

**FILED**

January 11, 2019

**OFFICE OF  
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8049

**ORDER PROMULGATING AMENDMENTS TO THE  
MINNESOTA RULES OF CRIMINAL PROCEDURE**

Rule 28.02, subdivision 12 of the Rules of Criminal Procedure was amended effective January 1, 2010 as part of a stylistic revision of the rules. *See Order Promulgating Amendments to the Minn. R. of Crim. P.*, No. C1-84-2137 (Minn. filed Oct. 27, 2009). With this amendment, the rule now requires the appellate courts, when reversing a “judgment” in a criminal appeal, to “direct a new trial,” “vacate the conviction and enter a judgment of acquittal,” or “reduce the conviction” accordingly.

The goal of the 2010 amendments was to “streamlin[e] the rules without making substantive changes.” *State v. Vang*, 881 N.W.2d 551, 556 (Minn. 2016) (citation omitted). Before it was amended in 2010, Rule 28.02, subdivision 12 allowed appellate courts to “direct” one of several options: “a new trial,” discharge of the defendant, or a reduction of the defendant’s conviction to a lesser included or lesser degree offense. Minn. R. Crim. P. 28.02, subd. 12 (2009). Typically, the district court takes the steps necessary to hold a new trial, vacate a conviction, or enter a judgment of acquittal because the judgment of conviction is entered in the record maintained by that court. To the extent that the 2010 amendment to Rule 28.02 suggests that the appellate courts are now required to take those steps, it goes beyond the stylistic revision intended. Thus, for reasons of clarity and consistency, an amendment to rule 28.02, subdivision 12, to correctly reflect the action on appeal, is necessary.

IT IS HEREBY ORDERED that the attached amendments to the Rules of Criminal Procedure be, and the same are, prescribed and promulgated to be effective immediately in appeals pending on, or filed on or after, the date of this order.

Dated: January 11, 2019

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea". The signature is written in a cursive, flowing style.

Lorie S. Gildea  
Chief Justice

## AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

*[Note: in the following amendments, deletions are indicated by a line drawn through the words, and additions are indicated by a line drawn under the words.]*

### Rule 28.02. Appeal by Defendant

\* \* \*

**Subd. 12. Action on Appeal.** If the appellate court affirms the judgment, it must direct execution of the sentence as pronounced by the district court or as modified by the appellate court under Rule 28.05, subd. 2. If it reverses the judgment, it must direct:

- (a) ~~direct~~ a new trial;
- (b) vacatione of the conviction and ~~enter~~ entry of a judgment of acquittal; or
- (c) reductione of the conviction to a lesser included offense or to an offense of lesser degree, as the case may require. If the court directs a reductiones of the conviction, it must remand for resentencing.