

# FAQ: Filing Direct Appeals of New York City Criminal Convictions and Getting Lawyer Assigned, March 2021

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You have the right to appeal your conviction in the State in New York, no matter your immigration status. It does not matter whether you were convicted at trial or pled guilty. You also have the right to ask for a new court-appointed lawyer to handle the appeal. Starting an appeal begins with the filing of a Notice of Appeal and, if you are seeking a court-appointed appeals lawyer, then filing a Motion for Poor Person's Relief.

If you are a non-citizen, you should make sure that an appeals court reviews your conviction. If you change your mind about the appeal later, you can always withdraw your appeal, but an appeal offers important protections for non-citizens. If you want court-appointed counsel for post-conviction relief, the easiest way is to start with the direct appeal. If your lawyer files the Notice of Appeal, they can also request an appeals lawyer be assigned and you will not need to file a Motion for Poor Person's Relief.

## Notice of Appeal

### **What is a Notice of Appeal?**

A Notice of Appeal is a form filled with criminal court informing them that you intend to appeal your conviction.

### **What is the deadline for filing a Notice of Appeal?**

The Notice of Appeal must be filled within 30 days of your sentencing date (usually the last time you appeared in criminal court on your case). Whether to appeal your conviction is **your** decision, and no one else can decide for you. Your criminal defense counsel is supposed to discuss your right to appeal with you at the end of your case and the judge is also supposed to inform you of your right to appeal. Sometimes prosecutors insist on waivers of appeal as part of plea deals. If you miss the 30 day deadline, you can still file an appeal. See IDP's [FAQ: Filing a Late Notice of Appeal of New York City Criminal Convictions, November 2023](#).

### **Can a Notice of Appeal be filed if you signed a waiver of appeal as part of a plea agreement?**

Yes. A Notice of Appeal can **still be filled** even if you signed a valid appeal waiver. Some appeal rights cannot be waived.

### **Who can file the Notice of Appeal?**

The criminal defense attorney on the case must file the Notice of Appeal if you tell them that you want to appeal. You should tell them that you want to appeal in a letter sent by certified mail, to prove you asked them to file it for you. If your defense attorney still says that they will not file a Notice of Appeal, you can file it yourself using a sample in this resource. *See Notice of Appeal Form on page 6.*

### Where does a Notice of Appeal get filed?

You have to file three copies of the Notice of Appeal: two copies with the Clerk of Court where the conviction was entered and the one copy with the District Attorney's office that prosecuted your case. You should keep a separate copy of the Notice of Appeal for yourself as well, as well as proof that you mailed it.

### What information must be included in a Notice of Appeal?

You must include your name, the name of the court where you were convicted, indictment number (if you do not have an indictment or SCI number because it is a lower court, use the docket number), and the date of the conviction, which is the date you were sentenced. You do not need to explain the reasons why you want to appeal. **You must also have a non-party fill out, notarize and attach an Affidavit of Service to prove you sent it to the DA.** See pages 6 - 8 for a Notice of Appeal and an Affidavit of Service for Notice of Appeal.

If you cannot afford to hire an attorney to represent you in the appeal, you should also file a Motion for Poor Person's Relief with the Appellate Division. See the Motion for Poor Person's Relief FAQ on page 4.

### What happens after a Notice of Appeal is filed?

Once the Notice of Appeal is filed, you must file a Motion for Poor Person's Relief with the appeals court before an appeals attorney will be assigned to the appeal. The appeals attorney will reach out to you and review the criminal court file to make sure everything was proper in your case.

### Where to send your Notice of Appeal

Clerk of Court (2 copies)

District Attorney (1 copy)

<u>Bronx County Supreme Court conviction</u> Bronx Supreme Court Criminal Term Clerk of Court 265 East 161st Street Bronx, NY 10451	Bronx County District Attorney 198 E 161 Street Bronx, NY 10451
<u>Bronx County Criminal Court conviction</u> Bronx Criminal Court Clerk of Court 215 East 161st Street Bronx, NY 10451	

<u>Kings County Supreme Court conviction</u> Kings Supreme Court Criminal Term Clerk of Court 320 Jay Street Brooklyn, NY 11201	Kings County District Attorney 350 Jay Street Brooklyn, NY 11201
<u>Kings County Criminal Court conviction</u> Kings Criminal Court Clerk of Court 120 Schermerhorn Street Brooklyn, NY 11210	

<u>New York County Supreme Court conviction</u> New York Supreme Court Criminal Term Clerk of Court 100 Centre Street, Room 1000 New York, NY 10013	New York County District Attorney 1 Hogan Place New York, NY 10013
<u>New York County Criminal Court conviction</u> New York Criminal Court Clerk of Court 100 Centre Street, Room 150 New York, NY 10013	

<u>Queens County Supreme Court conviction</u> Queens Supreme Criminal Term Clerk of Court 125-01 Queens Boulevard, Room 710 Kew Gardens, NY 11415	Queens County District Attorney 80-02 Kew Gardens Road Kew Gardens, NY 11415
<u>Queens County Criminal Court conviction</u> Queens Criminal Court Clerk of Court 125-01 Queens Boulevard, Room G-78 Kew Gardens, NY 11415	

<u>Richmond County Supreme Court conviction</u> Richmond Supreme Court Criminal Term Clerk of Court 26 Central Avenue, Room 240 Staten Island, NY 10301	Richmond County District Attorney 130 Stuyvesant Place Staten Island, NY 10301
<u>Richmond County Criminal Court conviction</u> Richmond County Criminal Court Clerk of Court 26 Central Avenue Staten Island, NY 10301	

## **Motion for Poor Person's Relief FAQ**

### **What is a Motion for Poor Person's Relief?**

You are entitled to a free appeals lawyer if you cannot afford one, no matter your immigration status.

Your criminal lawyer can ask that the appeals court assign you an appeals lawyer if they file your Notice of Appeal. If they won't file the Notice of Appeal or ask the court to assign you a lawyer, you will have to request an appeals lawyer yourself by filing a Motion for Poor Person's Relief with the Appellate Division. If your criminal lawyer doesn't request an appeals lawyer and you do not file a Motion for Poor Person's Relief, no attorney will be assigned to the appeal and it could be dismissed.

### **Who files a Motion for Poor Person's Relief?**

If your criminal defense lawyer won't ask for an appeals lawyer on your behalf as part of the Notice of Appeal, you will need to file the Motion for Poor Person's Relief. Filing the Motion for Poor Person's Relief does not mean that the lawyer who represented you in criminal court will be assigned to the appeal; it is almost always a different lawyer.

### **What Information must be included in a Motion for Poor Person's Relief?**

The Motion for Poor Person's Relief is an affidavit that you must sign and get notarized asking the appeals court to assign an appeals lawyer and waive the costs of the appeal (including the transcript fees).

You should explain why you cannot afford an appeals lawyer or the transcripts of the proceedings and ask for a lawyer to be assigned. You should include:

- Information about your current financial situation and why you cannot afford to hire a private appeals attorney
  - If you had an assigned lawyer on your criminal case, let the court know
  - If you paid for a lawyer at the trial level but cannot afford a lawyer for your appeal, explain to the court why
  - Reasons for this could include that you are currently incarcerated, that you are not working, or that you do not have enough money to afford a private lawyer
- You should give basic information about your financial situation in the sample Motion for Poor Person's Relief, and do not need to submit detailed records like paystubs or taxes.

You will need to sign and notarize your affidavit. *See Affidavit of Service for Motion for Poor Person's Relief on pages 13-14.*

## **Where does a Motion for Poor Person's Relief get filed?**

It depends on which court entered the conviction. For Supreme Court convictions, the Motion for Poor Person's Relief gets filed with the Appellate Division covering the court of conviction. Bronx and New York (Manhattan) County cases are filed at the First Appellate Division and Kings, Queens, and Richmond (Staten Island) County cases are filed at the Second Appellate Division.

For criminal court convictions, the Motion for Poor Person's Relief gets filed with the Appellate Term covering the court of conviction. Bronx and New York criminal court cases are filed at the First Judicial Dept. Appellate Term, and Kings, Queens, and Richmond (Staten Island) criminal court cases are filed at the Second Judicial Dept Appellate Term.

You should keep a copy of what you filed for your own records.

## **What happens after a Motion for Poor Person's Relief is filed?**

The Appellate Division will review the Motion and can assign an appeals attorney to work on the appeal. If you do not hear back from the Appellate Division after filing your motion, you should contact them to confirm that you have been assigned an attorney to work on your case.

### **Where to send your poor person motion**

#### **First Department**

Bronx and New York Counties

#### **Supreme Court convictions**

Supreme Court of the State of New York  
Appellate Division, First Judicial Department  
27 Madison Avenue  
New York, NY 10010

#### **Criminal Court convictions**

First Judicial Department Appellate Term  
N.Y. County Courthouse  
Room 401  
60 Centre Street  
New York, NY 10007

#### **Second Department**

Kings, Queens, and Richmond Counties

#### **Supreme Court conviction**

Supreme Court of the State of New York  
Appellate Division, Second Judicial Dept  
45 Monroe Place  
Brooklyn, NY 11201

#### **Criminal Court conviction**

Second Judicial Department Appellate Term  
Clerk's Office  
141 Livingston St.  
15th Floor  
Brooklyn, NY 11201

\_\_\_\_\_  
Court of the State of New York  
*Tribunal del estado de Nueva York*

County of \_\_\_\_\_  
*Condado de*

**NOTICE OF APPEAL**  
*Aviso de Apelación*

Ind. No.:  
*Número de Acusación:*  
\_\_\_\_\_

**PLEASE TAKE NOTICE** that *(insert your name)* \_\_\_\_\_ hereby  
*Por Favor Tomar Nota que (ponga su nombre)* \_\_\_\_\_ *por medio de este*

appeals to the Appellate Division of the Supreme Court of the State of New York from a judgment  
*apela a la división de apelación del tribunal Supremo del estado de Nueva York de un*

of conviction and sentence rendered in \_\_\_\_\_ Court, \_\_\_\_\_ County, on  
*fallo de condena y sentencia dictada en \_\_\_\_\_ Tribunal, \_\_\_\_\_ Condado, el*

\_\_\_\_\_ (date), from each and every part thereof and from each and every  
*(fecha), de cada parte y de cada orden intermedia que se haga en ella.*

intermediate order made therein.

Dated: \_\_\_\_\_, 20\_\_\_\_, New York  
*Fecha Nueva York*

\_\_\_\_\_  
*Signature / Firma*

*(Print Name)* \_\_\_\_\_  
*(Nombre completo, letra de imprenta)*

*(Address)* \_\_\_\_\_  
*(Dirección)*

*(Telephone Number)* \_\_\_\_\_  
*(Numero Telefónico)*

To: *(Insert below the name and address of the clerk of the trial court and the names and addresses of the District Attorney)*

A: *(Insertar debajo el nombre y la dirección del secretario del tribunal de juicio y el nombres y la dirección del fiscal)*

\_\_\_\_\_ Court of the State of New York  
*Tribunal del estado de Nueva York*

County of \_\_\_\_\_  
*Condado de*

People of the State of New York  
*El Estado de Nueva York*

Affidavit of Service of  
Notice of Appeal  
*Declaración de Presentación  
de Aviso de Apelación*

-against-  
*-contra-*

Indictment No. \_\_\_\_\_  
*No. de Acusación*

\_\_\_\_\_  
Defendant-Appellant  
*Nombre de Acusado/a-Apelante*

State of New York; County of \_\_\_\_\_ s.s.:  
*Estado de Nueva York; Condado de*

\_\_\_\_\_ being duly sworn, deposes and says:  
*(Name of person serving document) debidamente juramentado depone y dice:*  
*(Nombre de la persona entregando personalmente)*

1. I am not a party to this action, am over the age of 18 years and reside at the following  
*Yo no soy partido en esta acción, tengo mas de 18 años de edad y la dirección de mi*

address: \_\_\_\_\_  
*domicilio es:*

2. On, \_\_\_\_\_, 20\_\_\_\_\_, I served the within NOTICE OF APPEAL  
*(Fecha) El (año), yo serví el AVISO de APELACIÓN, sobre el*

upon the District Attorney located at \_\_\_\_\_ by:  
*fiscal ubicado en \_\_\_\_\_ por la siguiente manera:*

[ ] (FIRST CLASS MAIL) depositing a true copy of the same in a post-paid properly addressed  
(Correo de Primera Clase) Deposité una copia verdadera de la misma en un sobre pago

envelope at a post office under the exclusive care and custody of the United States Postal  
*debidamente en una oficina de correos bajo el cuidado exclusivo y la custodia del Servicio Postal*

Service within the State of New York;  
*de los Estados Unidos dentro dvel Estado de Nueva York;*

[ ] (PERSONAL SERVICE) personally delivering a true copy of the same; OR  
(Servicio Personal) Entregué personalmente una copia verdadera de la misma; O

[ ] (CERTIFIED MAIL, RETURN RECEIPT REQUESTED) depositing a true copy of the  
(Correo Certificado, RECIBO DE DEVOLUCIÓN SOLICITADO) Deposité una copia verdadera

same in a post-paid properly addressed envelope at a post office under the exclusive care and  
*de la misma en un sobre pago debidamente en una oficina de correos bajo el cuidado exclusivo*

custody of the United States Postal Service within the State of New York by certified mail,  
*y la custodia del Servicio Postal de los Estados Unidos dentro del Estado de Nueva York por correo*

return receipt requested.  
*certificado, y solicité un recibo de devolución.*

Dated: \_\_\_\_\_  
*Fecha*

\_\_\_\_\_  
*Signature of Person Providing Service*  
*(Firma de la persona entregando personalmente)*

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_  
*Jurado ante mi este día de 20\_\_\_\_\_*

\_\_\_\_\_  
**Notary Public**  
*Notario (firma de notario)*

(File this completed form with the Court along with the Notice of Appeal)  
*(Presente esta petición completada ante el tribunal junto con el aviso de apelación)*



SUPREME COURT OF THE STATE OF NEW YORK  
TRIBUNAL SUPREMO DEL ESTADO DE NUEVA YORK

APPELLATE DIVISION - \_\_\_\_\_ DEPARTMENT  
DIVISION DE APELACIÓN DEPARTAMENTO

People of the State of New York  
El Estado de Nueva York

-against-  
-contra-

Affidavit in Support of  
Motion to Proceed as a  
Poor Person & Assignment  
of Counsel

*Declaración de apoyo para  
la petición de proceder como  
persona sin recursos y la  
asignación de abogado*

Indictment No. \_\_\_\_\_  
Numero de Acusación

\_\_\_\_\_  
Defendant-Appellant  
Nombre de Acusado/a-Apelante

State of New York; County of \_\_\_\_\_ s.s.:  
Estado de Nueva York; Condado de

\_\_\_\_\_ being duly sworn, deposes and says:  
debidamente juramentado depone y dice:  
Defendant-Appellant  
Numero de Acusación

1. I am the defendant-appellant in the above-captioned case, and I make this affidavit in support of my  
*Yo soy el acusado/a-apelante en el caso mencionado anteriormente y yo hago esta declaración en apoyo de*  
  
motion to proceed in forma pauperis.  
*mi petición para continuar in forma pauperis (forma pauperis se refiere a su capacidad, como persona sin recursos, de continuar en el tribunal sin tener que pagar cargos asociados con su apelación).*

2. I was convicted pursuant to a judgment of the Supreme Court, \_\_\_\_\_ County,  
*Yo fui condenado en virtud de una sentencia en el tribunal Supremo, Condado,*

rendered on \_\_\_\_\_, convicting me of \_\_\_\_\_  
*en (fecha) condenándome de*

\_\_\_\_\_ and sentencing me to \_\_\_\_\_  
*y sentenciándome a*

3. I am unable because of my indigence to pay the costs, fees, and expenses necessary to  
*Debido a mi indigencia no puedo pagar los cargos del tribunal, y los cargos requeridos para continuar con*

prosecute this appeal. I am currently earning approximately \$ \_\_\_\_\_ per week in income.  
*esta apelación. Actualmente estoy ganando aproximadamente \_\_\_\_\_ por semana en ingresos.*

4. I own \$ \_\_\_\_\_ worth of real property.  
*Tengo bienes valoradas en \$*

5.  I do own a car.  I do **not** own a car.  
*Yo soy dueño de un auto. Yo **no** soy dueño de un auto.*

6. I have \_\_\_\_\_ \$ in savings.  
*Yo tengo \$ \_\_\_\_\_ en cuentas de ahorros.*

7.  I do collect unemployment.  I do **not** collect unemployment.  
*Yo colecto desempleo. Yo **no** colecto desempleo.*

8.  I do collect alimony or support.  I do **not** collect alimony or support.  
*Yo colecto pensión alimenticia o Yo **no** colecto pensión alimenticia o*  
*manutención de menores manutención de menores*

9.  I do collect a pension.  I do **not** collect a pension.  
*Yo colecto una pensión. Yo **no** colecto una pensión.*

10.  I do have other sources of income.  I do **not** have other sources of income.  
*Yo tengo otras fuentes de ingresos. Yo **no** tengo otras fuentes de ingresos.*

11.  I was represented in the Supreme Court by a court-appointed attorney from a legal  
*Fui representado en el tribunal Supremo por un abogado asignado de un proveedor*

services provider:  
*de servicios legal:*

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OR / O

A member of the 18-b Assigned Counsel Plan  
*Un miembro de un panel de abogados asignado (18-b)*

OR / O

- other assigned counsel (explain),  
*Otro abogado asignado (explique),*

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OR / O

- retained counsel (explain retainer).  
*Contrate un abogado privado (explique acuerdo de retención).*

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12. During the trial proceedings, I (check one box):  
*Durante el procedimiento del juicio, yo (marque la respuesta que corresponde):*

- was incarcerated.  
*estaba encarcelado.*

OR / O

- was released on my own recognizance.  
*estaba libre bajo palabra.*

OR / O

- was released on bail in the sum of \$ \_\_\_\_\_, which was posted by (fill  
*fui liberado bajo fianza en la suma \$ \_\_\_\_\_ y fue pago por (explique*

*in details)*  
*los detalles)*

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13. I am currently  at liberty OR  in custody.  
*Actualmente estoy libre O bajo custodia.*

Wherefore, I respectfully ask for an order permitting me to prosecute this appeal as a poor  
*Por medio de la presente, respetuosamente pido una orden permitiéndome de procesar esta*

person and I be furnished with the stenographic transcript of this action without fee and  
*apelación como una persona sin recursos y que me proporcionen una transcripción estenográfica*

that I be assigned an attorney to represent me on appeal and for such other and further  
*de esta acción sin cargos y que me asignen un abogado para representarme en esta apelación y para*

relief as may be proper and equitable.  
*cualquier otra ayuda adecuada y equitativa.*

\_\_\_\_\_  
Defendant-Appellant (*signature*)  
Nombre de Acusado/a-Apelante (*firma*)

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20  
*Jurado ante mi este día de 20*

\_\_\_\_\_  
Notary Public  
*Notario (firma de notario)*

SUPREME COURT OF THE STATE OF NEW YORK  
TRIBUNAL SUPREMO DEL ESTADO DE NUEVA YORK

APPELLATE DIVISION - \_\_\_\_\_ DEPARTMENT  
DIVISION DE APELACIÓN DEPARTAMENTO

People of the State of New York  
El Estado de Nueva York

-against-  
-contra-

Affidavit of Service of Motion  
to Proceed as a Poor Person &  
Assignment of Counsel

*Declaración de Presentación  
de la petición de proceder como  
persona sin recursos y la asignación  
de abogado*

\_\_\_\_\_  
Defendant-Appellant  
Nombre de Acusado/a-Apelante

Indictment No. \_\_\_\_\_  
No. de Acusación

State of New York; County of \_\_\_\_\_ s.s.:  
Estado de Nueva York; Condado de

\_\_\_\_\_ being duly sworn, deposes and says:  
*(Name of person serving document) debidamente juramentado depone y dice:*  
*(Nombre de la persona entregando personalmente)*

1. I am not a party to this action, am over the age of 18 years and reside at the following  
*Yo no soy partido en esta acción, tengo mas de 18 años de edad y la dirección de mi*

address: \_\_\_\_\_  
*domicilio es:*

2. On, \_\_\_\_\_, 20\_\_\_\_\_, I served the within Motion to Proceed as a Poor Person  
*(Fecha) El (año), yo serví la petición de proceder como persona*

& Assignment of Counsel upon the District Attorney located at \_\_\_\_\_  
*sin recursos y la asignación de abogado sobre el fiscal ubicado en*

by:  
*por la siguiente manera:*

[ ] (FIRST CLASS MAIL) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York;  
*(Correo de Primera Clase) Deposité una copia verdadera de la misma en un sobre pago de los Estados Unidos dentro del Estado de Nueva York;*

envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York;  
*debidamente en una oficina de correos bajo el cuidado exclusivo y la custodia del Servicio Postal de los Estados Unidos dentro del Estado de Nueva York;*

Service within the State of New York;  
*de los Estados Unidos dentro del Estado de Nueva York;*

[ ] (PERSONAL SERVICE) personally delivering a true copy of the same; OR  
*(Servicio Personal) Entregué personalmente una copia verdadera de la misma; O*

[ ] (CERTIFIED MAIL, RETURN RECEIPT REQUESTED) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.  
*(Correo Certificado, RECIBO DE DEVOLUCIÓN SOLICITADO) Deposité una copia verdadera de la misma en un sobre pago debidamente en una oficina de correos bajo el cuidado exclusivo y la custodia del Servicio Postal de los Estados Unidos dentro del Estado de Nueva York por correo certificado, y solicité un recibo de devolución.*

same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.  
*de la misma en un sobre pago debidamente en una oficina de correos bajo el cuidado exclusivo y la custodia del Servicio Postal de los Estados Unidos dentro del Estado de Nueva York por correo certificado, y solicité un recibo de devolución.*

custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.  
*y la custodia del Servicio Postal de los Estados Unidos dentro del Estado de Nueva York por correo certificado, y solicité un recibo de devolución.*

return receipt requested.  
*certificado, y solicité un recibo de devolución.*

Dated: \_\_\_\_\_  
*Fecha*

\_\_\_\_\_  
*(Signature of Person Providing Service)*  
*(Firma de la persona entregando personalmente)*

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_  
*Jurado ante mi este día de 20*

\_\_\_\_\_  
**Notary Public**  
*Notario (firma de notario)*

(File this completed form with the Court along with the Motion to Proceed as a Poor Person & Assignment of Counsel)  
*(Presente esta petición completada ante el tribunal junto con la petición de proceder como persona sin recursos y la asignación de abogado)*