

Effective 5/9/2017

Superseded 11/16/2021

78A-7-118 Appeals from justice court -- Trial or hearing de novo in district court.

- (1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 28 days of:
 - (a) sentencing, except as provided in Subsection (4)(b); or
 - (b) a plea of guilty or no contest in the justice court that is held in abeyance.
- (2) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice court shall be stayed as provided for in Section 77-20-10 and the Rules of Criminal Procedure.
- (3) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.
- (4) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if the defendant files a notice of appeal within 28 days of:
 - (a) an order revoking probation;
 - (b) imposition of a sentence, following a determination that a defendant failed to fulfill the terms of a plea in abeyance agreement;
 - (c) an order denying a motion to withdraw a plea, if the plea is being held in abeyance and the motion to withdraw the plea is filed within 28 days of the entry of the plea;
 - (d) a postsentence order fixing total or court ordered restitution; or
 - (e) an order denying expungement.
- (5) The prosecutor is entitled to a hearing de novo in the district court if an appeal is filed within 28 days of the court entering:
 - (a) a final judgment of dismissal;
 - (b) an order arresting judgment;
 - (c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;
 - (d) a judgment holding invalid any part of a statute or ordinance;
 - (e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution of an infraction or class C misdemeanor;
 - (f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence impairs continued prosecution of a class B misdemeanor;
 - (g) an order granting a motion to withdraw a plea of guilty or no contest;
 - (h) an order fixing total restitution at an amount less than requested by a crime victim; or
 - (i) an order granting an expungement, if the expungement was opposed by the prosecution or a victim before the order was entered.
- (6) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:
 - (a) the decision results in immediate dismissal of the case; or
 - (b) the hearing de novo was on a pretrial order and the parties and the district court agree to have the district court retain jurisdiction.
- (7) The district court shall retain jurisdiction over the case on trial de novo.
- (8) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.