

CHAPTER 6
POST TRIAL MOTION

Chapter 6 - Post Trial Motions

6.01	Key Points.....	6.1
6.011	Time Periods	6.1
6.012	Motion for New Trial or Arrest of Judgment	6.1
6.013	Grounds for New Trial.....	6.1
6.014	Grounds for Arrest of Judgment	6.2
6.015	Rule 3.691: Post Trial Release.....	6.2
6.016	Rule 3.800: Correction, Reduction and Modification of Sentence.....	6.3
6.017	Rule 3.850: Vacate, Set Aside or Correct Sentence by Defendant.....	6.3
6.02	Authorities	6.3
6.03	Tips/Notes.....	6.3
6.04	Checklists/Forms	6.3
Chapter 6: Case Notes		
	Motion for New Trial.....	6.4
	Motion for Arrest of Judgment	6.5

POST TRIAL MOTIONS

6.01 KEY POINTS

6.011 Time Periods

- The day of the event is excluded from computation. Rule 3.040
- Last day is computed, unless Saturday, Sunday or legal holiday, and then utilize next working day
- If period of time is less than seven (7) days, intermediate Saturdays, Sundays or holidays are excluded, except for the periods of the time of less than 7 days contained in Rules 3.130, 3.132(a) and 3.133(a)
- For good cause shown, enlargement of time may be given if application is made before expiration of the period. Rule 3.050
- Upon motion and with notice, enlargement may be approved if the failure to comply was the result of excusable neglect, if application is made after expiration of the period
- Exceptions to the enlargement shall not be applicable to motions for a new trial, taking an appeal, or judgment of acquittal

6.012 Motion For New Trial or Arrest of Judgment

- Motion by either defendant or court, and may be for new trial or arrest of judgment
- Can be argued immediately after return of verdict and the judge may rule immediately, or within ten (10) days of verdict, or otherwise with leave of court
- May be made orally if dictated onto the record with a court reporter present, or
- Written with grounds stated

6.013 Grounds for New Trial

- If shown that the jurors decided verdict by lot, or
- Verdict is contrary to law or the weight of the evidence, or
 - New and material evidence has been discovered, and, if introduced

- Would probably have changed the verdict, and
- Which the defendant could not with reasonable diligence have discovered and produced at the trial.
- If prejudice of defendant's substantial rights is established, and
 - Defendant not present where required by the rules, or
 - Jury received any evidence out of court, other than authorized view of premises, or
 - Jurors separated after retiring to deliberate without leave of court, or
 - Juror guilty of misconduct, or
 - Prosecutors guilty of misconduct, or
 - Court erred in decision of any matter of law during trial, or
 - Court erred in its instructions, either giving erroneous instruction or failing to give a proper instruction, or
 - For any other reason not the defendant's fault, the defendant did not receive a fair trial

6.014 Grounds for Arrest of Judgment

- Indictment or information was so defective it could not support a judgment of conviction, or
- Court is without jurisdiction, or
- Verdict uncertain, appearing that jurors did not intend to convict, or
- Defendant convicted of an offense for which defendant could not be convicted under indictment or information under which defendant was tried

6.015 Rule 3.691 : Post Trial Release

- If adjudicated for other than capital offense, release is discretionary with trial court, except

- No bail unless defendant establishes that appeal is taken in good faith, and on grounds fairly debatable, and not frivolous
- No bail if defendant previously convicted of a felony, or if other felony charges are pending (See Younghans v. State, 90 So.2d 308 (Fla. 1956))
- Denial of post trial release must be in writing

6.016 Rule 3.800: Correction, Reduction and Modification of Sentence

- Illegal sentences may be corrected at any time
- Reduction or modification of sentence must be within sixty (60) days of imposition, receipt of mandate, or dismissal of appeal

6.017 Rule 3.850: Vacate, Set Aside or Correct Sentence by Defendant

- Grounds may be based upon:
 - Violation of Constitution or laws of United States and/or Florida, or
 - Court without jurisdiction, or
 - Sentence exceeded maximum allowable by law, or
 - Plea was involuntary, or
 - Judgment or sentence is otherwise subject to collateral attack
- Time limitations
 - At any time for sentence exceeding maximum allowable by law
 - All other grounds must be filed within two (2) years after judgment and sentence becomes final in noncapital cases (1 year in capital cases), except if based upon:
 - Facts or claim unknown to movant or attorney, and facts could not have been ascertained by the exercise of due diligence, or
 - Fundamental constitutional right asserted was not established within the period provided for herein, and has been held to apply retroactively.
- Contents must be under oath, including

- Judgment or sentence under attack and the name of the court; and
 - Whether or not there was an appeal; and
 - Number of postconviction motions previously filed, if any, and
 - If there were other 3.850 motions filed, and the reason(s), or claim(s) was/were not raised previously
- Defendant's presence not required
 - Successive motions may be dismissed if duplicative

6.02 AUTHORITIES

Florida Rules of Criminal Procedure:

Rule 3.040 - Computation of Time

Rule 3.050 - Enlargement of Time

Rules 3.580, 3.590, 3.600 - Motion for New Trial

Rule 3.610 - Motion for Arrest of Judgment

Rule 3.640 - Effect of Granting New Trial

Rule 3.691 - Post-Trial Release

Rule 3.800 - Correction, Reduction and Modification of Sentence

Rule 3.850 - Motion to Vacate, Set Aside or Correct Sentence; Hearing, Appeal

6.03 TIPS/NOTES

6.04 CHECKLISTS/FORMS

Chapter 6 -- Post-trial motions

Motion for New Trial

(See **Robinson v. S.**, 770 So. 2d 1167 (Fla. 2000), 25 F.L.W. S742 (10/5/2000) for extensive discussion of when newly discovered impeachment evidence is sufficient to obtain a new trial.)

Juror interviews are not permitted unless the moving party makes sworn allegations under oath that, if true, would require the court to order a new trial because the error was so fundamental and prejudicial as to vitiate the entire proceeding.

Kearse v. S., 770 So. 2d 1119 (Fla. 2000), 25 F.L.W. S507 (6/29/2000)

The court properly denies a motion seeking a new trial based on newly discovered evidence when the evidence is related in affidavits that constitute hearsay. The evidence must be admissible at trial before it can be considered sufficient to obtain a new trial.

Sims v. S., 754 So. 2d 657 (Fla. 2000), 25 F.L.W. S128 (2/16/2000)

When a motion for new trial based on newly discovered evidence is made, and the evidence consists of person who testified that another person had admitted to them that he, not defendant, had committed the murder, the court properly denies the motion upon ruling that the witnesses were not credible.

Melendez v. S., 718 So. 2d 746 (Fla. 1998), 23 F.L.W. S350 (6/11/98)

Recanted evidence is not likely to cause an acquittal upon retrial when defendant confessed to two other people in addition to the recanting witness.

Stano v. S., 708 So. 2d 271 (Fla. 1998), 23 F.L.W. S177 (3/20/98)

Recantation of a witness called by the state does not entitle defendant to a new trial.

Recanted testimony is exceedingly unreliable, and the court must carefully examine all the facts of a case before granting a new trial on that basis.

Court does not err in admitting the testimony of experts relating to hypnosis when the state's key witness had been hypnotized and later recanted. The context of the hypnotized statements is critical to a decision regarding their credibility.

A motion for a new trial is addressed to the sound judicial discretion of the trial court, and the presumption is that it exercised that discretion properly. And the general rule is that unless it clearly appears that the trial court abused its discretion, the action of the trial court will not be disturbed by the appellate court.

•**S. v. Spaziano, 692 So. 2d 174 (Fla. 1997), 22 F.L.W. S193 (4/17/97)**

(See **Swafford v. S., 679 So. 2d 736 (Fla. 1996), 21 F.L.W. S304 (7/11/96)** for discussion of what constitutes newly discovered evidence for new trial purposes).

The court errs in entering sua sponte an order adjudging defendant to be not guilty, following a jury verdict of guilty, based on the court's determination that it should not have allowed the testimony of a child sex abuse victim. Where the evidence was not objected to by the defense, the order adjudging defendant not guilty is procedurally improper.

S. v. Brockman, 827 So. 2d 299 (1st DCA 2002), 27 F.L.W. D2000 (9/3/2002)

To get a new trial based on a juror's failure to disclose material, the defendant must show (1) the information the juror withheld is relevant and material to jury selection; (2) the juror concealed such information; and (3) the failure to disclose the information was not attributable to the movant's lack of diligence.

Defendant's allegation that a juror was aware of the defendant and had attended a neighborhood meeting concerning burglaries committed by the defendant is sufficient to require an evidentiary hearing on the matter.

Forbes v. S., 753 So. 2d 709 (1st DCA 2000), 25 F.L.W. D689 (3/17/2000)

In a motion filed under rule 3.600(b) on the ground that the verdict is contrary to the weight of the evidence, the trial court acts as a "safety valve" by granting a new trial when the evidence is technically legally sufficient but the weight of the evidence does not appear to support the verdict. In such a motion, the judge is asked to act as a "seventh juror" in reweighing the evidence.

(See this case for discussion of the distinction between a 3.600(b) motion for new trial and a civil motion for judgment notwithstanding the verdict.)

Geibel v. S., 817 So. 2d 1042 (2d DCA 2002), 27 F.L.W. D1327 (6/5/2002)

A motion for new trial delivered to the judge on day 10 but not filed with the clerk until later is not timely where the judge does not accept the motion for filing.

Porter v. S., 749 So. 2d 514 (2d DCA 1999), 24 F.L.W. D2100 (9/10/99)

Motion for arrest of judgment

Defendant was charged with introducing contraband into a detention facility and possession of cannabis for the same incident. He was convicted of count I, but

acquitted of the possession charge. Held: Because section 951.22 prohibits both introduction and possession of contraband into a jail, and defendant here was charged with introduction in count I, the verdicts are factually inconsistent but not truly inconsistent. Florida law allows factually inconsistent verdicts, and the trial court errs in arresting judgment on the introduction charge.
(See this case for extensive discussion of inconsistent jury verdicts.)

**•S. v. Connelly, 748 So. 2d 248 (Fla. 1999), 24 F.L.W. S387
(8/19/99)**

A motion for arrest of judgment under rule 3.590(a) must be filed within 10 days of the verdict or ruling by the court.

**S. v. Johnson, 651 So. 2d 145 (2d DCA 1995), 20 F.L.W. D449
(2/15/95)**

Motions for arrest of judgment and for a new trial are not available to defendant who pled no contest. No contest plea is functionally the same as a guilty plea, and defendant waives the right to make those motions by entering a plea.

Brady v. S., 518 So. 2d 1305 (3d DCA 1988)