

Direct Appeal vs. Post Conviction Review

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DIRECT APPEAL

- **What:** An appeal is a process for correcting any legal errors that harmed a person's right to a fair trial or lawful sentence raised at the trial court level.
 - For an issue to be considered by the Court of Appeals it must have been preserved properly on the trial court record by either the defendant or the state.
- **Who may appeal:** The defendant in a criminal case or the State.

DIRECT APPEAL

- **Where:** If the trial was conducted in a circuit court, then the appeal in almost all cases would be filed in the Court of Appeals
- **When:** Notice of appeal must be served and filed not later than 30 days after the judgment or order appealed from was entered in the register.

POST CONVICTION RELIEF

- **What:** A Post-Conviction challenge is not limited to preserved objections to legal rulings made by the trial judge.
 - Statute requires that post conviction relief be granted by the court when, one or more of the following grounds is established by the petitioner:
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POST CONVICTION RELIEF

- **(a)** A substantial denial in the proceedings resulting in petitioner's conviction, or in the appellate review thereof, of petitioner's rights under the Constitution of the United States, or under the Constitution of the State of Oregon, or both, and which denial rendered the conviction void.
- **(b)** Lack of jurisdiction of the court to impose the judgment rendered upon petitioner's conviction.
- **(c)** Sentence in excess of, or otherwise not in accordance with, the sentence authorized by law for the crime of which petitioner was convicted; or unconstitutionality of such sentence.
- **(d)** Unconstitutionality of the statute making criminal the acts for which petitioner was convicted.

[ORS § 138.530](#)

POST CONVICTION RELIEF

- **Who may appeal**: A defendant convicted in a criminal case.
- **When**: A petition must be filed within two years of the trial court judgment or the date an appeal is final in the Oregon appellate courts, unless the court on hearing a subsequent petition finds grounds for relief asserted which could not reasonably have been raised in the original or amended petition.
- **Where**: A Post-Conviction case is a trial-level case, it is filed in the circuit court where the underlying conviction was entered or in the county where petitioner is incarcerated.

TRIAL
(Jury or Bench Trials)

DIRECT APPEAL to Court Of Appeals
(Preserved legal questions only)
Filed w/in 30 days of circuit court judgment

Remanded to trial court
(new trial or reconsideration)

Oregon Supreme Court
(for review of decision)

POST CONVICTION RELIEF
(Constitutional claims not raised/addressed in direct appeal)
Filed w/in 2 years of appellate judgment in circuit court of record

POST CONVICTION RELIEF
(Constitutional claims not addressable in direct appeal)
Filed w/in 2 years of final judgment in circuit court of record

Appeal to Oregon Court of Appeals
(for review of decision)

Oregon Supreme Court
(for review of decision)