

Proposal 04-11
(P.R. 0118)
Offered by the Special Supreme Court Committee on Capital Cases

Rule 604. Appeals from Certain Judgments and Orders

(a) Appeals by the State.

(1) *When State May Appeal.* In criminal cases the State may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114-1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; ~~or suppressing evidence;~~ decertifying a prosecution as a capital case on the grounds enumerated in section 9-1(h-5) of the Criminal Code of 1961; or finding that the defendant is mentally retarded after a hearing conducted pursuant to section 114-15(b) of the Code of Criminal Procedure of 1963.

(2) *Leave to Appeal by State.* The State may petition for leave to appeal under Rule 315(a).

(3) *Release of Defendant Pending Appeal.* A defendant shall not be held in jail or to bail during the pendency of an appeal by the State, or of a petition or appeal by the State under Rule 315(a), unless there are compelling reasons for his continued detention or being held to bail.

(4) *Time Appeal Pending Not Counted.* The time during which an appeal by the State is pending is not counted for the purpose of determining whether an accused is entitled to discharge under section 103--5 of the Code of Criminal Procedure of 1963.

Committee Comments

In developing the proposal for allowing interlocutory appeals from orders decertifying a

prosecution as a capital case or finding the defendant to be mentally retarded the Committee was concerned with the absence of any procedural rule permitting the appeals envisioned by the legislature. Moreover, the Committee clearly recognized that any decision to broaden the scope of interlocutory appeals vested solely in the Illinois Supreme Court, rather than the legislature.

Jurisdictional authority to entertain appeals from orders decertifying prosecutions as a capital case is impliedly found in *People v. Ruiz*, 194 Ill.2d 454, 742 N.E.2d 299 (2000). In *Ruiz*, the trial court granted the defendant's motion to preclude a capital sentencing hearing, concluding that the death penalty would be disproportionate to a codefendant's natural life sentence. Although the defendant challenged the State's authority to appeal the order on jurisdictional grounds, the Supreme Court invoked its general supervisory authority over the courts of the state pursuant to Supreme Court Rule 383. In turn, the Court granted a supervisory order reversing the trial court's order, reasoning that dismissal of the appeal would effectively bar the State from ever seeking the death penalty as the State could not later appeal the entry of a non-capital sentence. *Ruiz*, 194 Ill.2d at 459-60.

The absence of any statutory procedural or substantive standard relating to determinations of mental retardation was noted in *People v. Pulliam*, 206 Ill.2d 218, 794 N.E.2d 214 (2002). There, the Court also recognized that trial judges would have to conduct such hearings for the time being without any definitive guidance from the legislature or from the Supreme Court. The legislature has now spoken and provided such procedural standards in section 114-15 of the Code of Criminal Procedure. In subsection (f), the legislature also addressed situations where the State elects not to appeal pursuant to Rule 604 from determinations that a defendant is mentally retarded. The present amendment serves to provide a sound basis for that exigency.