§2116. Court action after federal court has acted

Whenever a federal court finds that a prisoner in any penal institution in this State has been deprived of any of the rights guaranteed to the prisoner by the United States Constitution before, at or after the prisoner's trial, so that the judgment or sentence or both are erroneous and the court holds the case on its docket pending corrective action by the proper state official, the Attorney General may act as follows. The Attorney General may file a petition in the Superior Court of the county where the prisoner was tried and convicted in term time or with any justice of the court in vacation, setting forth the petition of the prisoner to the federal court and the decision of that court, and the Superior Court of conviction or any justice of the court in vacation shall then recall the judgment and sentence held erroneous and order it stricken from the records of the court and shall set the prisoner down for trial if in term time or bind the prisoner over to the next criminal term in the county if in vacation, after setting the prisoner's bail. If the sentence only is erroneous, the Superior Court of the county of conviction in term time or any justice of the court in vacation, on presentation of the Attorney General's petition, shall recall the erroneous sentence and order it stricken from the records and shall, in term time or in vacation, sentence the prisoner anew in accordance with the indictment against the prisoner. [RR 2023, c. 2, Pt. D, §77 (COR).]

SECTION HISTORY

RR 2023, c. 2, Pt. D, §77 (COR).

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