Court of Criminal Appeals shall stay the post-conviction proceedings pending the final disposition of the delayed appeal. If new issues arise from the handling of the delayed appeal, the original post-conviction petition may be amended to include such new issues, and if the case is stayed in the Court of Criminal Appeals, it may be remanded to the trial court for the taking of evidence on such new issues.

FOR THE COURT:

E. Riley Anderson, Chief Justice