

1 **Rule 27. Stays of sentence pending appeal from courts of record.**

2 (a) Staying sentence terms other than incarceration.

3 (a)(1) A sentence of death ~~shall be~~ is stayed if an appeal or a petition for other relief is pending.
4 The defendant shall remain in the custody of the warden of the Utah State Prison until the appeal or
5 petition for other relief is resolved.

6 ~~(a)(2) A sentence of fine, imprisonment, or probation shall be stayed if an appeal is taken and~~
7 ~~a certificate of probable cause is issued.~~

8 ~~(a)(3)~~ (a)(2) When an appeal is taken by the state prosecution, a stay of any order of judgment
9 in favor of the defendant may be granted by the court upon good cause pending disposition of the
10 appeal.

11 ~~(b) (a)(3) A person who has been found guilty of an offense and sentenced to a term~~ Upon the
12 filing of a notice of appeal, and motion of the defendant, the court may stay any sentenced amount
13 of fines, conditions of probation (other than incarceration) pending disposition of the appeal, upon
14 notice to the prosecution and a hearing if requested by the prosecution.

15 (a)(4) A party dissatisfied with the trial court's ruling on such a motion may petition for relief
16 in the court in which the appeal is pending.

17 (b) Staying sentence terms of incarceration. A defendant sentenced, or required as a term of
18 probation, to serve a period of incarceration in jail or in prison, and who has filed a notice of appeal,
19 shall be detained, unless the trial judge issues released by the court in conformity with this rule.

20 (b)(1) In general. Before a court may release a defendant after the filing of a notice of appeal,
21 the court must:

22 (b)(1)(A) issue a certificate of probable cause; and

23 (b)(1)(B) determines by clear and convincing evidence that the defendant;

24 (b)(1)(B)(i) is not likely to flee during pendency of the appeal; and that the defendant will

25 (b)(1)(B)(ii) does not pose a danger to the safety of any other person or the community if released
26 under any of the conditions as set forth in paragraph subsection (g) (c).

27 ~~(c) (b)(2) If A defendant shall file a written motion in the trial court denies the defendant a~~
28 ~~certificate of probable cause, or finds that the defendant is likely to flee or poses a danger to the~~
29 ~~safety of any other person or the community and denies release, the decision may be appealed to the~~

30 court in which the requesting a stay of the sentence term of incarceration.

31 (b)(2)(A) That motion shall be accompanied by a copy of the filed notice of appeal of the
32 conviction has been filed.

33 ~~(d)(1) No certificate of probable cause shall issue except upon application of the defendant filed~~
34 ~~with the appropriate court.~~

35 ~~(d)(2) The; a written~~ application for a certificate of probable cause ~~shall be in writing;~~ and
36 accompanied by a memorandum of law. The memorandum shall identify the issues to be presented
37 on appeal and support the defendant's position that those issues raise a substantial question of law
38 or fact reasonably likely to result in reversal, an order for a new trial or a sentence that does not
39 include a term of incarceration in jail or prison.

40 ~~(d)(3) If release is denied, any appeal shall be accompanied by an affidavit made and signed by~~
41 ~~counsel for the defendant, or by the defendant if~~ The memorandum shall also address why clear and
42 convincing evidence exists that the defendant is not represented by counsel. ~~The affidavit shall~~
43 ~~contain the following:~~

44 ~~(d)(3)(A) A narration of the relevant facts developed at trial;~~

45 ~~(d)(3)(B) A statement of the crime(s) of which the defendant was convicted;~~

46 ~~(d)(3)(C) A statement setting out the sentence imposed; and~~

47 ~~(d)(3)(D) A statement a flight risk and that the defendant has previously applied for a certificate~~
48 ~~of probable cause, setting forth the issues that were presented to the court, the court's ruling and the~~
49 ~~reasons given in support of the ruling.~~

50 ~~(e) When filed in the trial court, a copy of~~ does not pose a danger to any other person or the
51 community.

52 (b)(2)(B) A copy of the motion, the application for a certificate of probable cause and supporting
53 memorandum shall be served on the prosecuting attorney. ~~When filed in the appellate court, a copy~~
54 ~~of the application and supporting memorandum shall be served on the Utah Attorney General if the~~
55 ~~case involved any felony charge, and on the prosecuting attorney if the case involved only~~
56 ~~misdemeanor charges.~~ An opposing memorandum ~~shall~~ may be filed within 10 days after receipt of
57 the application, or within a shorter time as the court deems necessary. A hearing on the application
58 shall be held within 10 days after the ~~appropriate~~ court receives the opposing memorandum, or if no

59 opposing memorandum is filed, within 15 days after the application is filed with the court.

60 ~~(f) (b)(3) No~~ The court shall issue a certificate of probable cause ~~shall issue and the defendant~~
61 ~~shall be detained unless the appropriate court if it finds that the appeal:~~

62 ~~(f) (b)(3)(A) (1)~~ is not being taken for the purpose of delay; and

63 ~~(f)(2) (B)~~ raises substantial issues of law or fact reasonably likely to result in reversal, an order
64 for a new trial or a sentence that does not include a term of incarceration in jail or prison.

65 ~~(g) If the court determines~~ (b)(4) If the court issues a certificate of probable cause it shall order
66 the defendant released if it finds that clear and convincing evidence exists to demonstrate that the
67 defendant may be released pending appeal, it may release the defendant is not a flight risk and that
68 the defendant does not pose a danger to any other person or the community if released under any of
69 the conditions set forth in subsection (c).

70 (b)(5) The court ordering release pending appeal under subsection (b)(4) shall order release on
71 the least restrictive condition or combination of conditions set forth in subsection (c) that the court
72 determines will reasonably assure the appearance of the person as required and the safety of persons
73 and property in the community.

74 (b)(6) Review of trial court's order. A party dissatisfied with the relief granted or denied under
75 this subsection may petition the court in which the appeal is pending for relief.

76 (b)(6)(A) If the petition is filed by the defendant, a copy of the petition, the affidavit and papers
77 filed in support of the original motion shall be served on the Utah Attorney General if the case
78 involves any felony charge, and on the prosecuting attorney if the case involves only misdemeanor
79 charges.

80 (b)(6)(B) If the petition is filed by the prosecution, a copy of the petition, and supporting papers
81 shall be served on defense counsel, or the defendant if the defendant is not represented by counsel.

82 (c) If the court determines that the defendant may be released pending appeal, it may release the
83 defendant on the least restrictive condition or combination of conditions that the court determines
84 will reasonably assure the appearance of the person as required and the safety of persons and
85 property in the community, which conditions may include, without limitation, that the defendant:

86 ~~(g) (c)(1)~~ is admitted to appropriate bail;

87 ~~(g) (c)(2)~~ not commit a federal, state or local crime during the period of release;

88 ~~(g)~~ (c)(3) remain in the custody of a designated person who agrees to assume supervision of the
89 defendant and who agrees to report any violation of a release condition to the court, if the designated
90 person is reasonably able to assure the court that the person will appear as required and will not pose
91 a danger to the safety of any other person or the community;

92 ~~(g)~~ (c)(4) maintain employment, or if unemployed, actively seek employment;

93 ~~(g)~~ (c)(5) maintain or commence an educational program;

94 ~~(g)~~ (c)(6) abide by specified restrictions on personal associations, place of abode or travel;

95 ~~(g)~~ (c)(7) avoid all contact with the victim or victims of the crime(s), any witness or witnesses
96 who testified against the defendant and any potential witnesses who might testify concerning the
97 offenses if the appeal results in a reversal or an order for a new trial;

98 ~~(g)~~ (c)(8) report on a regular basis to a designated law enforcement agency, pretrial services
99 agency or other agency;

100 ~~(g)~~ (c)(9) comply with a specified curfew;

101 ~~(g)~~ (c)(10) refrain from possessing a firearm, destructive device or other dangerous weapon;

102 ~~(g)~~ (c)(11) refrain from possessing or using alcohol, or any narcotic drug or other controlled
103 substance except as prescribed by a licensed medical practitioner;

104 ~~(g)~~ (c)(12) undergo available medical, psychological or psychiatric treatment, including treatment
105 for drug or alcohol abuse or dependency;

106 ~~(g)~~ (c)(13) execute an agreement to forfeit, upon failing to appear as required, such designated
107 property, including money, as is reasonably necessary to assure the appearance of the defendant as
108 required, and post with the court such indicia of ownership of the property or such percentage of the
109 money as the court may specify;

110 ~~(g)~~ (c)(14) return to custody for specified hours following release for employment, schooling or
111 other limited purposes; and

112 ~~(g)~~ (c)(15) satisfy any other condition that is reasonably necessary to assure the appearance of
113 the defendant as required and to assure the safety of persons and property in the community.

114 ~~(h)~~ (d) The court may at any time for good cause shown amend the order granting release to
115 impose additional or different conditions of release.