In this episode, Dr. Artello and Nia talk about typical appeals by those convicted of federal crimes using Skippy’s case to illustrate the process.

Nia: Hi Dr. Artello
Dr. Artello: Hi Nia.

Nia: Well bad news for Skippy but good news for us as we are nearing the end of the criminal justice process. When we last left Skippy, he had been found guilty of murder and sentenced from 20-30 years. So after he is sentenced, how does he appeal his conviction?

Dr. Artello: You are probably going to be surprised by my next statement, as most of my students are as well. But Skippy does not have a constitutional right to appeal his conviction. According to Ross v. Moffit, it is clear that the state need not provide any appeal at all. Based on this principle, the court upheld a state court decision that denied poor defendant of a right to a lawyer for his appeal to a state Supreme Court.

Nia: You are right. You blew my mind. I did not know that. Does that mean he’s not going to?

Dr. Artello: While he does not take to shuttle right to an appeal, every jurisdiction has created a statutory right to appeal. In this statutory right to appeal applies only to appeal to in intermediate appellate court.

Nia: What is an intermediate court?

Dr. Artello: There are three levels of courts and the federal court system. You have the District Court which is where Skippy’s trial happened. You then have the Court of Appeals which is where his appeal would be heard. And then you have the US Supreme Court. The US Supreme Court is not required to hear his appeal.

Nia: what are the types of appeals that he could file.

Dr. Artello: We have talked a bit about the different types of motions in the pretrial context. Skippy might appeal that his motion to suppress was improperly denied. In other words, the trial court had allowed the state to introduce some type of evidence that should have not been put forward because of an illegal search or coercion. Another one may be self-incrimination and that there was a violation of his Fifth Amendment right against self-incrimination. Another motion may be that the prosecutor failed to disclose exculpatory evidence to the defense. We talked about this before when we talked about discovery process.
Nia: Yes we did in the episodes on pretrial motions..

Dr. Artello: another grounds may be that the defendant was previously tried for the same crime or that this trial was not done in a speedy manner. Another ground may be that the jury selection process was discriminatory we talked about that in our last discussion on the use of challenges to jurors. Another major area for appeal is that the judge’s instructions to the jury were wrong.

Nia: We talked about that on podcast on trials.

Dr. Artello: Many grounds for appeals come from the trial process because many appeals about are about violations of the law. Another ground for an appeal would be that the facts at trial were insufficient to establish the defendant’s criminal conviction under the law. This would be a determination made as to the legal sufficiency of the evidence; not about the finder of fact. The last two potential areas for appeal would be if the defense counsel was ineffective and if the prosecutor introduce prejudicial evidence at trial or had engaged in an inflammatory closing argument that cause the jury to lose perspective. These types of appeals are called direct appeals.

Nia: What are direct appeals?

Dr. Artello: They are the ones that directly follow from the trial. These are usually the ones that are covered under statutory rights to appeal.

Nia: So since you’re talking about statutory rights to appeal is there a different type of appeal?

Dr. Artello: Yes they are called collateral remedies or appeals that are available following the exhaustion of direct appeals or in some cases when defendants are unable to do direct appeal. The federal habeas corpus review is the most important collateral remedy in federal and state courts.

Nia: What is habeas corpus?

Dr. Artello: Habeas corpus is a known criminal civil lawsuit in which the defendant who is now called the petitioner or plaintiff asked the court for a writ on the grounds that they are being detained unlawfully. This type of writ is important because it is mentioned by name in article 1 section 9 paragraph two of the Constitution. The Constitution says that it shall not be suspended unless in cases of rebellion or invasion the public safety may require it. It is enshrined in our Constitution.

Nia: What happens when you bring a habeas corpus case?
Dr. Artello: A District Court decides the case usually based on the written trial record and on written judgments. In certain limited circumstances, a federal court may conduct a hearing in which witnesses will testify in the court will make a factual determination. One of the instances that is most common is when someone wants to introduce new evidence that supports a claim of actual innocence.

Nia: Who has the burden of proof? We have talked about the burden of proof before but You said that after conviction it shifts to the offender.

Dr. Artello: In a habeas corpus case, the petitioner must demonstrate by a preponderance of the evidence that the constitutional air had a substantial and injurious impact or influence on the jury’s guilty verdict. In other words the defendant has this burden of proof and must demonstrate actual prejudice.

Nia: Do they have the right to an attorney to represent them in these types of cases?

Dr. Artello: There is no right to representation by an attorney and filing of habeas corpus petition.

Nia: What about Skippy’s case? What can he do?

Dr. Artello: So procedurally, we have had the trial and he has been found guilty. The judge’s sentencing him to probably between 20 and 30 years for murder. He probably will appeal on a direct appeal to the Court of Appeals. The Court of Appeals will review his case and they can give him two decisions. They can find that his constitutional rights have been violated and remand the case for a retrial based on their ruling. So let’s say that the police had gotten an illegal confession from Skippy that led them to the weapon that killed the park ranger. The trial judge allowed it and it was used as evidence. The Court of Appeals has now said that this was an error so he is entitled to a new trial. In the new trial the prosecution cannot use the evidence of his conviction or the weapon. So the prosecution will decide how to proceed from that and he’ll get a new trial.

Nia: What is the other decision?

Dr. Artello: They can find that there was no violation of his constitutional rights and affirm the judge’s ruling to allow the evidence and sustain his conviction.

Nia: What happens in that case? Can he appeal to the Supreme Court?
Dr. Artello: He may appeal to the US Supreme Court but that does not mean that his case will be heard by the court.

Nia: What does that mean?

Dr. Artello: That means that the Supreme Court is not required to hear his appeal. The Supreme Court would have to agree to hear his appeal. In legal terms it is what we call the Supreme Court would have to grant you a writ of certiorari to hear your case. It is also known as a writ of cert. There are thousands of cases appealed to the Supreme Court every year. Generally they will only hear maybe 100 cases. So it is unlikely that Skippy will ever get a day in the US Supreme Court.