

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULE CHANGE

The Rules Committee has submitted a Letter Report to the Court of Appeals, transmitting thereby proposed amendments to Rule 4-345, Sentencing -- Revisory Power of Court, of the Maryland Rules of Procedure.

The Committee's Letter Report and the proposed rule change are set forth below.

Interested persons are asked to consider the Committee's Letter Report and proposed rule change and to forward on or before April 5, 2004 any written comments they may wish to make to:

Sandra F. Haines, Esq.  
Reporter, Rules Committee  
Room 1.517  
100 Community Place  
Crownsville, Maryland 21032-2030

ALEXANDER L. CUMMINGS

Clerk

Court of Appeals of Maryland

February 17, 2004

The Honorable Robert M. Bell,  
Chief Judge  
The Honorable Irma S. Raker  
The Honorable Alan M. Wilner  
The Honorable Dale R. Cathell  
The Honorable Glenn T. Harrell, Jr.  
The Honorable Lynne A. Battaglia  
The Honorable Clayton Greene, Jr.,  
Judges  
The Court of Appeals of Maryland  
Robert C. Murphy Courts of  
Appeal Building  
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this Letter Report to the Court, transmitting hereby a recommendation of the Conference of Circuit Judges ("the Conference") that Rule 4-345 be amended to establish a certain five-year limit on a court's exercise of its revisory power over a sentence involving a crime of violence.

The proposed amendment has received the unanimous endorsement of the Conference. The Rules Committee, by a vote of 11-10, has declined to approve the recommendation. The relevant portion of the Minutes of the January 9, 2004 meeting of the Rules Committee at which this vote was taken are enclosed for the Court's reference. Also enclosed are the relevant portions of the Minutes of the March 9, 2001 meeting of the Rules Committee, at which this issue previously was discussed, and the Minutes of the September 15, 2003 meeting of the Conference, at which the vote was taken to recommend the amendment.

The Conference also recommended that the time for filing a

motion for modification under Rule 4-345 in a circuit court be reduced from 90 to 30 days. This recommendation received a strong negative vote from the Rules Committee, with only two members in favor, and therefore has not been included in the draft Rule.

Because of the importance of the issue of the revisory power of the court in criminal matters, the unanimous recommendation of the Conference, and the close vote by the Rules Committee, the proposed amendments to Rule 4-345 are submitted to the Court for its determination of this policy issue.

For the guidance of the Court and the public, following the proposed rule change is a Reporter's Note describing the reasons for the proposal and any changes that would be effected in current law or practice. We caution that the Reporter's Note was prepared initially for the benefit of the Rules Committee; it is not part of the Rule and has not been debated or approved by the Committee; and it is not to be regarded as any kind of official comment or interpretation. It is included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Joseph F. Murphy, Jr.  
Chair

Linda M. Schuett  
Vice Chair

JFM/LMS:cdc  
Enclosures  
cc: Alexander L. Cummings, Clerk

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-345 to reorganize it, to add the phrase "or has been dismissed" to relettered subsection (e)(1), to add a certain cross reference after subsection (e)(1), to add a new subsection (e)(2) that sets a five-year limit on the court's exercise of its revisory power over a sentence involving a crime of violence except where the State's Attorney and defendant agree that the court may exercise its revisory power, and to make certain stylistic changes, as follows:

Rule 4-345. SENTENCING -- REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

~~(e)~~ (d) Desertion and Non-support Cases

At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children, or destitute parents, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.

~~(b) (e) Modification or Reduction - Time For~~ Upon Motion

(1) Generally

~~The court has revisory power and control over a sentence upon~~ Upon a motion filed within 90 days after ~~its~~ imposition of a sentence (1) in the District Court, if an appeal has not been perfected or has been dismissed, and (2) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not increase the sentence. ~~Thereafter, the court has revisory power and control over the sentence in case of fraud, mistake, or irregularity, or as provided in section (e) of this Rule. The court may not increase a sentence after the sentence has been imposed, except that it may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.~~

Cross reference: Rule 7-112 (b).

(2) Defendant Convicted of a Crime of Violence

Unless the State's Attorney and the defendant agree that the court may exercise its revisory power, the court may not

revise a sentence after the expiration of five years from the date the sentence originally was imposed on a defendant convicted of a crime of violence, as defined in Code, Criminal Law Article, §14-101.

~~(c)~~ (3) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, §11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, §11-503 that states (1) that a motion to modify or reduce a sentence has been filed; (2) that the motion has been denied without a hearing or the date, time, and location of the hearing; and (3) if a hearing is to be held, that each victim or victim's representative may attend and testify.

~~(d)~~ (f) Open Court Hearing

The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. No hearing shall be held on a motion to modify or reduce the sentence until the court determines that the notice requirements in ~~section (c)~~ subsection (e)(3) of this Rule have been satisfied. If the court grants the motion, the court ordinarily

shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

Source: This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.

#### REPORTER'S NOTE

The Conference of Circuit Judges *Ad Hoc* Committee to Consider Amending Rule 4-345 has recommended several changes to Rule 4-345, including reducing the 90-day period for filing a motion for modification or reduction of a sentence to 30 days in the circuit court and imposing a five-year limit on the courts' revisory power when the defendant has been convicted of a crime of violence.

With two members opposed, the Rules Committee voted to recommend retaining the 90-day period for filing the motion, rather than reducing it to a 30-day period. The Committee was concerned that a reduction in this long-standing time period would lead to an increase in late-filed motions, which would result in an increase in post conviction proceedings.

By an 11 to 10 vote, the Committee also declined to approve the proposed five-year limit on the court's exercise of its revisory power over sentences involving a crime of violence, except where the State's Attorney and defendant agree that the court may exercise that power. However, in light of the close vote and the strong support of the Conference of Circuit Judges in favor of the rule change, the Committee is transmitting the proposal to the Court of Appeals for a policy determination by the Court.

The proposed addition of the phrase "or had been dismissed" to subsection (e)(1) appears to be noncontroversial. The addition of the phrase and a cross reference to Rule 7-112 (b) clarify the revisory power of the District Court over a sentence imposed by that Court.

Other changes, including replacing the phrase "revisory power and control" with the phrase "revisory power," are stylistic only.