

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted a Letter Report to the Court, transmitting thereby proposed amendments to Rule 4-345 of the Maryland Rules of Procedure, as set forth in that Letter Report published in the *Maryland Register*, Vol. 31, Issue 5, pages 443 - 444 (March 5, 2004); and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, the proposed rule changes, together with the comments received, and making certain amendments to the proposed rule changes on its own motion, it is this 11th day of May, 2004,

ORDERED, by the Court of Appeals of Maryland, that the amendments to Rule 4-345 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that the rule changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all sentences imposed on or after July 1, 2004; and it is further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

/s/ Robert M. Bell

Robert M. Bell

/s/ Irma S. Raker

Irma S. Raker

/s/ Alan M. Wilner

Alan M. Wilner

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Dale R. Cathell

/s/ Glenn T. Harrell, Jr.

Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

Lynne A. Battaglia

/s/ Clayton Greene, Jr.

Clayton Greene, Jr.

* Judge Cathell declined to sign the Rules Order.

Filed: May 11, 2004

/s/ Alexander L. Cummings

Clerk
Court of Appeals of Maryland

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 set a certain five-year limit on the court's exercise of its revisory power over a sentence, 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)~~ (A) in the District Court, if an appeal has not been perfected or has been dismissed, and ~~(2)~~ (B) 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 revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and 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).

~~(e)~~ (2) 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)~~ (A) that a motion to modify or reduce a sentence has been filed; ~~(2)~~ (B) that the motion has been denied without a hearing or the date, time, and location of the hearing; and ~~(3)~~ (C) 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) (2) 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.