

**CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES****PART A. Sentencing Procedures**

- 700. Sentencing Judge.
- 701. Pleas of Guilty to Multiple Offenses.
- 702. Aids in Imposing Sentence.
- 703. Disclosure of Pre-Sentence Reports.
- 704. Procedure at Time of Sentencing.
- 705. Imposition of Sentence.
- 706. Fines or Costs.
- 707. Documents Transmitted to Prison.
- 708. Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition.

**PART B. Post-Sentence Procedures**

- 720. Post-Sentence Procedures; Appeal.
- 721. Procedures for Commonwealth Challenges to Sentencing; Sentencing Appeals.
- 722. Contents of Order for Expungement.

**PART A. Sentencing Procedures****Rule 700. Sentencing Judge.**

(A) Except as provided in paragraph (B), the judge who presided at the trial or who received the plea of guilty or nolo contendere shall impose sentence unless there are extraordinary circumstances which preclude the judge's presence. In such event, another judge shall be assigned to impose sentence.

(B) A court may provide by local rule that sentence on a plea of guilty or nolo contendere may be imposed by a judge other than the judge who received a plea of guilty or nolo contendere. In such event, the defendant must be so notified at the time of entering the plea.

**Comment**

Generally, the president judge makes assignment of judges. However, in one-judge judicial districts, or in instances in which the president judge is the one whose presence at sentencing is precluded, an appropriate assigning authority, such as the Supreme Court or the Court Administrator of Pennsylvania, should assign a new judge.

It is always desirable that the judge who accepts a plea of guilty or nolo contendere should impose sentence. It is recognized, however, that the rotation practices of many courts make it difficult in many instances for the same judge to sit in both capacities. For that reason, paragraph (B) provides that a court may set up an alternate procedure by local rule. In any event, the judge who imposes the sentence should ascertain the facts concerning the plea and the offense. See ABA Standards on Sentencing Alternatives and Procedures Section 5.1.

**Official Note:** Rule 1401 adopted July 23, 1973, effective October 23, 1973; amended June 30, 1975, effective September 28, 1975; renumbered Rule 700 and amended March 1, 2000, effective April 1, 2001.

*Committee Explanatory Reports:*

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

**Rule 701. Pleas of Guilty to Multiple Offenses.**

(A) Before the imposition of sentence, the defendant may plead guilty to other offenses that the defendant committed within the jurisdiction of the sentencing court.

(B) When such pleas are accepted, the court shall sentence the defendant for all the offenses.

**Comment**

The objective of this rule is to enable consolidation of all outstanding charges within the jurisdiction of the sentencing court for sentencing at one time.

**Official Note:** Rule 1402 adopted July 23, 1973, effective 90 days hence; renumbered Rule 701 and amended March 1, 2000, effective April 1, 2001.

*Committee Explanatory Reports:*

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

**Rule 702. Aids in Imposing Sentence.**

(A) PRE-SENTENCE INVESTIGATION REPORT.

(1) The sentencing judge may, in the judge's discretion, order a pre-sentence investigation report in any case.

(2) The sentencing judge shall place on the record the reasons for dispensing with the pre-sentence investigation report if the judge fails to order a pre-sentence report in any of the following instances:

(a) when incarceration for one year or more is a possible disposition under the applicable sentencing statutes;

(b) when the defendant is less than 21 years old at the time of conviction or entry of a plea of guilty; or

(c) when a defendant is a first offender in that he or she has not heretofore been sentenced as an adult.

(3) The pre-sentence investigation report shall include information regarding the circumstances of the offense and the character of the defendant sufficient to assist the judge in determining sentence.

(4) The pre-sentence investigation report shall also include a victim impact statement as provided by law.

(B) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION.

After a finding of guilt and before the imposition of sentence, after notice to counsel for both parties, the sentencing judge may, as provided by law, order the defendant to undergo a psychiatric or psychological examination. For this purpose the defendant may be remanded to any available clinic, hospital, institution, or state correctional diagnostic and classification center for a period not exceeding 60 days.

#### Comment

For purposes of paragraph (A)(2)(c), whether the defendant has a prior juvenile adjudication is immaterial. Paragraph (A)(3) indicates in general terms what the contents of the pre-sentence investigation report must include. With respect to the particularized contents of such reports, see *Commonwealth v. Martin*, 351 A.2d 650 (Pa. 1976). Concerning other information that would be helpful for the sentencing judge to have in the pre-sentencing investigation report, see 18 Pa.C.S. § 1106(c)(2)(iv) (the judge, when determining the amount of restitution, must consider “any other preexisting orders imposed on the defendant, including, but not limited to, orders imposed under this title or any other title”).

For the victim’s right to have information included in the pre-sentence report concerning the impact of the crime on the victim, as provided in paragraph (A)(4), see 71 P. S. § 180-9.3.

A psychiatric or psychological examination may be ordered on an outpatient or inpatient basis as provided by law. See 50 P. S. § 7405. Because the 1976 Mental Health Procedures Act excludes issues related to mental retardation, 50 P. S. § 7502, see also the Mental Health and Mental Retardation Act of 1966, 50 P. S. § 4101 et seq.

When an incarcerated defendant has undergone any period of voluntary or involuntary confinement for the purpose of examination pursuant to this rule, credit for the period of confinement should be given toward the sentence ultimately imposed. See, e.g., 50 P. S. §§ 7401(b) and 7407(f).

Additional pre-sentence procedures may be required by statute. For example, see 42 Pa.C.S. §§ 9791—9799.5 (concerning persons convicted of sexually violent offenses) for pre-sentence assessment and hearing procedures. See also 42 Pa.C.S. § 9714(c) for hearing to determine high risk dangerous offender status.

Under the provisions of Rule 703 (Disclosure of Pre-Sentence Reports), full disclosure of reports to defense counsel and the Commonwealth is required. See Rule 703(A)(2). Reports may also be disclosed under Rule 703 to other designated persons or agencies, unless the sentencing judge otherwise orders. See Rule 703(C), (D), and (E).

**Official Note:** Rule 1403 adopted July 23, 1973, effective 90 days hence; amended June 28, 1976, effective January 1, 1977; amended November 1, 1991, effective January 1, 1992; amended March 22, 1993, effective January 1, 1994; Comment revised April 18, 1997, effective immediately; renumbered Rule 702 and amended March 1, 2000, effective April 1, 2001; Comment revised March 27, 2003, effective July 1, 2003.

#### *Committee Explanatory Reports:*

Report explaining the January 1, 1992 amendments published at 20 Pa.B. 1697 (March 24, 1990); Supplemental Report published with the Court’s Order at 21 Pa.B. 5329 (November 16, 1991).

Final Report explaining the March 22, 1993 amendments published with the Court’s Order at 23 Pa.B. 1699 (April 10, 1993).

Report explaining the April 18, 1997 Comment revision published with the Court’s Order at 27 Pa.B. 2122 (May 3, 1997).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

Final Report explaining the March 27, 2003 Comment revision adding a cross-reference to 18 Pa.C.S. § 1106 published with the Court's Order at 33 Pa.B. 1928 (April 19, 2003).

#### Source

The provisions of this Rule 702 amended March 27, 2003, effective July 1, 2003, 33 Pa.B. 1927. Immediately preceding text appears at serial pages (264336) to (264337).

### Rule 703. Disclosure of Pre-Sentence Reports.

(A) All pre-sentence reports and related psychiatric and psychological reports shall be confidential, and not of public record. They shall be available to the sentencing judge, and to:

- (1) An examining professional or facility appointed to assist the court in sentencing, unless the sentencing judge otherwise orders;
- (2) the attorney for the Commonwealth and counsel for the defendant, for inspection and copying, unless the sentencing judge orders that they be available for inspection only.

(B) If the defendant or the Commonwealth alleges any factual inaccuracy in a report under this rule, the sentencing judge shall, as to each inaccuracy found, order that the report be corrected accordingly.

(C) After sentencing, unless the sentencing judge otherwise orders, and subject to the provisions of paragraph (B), psychiatric, psychological, and pre-sentence reports shall also be available to:

- (1) correctional institutions housing the defendant; and
- (2) departments of probation or parole supervising the defendant; and
- (3) departments of probation or parole preparing a pre-sentence investigation report regarding the defendant.

The reports shall continue to be confidential and not of public record.

(D) On the order of the sentencing judge, a psychiatric, psychological, or pre-sentence investigation report may be made available to any other person or agency having a legitimate professional interest in the disposition of the case.

(E) The sentencing judge may at any time impose further conditions of confidentiality on a person or agency receiving a report under paragraphs (C) or (D) of this rule.

#### Comment

This rule facilitates the sentencing process by permitting disclosure of reports not only to counsel and those persons appointed to assist the court in sentencing, but also to those charged with effecting the sentence imposed—correctional institutions and departments of probation and parole. See also Rule 702.

The persons, agencies, and institutions enumerated in paragraphs (A) and (C) would ordinarily be given access to the confidential reports encompassed by this rule. A court order is not necessary. Under paragraphs (C)(1) and (2), it is intended that out-of-state correctional facilities and parole boards would also have access to such reports, subject to the provisions of paragraphs (B) and (C).

The disclosure provisions contained in paragraph (A)(2) and paragraph (B) are not intended to encourage formal litigation over confidential reports, but should avoid such litigation by affording counsel for both parties full disclosure of reports and the opportunity to point out any inaccuracies before the judge imposes sentence. Disclosure under paragraph (A)(2) should be made in sufficient time for counsel to prepare for the sentencing hearing. See Rule 704.

Although it is not necessary for a probation officer to make a sentencing recommendation, if one is made, it should be disclosed to defense counsel. See *Commonwealth v. Bastone*, 467 A.2d 1339 (Pa. Super. 1983).

Paragraph (B) is intended to insure that reports considered by the sentencing judge and disclosed after sentencing are factually accurate, particularly in light of the reliance placed on the information contained in reports by correctional facilities and probation and parole departments. Although paragraph (B) addresses inaccuracies alleged by the defendant or the Commonwealth, the section is not intended to preclude the sentencing judge from finding and correcting an inaccuracy sua sponte.

This rule requires full disclosure to those persons and facilities listed in paragraph (A). Under paragraphs (C), (D), and (E), however, the sentencing judge retains the discretion to withhold confidential reports or to impose special conditions of confidentiality at any time.

When a psychiatric, psychological, or pre-sentence investigation report is relevant to a sentencing issue, the report should be sealed to preserve its confidentiality, and made part of the record for review.

**Official Note:** Former Rule 1404 adopted July 23, 1973, effective 90 days hence; amended December 14, 1979, effective April 1, 1980; rescinded November 1, 1991, effective January 1, 1992. Present Rule 1404 adopted November 1, 1991, effective January 1, 1992; renumbered Rule 703 and amended March 1, 2000, effective April 1, 2001.

*Committee Explanatory Reports:*

Report explaining the January 1, 1992 amendments published at 20 Pa.B. 1697 (March 24, 1990); Supplemental Report published with the Court's Order at 21 Pa.B. 5329 (November 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

### **Rule 704. Procedure at Time of Sentencing.**

**(A) TIME FOR SENTENCING.**

(1) Except as provided by Rule 702(B), sentence in a court case shall ordinarily be imposed within 90 days of conviction or the entry of a plea of guilty or nolo contendere.

(2) When the date for sentencing in a court case must be delayed, for good cause shown, beyond the time limits set forth in this rule, the judge shall include in the record the specific time period for the extension.

(3) In a summary case appeal, sentence shall be imposed immediately following a determination of guilt at a trial de novo in the court of common pleas.

**(B) ORAL MOTION FOR EXTRAORDINARY RELIEF.**

(1) Under extraordinary circumstances, when the interests of justice require, the trial judge may, before sentencing, hear an oral motion in arrest of judgment, for a judgment of acquittal, or for a new trial.

(2) The judge shall decide a motion for extraordinary relief before imposing sentence, and shall not delay the sentencing proceeding in order to decide it.

(3) A motion for extraordinary relief shall have no effect on the preservation or waiver of issues for post-sentence consideration or appeal.

(C) SENTENCING PROCEEDING.

(1) At the time of sentencing, the judge shall afford the defendant the opportunity to make a statement in his or her behalf and shall afford counsel for both parties the opportunity to present information and argument relative to sentencing.

(2) The judge shall state on the record the reasons for the sentence imposed.

(3) The judge shall determine on the record that the defendant has been advised of the following:

(a) of the right to file a post-sentence motion and to appeal, of the time within which the defendant must exercise those rights, and of the right to assistance of counsel in the preparation of the motion and appeal;

(b) of the rights,

(i) if the defendant is indigent, to proceed in forma pauperis and to proceed with appointed counsel as provided in Rule 122; or,

(ii) if represented by retained counsel, to proceed with retained counsel unless the court has granted leave for counsel to withdraw pursuant to Rule 120(B);

(c) of the time limits within which post-sentence motions must be decided;

(d) that issues raised before or during trial shall be deemed preserved for appeal whether or not the defendant elects to file a post-sentence motion; and

(e) of the defendant's qualified right to bail under Rule 521(B).

(4) The judge shall require that a record of the sentencing proceedings be made and preserved so that it can be transcribed as needed. The record shall include:

(a) the record of any stipulation made at a pre-sentence conference; and

(b) a verbatim account of the entire sentencing proceeding.

**Comment**

The rule is intended to promote prompt and fair sentencing procedures by providing reasonable time limits for those procedures, and by requiring that the defendant be fully informed of his or her post-sentence rights and the procedural requirements which must be met to preserve those rights.

Rule 708 (Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition) governs sentencing procedures after a revocation of probation, intermediate punishment, or parole.

**TIME FOR SENTENCING**

As a general rule, the date for sentencing should be scheduled at the time of conviction or the entry of a plea of guilty or nolo contendere.

Under paragraph (A)(1), sentence should be imposed within 90 days of conviction or the entry of a plea of guilty or nolo contendere, unless the court orders a psychiatric or psychological examination

pursuant to Rule 702(B). Such an order should extend the time for sentencing for only as much time as is reasonably required, but in no event should sentencing be extended for more than 30 days beyond the original 90-day limit. In summary appeal cases, however, sentence must be imposed immediately at the conclusion of the de novo trial.

Paragraph (A)(2) is not intended to sanction pro forma requests for continuances. Rather, it permits the judge to extend the time limit for sentencing under extraordinary circumstances only. For example, additional pre-sentence procedures may be required by statute. See 42 Pa.C.S. §§ 9791—9799.5 for pre-sentence assessment and hearing procedures for persons convicted of sexually violent offenses. See also 42 Pa.C.S. § 9714(c) for hearing to determine high risk dangerous offender status.

Because such extensions are intended to be the exception rather than the rule, the extension must be for a specific time period, and the judge must include in the record the length of the extension. A hearing need not be held before an extension can be granted. Once a specific extension has been granted, however, some provision should be made to monitor the extended time period to insure prompt sentencing when the extension period expires.

Failure to sentence within the time specified in paragraph (A) may result in the discharge of the defendant. See *Commonwealth v. Anders*, 725 A.2d 170 (Pa. 1999) (discharge is appropriate remedy for violation of Rule 1405 time limits, but only if the defendant can demonstrate that the delay in sentencing was prejudicial to the defendant).

#### ORAL MOTION FOR EXTRAORDINARY RELIEF

Under paragraph (B), when there has been an error in the proceedings that would clearly result in the judge's granting relief post-sentence, the judge should grant a motion for extraordinary relief before sentencing occurs. Although trial errors may be serious and the issues addressing those errors meritorious, this rule is intended to allow the trial judge the opportunity to address only those errors so manifest that immediate relief is essential. It would be appropriate for counsel to move for extraordinary relief, for example, when there has been a change in case law, or, in a multiple count case, when the judge would probably grant a motion in arrest of judgment on some of the counts post-sentence. Although these examples are not all-inclusive, they illustrate the basic purpose of the rule: when there has been an egregious error in the proceedings, the interests of justice are best served by deciding that issue before sentence is imposed. Because the relief provided by this section is extraordinary, boilerplate motions for extraordinary relief should be summarily denied.

Under paragraph (B)(2), the motion must be decided before sentence is imposed, and sentencing may not be postponed in order to dispose of the motion. The judge may summarily deny the motion or decide it on the merits.

Paragraph (B)(3) is intended to make it clear that a motion for extraordinary relief is neither necessary nor sufficient to preserve an issue for appeal. The failure to make a motion for extraordinary relief, or the failure to raise a particular issue in such a motion, does not constitute a waiver of any issue. Conversely, the making of a motion for extraordinary relief does not, of itself, preserve any issue raised in the motion, nor does the judge's denial of the motion preserve any issue.

#### SENTENCING PROCEDURES

Paragraph (C)(1) retains the former requirement that the judge afford the defendant an opportunity to make a statement and counsel the opportunity to present information and argument relative to sentencing. The defendant's right to allocution at sentencing is well established, and the trial judge must inform the defendant of that right. See *Commonwealth v. Thomas*, 553 A.2d 918 (Pa. 1989).

The duty of the judge to explain to the defendant the rights set forth in paragraph (C)(3) is discussed in *Commonwealth v. Wilson*, 241 A.2d 760, 763 (Pa. 1968), and *Commonwealth v. Stewart*, 241 A.2d 764, 765 (Pa. 1968).

The judge should explain to the defendant, as clearly as possible, the timing requirements for making and deciding a post-sentence motion under Rule 720. The judge should also explain that the defendant may choose whether to file a post-sentence motion and appeal after the decision on the motion, or to pursue an appeal without first filing a post-sentence motion.

Paragraph (C)(3) requires the judge to ensure the defendant is advised of his or her rights concerning post-sentence motions and appeal, and the right to proceed with counsel. See, e.g., *Commonwealth v. Librizzi*, 810 A.2d 692 (Pa. Super. 2002).

The rule permits the use of a written colloquy that is read, completed, signed by the defendant, and made part of the record of the sentencing proceeding. This written colloquy must be supplemented by an on-the-record oral examination to determine that the defendant has been advised of the applicable rights enumerated in paragraph (C)(3) and that the defendant has signed the form.

Other, additional procedures are required by statute. See, e.g., 42 Pa.C.S. § 9795(b), which requires the judge to inform certain offenders of the duty to register.

After sentencing, following a conviction in a trial de novo in a summary case, the judge should advise the defendant of the right to appeal and the time limits within which to exercise that right, the right to proceed in forma pauperis and with appointed counsel to the extent provided in Rule 122(A), and of the qualified right to bail under Rule 521(B). See paragraphs (C)(3)(a), (b), and (e). See also Rule 720(D) (no post-sentence motion after a trial de novo).

After sentencing, the judge should inquire whether the defendant intends to file a post-sentence motion or to appeal, and if so, should determine the defendant's bail status pursuant to paragraph (C)(3)(e) and Rule 521. It is recommended, when a state sentence has been imposed, that the judge permit a defendant who cannot make bail to remain incarcerated locally, at least for the 10-day period during which counsel may file the post-sentence motion. When new counsel has been appointed or entered an appearance for the purpose of pursuing a post-sentence motion or appeal, the judge should consider permitting the defendant to remain incarcerated locally for a longer period to allow new counsel time to confer with the defendant and become familiar with the case. See also Rule 120 (Attorneys—Appearances and Withdrawals).

It is difficult to set forth all the standards that a judge must utilize and consider in imposing sentence. It is recommended that, at a minimum, the judge look to the standards and guidelines as specified by statutory law. See the Judicial Code, 42 Pa.C.S. § 9701 et seq. See also *Commonwealth v. Riggins*, 377 A.2d 140 (Pa. 1977) and *Commonwealth v. Devers*, 546 A.2d 12 (Pa. 1988). The judge also should consider other preexisting orders imposed on the defendant. See 18 Pa.C.S. § 1106(c)(2)(iv). And see 42 Pa.C.S. § 9728.

In all cases in which restitution is imposed, the sentencing judge must state on the record the amount of restitution, if determined at the time of sentencing, or the basis for determining an amount of restitution. See 18 Pa.C.S. § 1106 and 42 Pa.C.S. §§ 9721, 9728.

For the right of a victim to have information included in the pre-sentence investigation report concerning the impact of the crime upon him or her, see 71 P. S. § 180-9.3(1) and Rule 702(A)(4).

For the duty of the sentencing judge to state on the record the reasons for the sentence imposed, see *Commonwealth v. Riggins*, 377 A.2d 140 (Pa. 1977) and *Commonwealth v. Devers*, 546 A.2d 12 (Pa. 1988). If the sentence initially imposed is modified pursuant to Rule 720(B)(1)(a)(v), the sentencing judge should ensure that the reasons for the ultimate sentence appear on the record. See also Sentencing Guidelines, 204 PA. CODE §§ 303.1(b), 303.1(h), and 303.3(2).

In cases in which a mandatory sentence is provided by law, when the judge decides not to impose a sentence greater than the mandatory sentence, regardless of the number of charges on which the defendant could be sentenced consecutively, and when no psychiatric or psychological examination is required under Rule 702(B), the judge may immediately impose that sentence. But see Rule 702(A)(2), which requires that the court state on the record the reasons for dispensing with a pre-sentence report under the circumstances enumerated therein. See also 42 Pa.C.S. § 9721 et seq.

No later than 30 days after the date of sentencing, a Pennsylvania Commission on Sentencing Guideline Sentence Form must be completed at the judge's direction and made a part of the record. In addition, a copy of the form must be forwarded to the Commission on Sentencing, 204 PA. CODE § 303.1(e), effective July 13, 1997. See 27 Pa.B. 1254 (March 15, 1997).

With respect to the recording and transcribing of court proceedings, including sentencing, see Rule 115.

**Official Note:** Previous Rule 1405 approved July 23, 1973, effective 90 days hence; Comment amended June 30, 1975, effective immediately; Comment amended and paragraphs (c) and (d) added June 29, 1977, effective September 1, 1977; amended May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; Comment amended April 24, 1981, effective July 1, 1981; Comment amended November 1, 1991, effective January 1, 1992; rescinded March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994, and replaced by present Rule 1405. Present Rule 1405 adopted March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; amended January 3, 1995, effective immediately; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996. Comment revised December 22, 1995, effective February 1, 1996. The April 1, 1996 effective date extended to July 1, 1996. Comment revised September 26, 1996, effective January 1, 1997; Comment revised April 18, 1997, effective immediately; Comment revised January 9, 1998, effective immediately; amended July 15, 1999, effective January 1, 2000; renumbered Rule 704 and amended March 1, 2000, effective April 1, 2001; Comment revised March 27, 2003, effective July 1, 2003; amended April 28, 2005, effective August 1, 2005.

*Committee Explanatory Reports:*

Final Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Report explaining the 1995 amendment to paragraph C(3) published with the Court's Order at 25 Pa.B. 236 (January 21, 1995).

Final Report explaining the September 13, 1995 amendments concerning bail published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the December 22, 1995 Comment revision on restitution published with the Court's Order at 26 Pa.B. 13 (January 6, 1996).

Final Report explaining the September 26, 1996 Comment revision on Rule 1409 procedures published with the Court's Order at 26 Pa.B. 4900 (October 12, 1996).

Report explaining the April 18, 1997 Comment revisions published with the Court's Order at 27 Pa.B. 2122 (May 3, 1997).

Final Report explaining the January 9, 1998 Comment revisions concerning Guideline Sentence Forms, and summary case appeal notice, published with the Court's Order at 28 Pa.B. 481 (January 31, 1998).

Final Report explaining the July 15, 1999 amendments concerning the time for sentencing published with the Court's Order at 29 Pa.B. 4059 (July 31, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the March 27, 2003 Comment revision adding cross-reference to 18 Pa.C.S. § 1106 and 42 Pa.C.S. § 9728 published with the Court's Order at 33 Pa.B. 1928 (April 19, 2003).

Final Report explaining the April 28, 2005 amendments to paragraph (C)(3)(b) concerning retained counsel's obligations published with the Court's Order at 35 Pa.B. 2859 (May 14, 2005).

**Source**

The provisions of this Rule 704 amended March 27, 2003, effective July 1, 2003, 33 Pa.B. 1927; amended April 28, 2005, effective August 1, 2005, 35 Pa.B. 2855. Immediately preceding text appears at serial pages (296729) to (296732) and (296734).

**Rule 705. Imposition of Sentence.**

(A) When imposing a sentence to imprisonment, the judge shall state the date the sentence is to commence.

(B) When more than one sentence is imposed at the same time on a defendant, or when a sentence is imposed on a defendant who is sentenced for another offense, the judge shall state whether the sentences shall run concurrently or consecutively. If the sentence is to run concurrently, the sentence shall commence from the date of imposition unless otherwise ordered by the judge.

**Comment**

This rule was amended in 1996 to eliminate language that created a presumption that certain sentences run concurrently unless the judge states otherwise, and by deleting former paragraph (b) as unnecessary. The rule now requires the judge to state whether sentences run concurrently or consecutively.

The 2005 amendments adding new paragraph (A) and adding language to paragraph (B) clarify the procedures for determining the date of commencement of sentences of imprisonment.

The computation of sentences and credit for time served also are addressed in the Sentencing Code. See 42 Pa.C.S. §§ 9760 and 9761.

**Official Note:** Rule 1406 adopted July 23, 1973, effective 90 days hence; amended March 21, 1975, effective March 31, 1975; amended November 7, 1996, effective January 1, 1997; renumbered Rule 705 and Comment revised March 1, 2000, effective April 1, 2001; amended May 18, 2005, effective August 1, 2005.

*Committee Explanatory Reports:*

Final Report explaining the November 7, 1996 amendments published with the Court's Order at 26 Pa.B. 5694 (November 23, 1996).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the amendments concerning date of commencement of sentence published with the Court's Order at 35 Pa.B. 3218 (June 4, 2005).

**Source**

The provisions of this Rule 705 amended May 18, 2005, effective August 1, 2005, 35 Pa.B. 3217. Immediately preceding text appears at serial page (311416).

**Rule 706. Fines or Costs.**

(A) A court shall not commit the defendant to prison for failure to pay a fine or costs unless it appears after hearing that the defendant is financially able to pay the fine or costs.

(B) When the court determines, after hearing, that the defendant is without the financial means to pay the fine or costs immediately or in a single remittance, the court may provide for payment of the fines or costs in such installments and over such period of time as it deems to be just and practicable, taking into account the financial resources of the defendant and the nature of the burden its payments will impose, as set forth in paragraph (D) below.

(C) The court, in determining the amount and method of payment of a fine or costs shall, insofar as is just and practicable, consider the burden upon the defendant by reason of the defendant's financial means, including the defendant's ability to make restitution or reparations.

(D) In cases in which the court has ordered payment of a fine or costs in installments, the defendant may request a rehearing on the payment schedule when the defendant is in default of a payment or when the defendant advises the court that such default is imminent. At such hearing, the burden shall be on the defendant to prove that his or her financial condition has deteriorated to the extent that the defendant is without the means to meet the payment schedule. Thereupon the court may extend or accelerate the payment schedule or leave it unaltered, as the court finds to be just and practicable under the circumstances of record. When there has been default and the court finds the defendant is not indigent, the court may impose imprisonment as provided by law for nonpayment.

#### Comment

See generally *Commonwealth ex rel. Benedict v. Cliff*, 451 Pa. 427, 304 A.2d 158 (1973).

Under this rule, when a defendant fails to pay the fine and costs, the common pleas court judge may issue a bench warrant for the collection of the fine and costs. When a "failure to pay" bench warrant is issued, the bench warrant must be executed by a police officer following the procedures set forth in Rule 431(C)(1)(c) and (C)(2), or, if the defendant is unable to pay, the police officer must proceed as provided in Rule 150 (Bench Warrants).

Nothing in this rule is intended to abridge any rights the Commonwealth may have in a civil proceeding to collect a fine or costs.

For suspension of Acts of Assembly, see Rule 1101(F).

**Official Note:** Rule 1407 approved July 23, 1973, effective 90 days hence; renumbered Rule 706 and amended March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective August 1, 2006.

#### *Committee Explanatory Reports:*

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the March 9, 2006 Comment revision concerning fine and cost warrants published with the Court's Order at 36 Pa.B. 1396 (March 25, 2006).

#### Source

The provisions of this Rule 706 amended March 9, 2006, effective August 1, 2006, 36 Pa.B. 1396. Immediately preceding text appears at serial pages (311772) to (311773).



**Rule 707. Documents Transmitted to Prison.**

When a defendant is sentenced to a term of imprisonment of two years or more, a copy of each of the following shall be delivered to the person in charge of the correctional facility to which the defendant is committed at the time the defendant is delivered thereto:

- (1) any available pre-sentence investigation report;
- (2) any report by a state correctional diagnostic and classification center; and
- (3) any medical, psychiatric, or social agency report used by the sentencing judge in imposing sentence or by a probation department or state correctional diagnostic and classification center in compiling a report to the sentencing judge.

**Comment**

It is intended that the confidentiality of such reports remain as secure after they have been delivered pursuant to this rule as at any previous stage. Cf. Rule 703.

**Official Note:** Rule 1408 adopted July 23, 1973, effective 90 days hence; renumbered Rule 707 and amended March 1, 2000, effective April 1, 2001.

*Committee Explanatory Reports:*

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

**Rule 708. Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition.**

- (A) A written request for revocation shall be filed with the clerk of courts.
- (B) Whenever a defendant has been sentenced to probation or intermediate punishment, or placed on parole, the judge shall not revoke such probation, intermediate punishment, or parole as allowed by law unless there has been:
  - (1) a hearing held as speedily as possible at which the defendant is present and represented by counsel; and
  - (2) a finding of record that the defendant violated a condition of probation, intermediate punishment, or parole.
- (C) Sentencing Procedures
  - (1) At the time of sentencing, the judge shall afford the defendant the opportunity to make a statement in his or her behalf and shall afford counsel for both parties the opportunity to present information and argument relative to sentencing.
  - (2) The judge shall state on the record the reasons for the sentence imposed.
  - (3) The judge shall advise the defendant on the record:

(a) of the right to file a motion to modify sentence and to appeal, of the time within which the defendant must exercise those rights, and of the right to assistance of counsel in the preparation of the motion and appeal; and

(b) of the rights, if the defendant is indigent, to proceed in forma pauperis and to proceed with assigned counsel as provided in Rule 122.

(4) The judge shall require that a record of the sentencing proceeding be made and preserved so that it can be transcribed as needed. The record shall include:

(a) the record of any stipulation made at a pre-sentence conference; and

(b) a verbatim account of the entire sentencing proceeding.

(D) Motion to Modify Sentence

A motion to modify a sentence imposed after a revocation shall be filed within 10 days of the date of imposition. The filing of a motion to modify sentence will not toll the 30-day appeal period.

**Comment**

This rule addresses Gagnon II revocation hearings only, and not the procedures for determining probable cause (Gagnon I). See *Gagnon v. Scarpelli*, 411 U. S. 778 (1973).

Paragraph (A) requires that the Gagnon II proceeding be initiated by a written request for revocation filed with the clerk of courts.

The judge may not revoke probation or parole on arrest alone, but only upon a finding of a violation thereof after a hearing, as provided in this rule. However, the judge need not wait for disposition of new criminal charges to hold such hearing. See *Commonwealth v. Kates*, 305 A.2d 701 (Pa. 1973).

This rule does not govern parole cases under the jurisdiction of the Pennsylvania Board of Probation and Parole, but applies only to the defendants who can be paroled by a judge. See 61 P. S. § 314. See also *Georgevich v. Court of Common Pleas of Allegheny County*, 507 A.2d 812 (Pa. 1986).

This rule was amended in 1996 to include sentences of intermediate punishment. See 42 Pa.C.S. §§ 763 and 9773. Rules 704, 720, and 721 do not apply to revocation cases.

Issues properly preserved at the sentencing proceeding need not, but may, be raised again in a motion to modify sentence in order to preserve them for appeal. In deciding whether to move to modify sentence, counsel must carefully consider whether the record created at the sentencing proceeding is adequate for appellate review of the issues, or the issues may be waived. See *Commonwealth v. Jarvis*, 663 A.2d 790, 791-2, n. 1 (Pa. Super. 1995). As a general rule, the motion to modify sentence under paragraph (D) gives the sentencing judge the earliest opportunity to modify the sentence. This procedure does not affect the court's inherent powers to correct an illegal sentence or obvious and patent mistakes in its orders at any time before appeal or upon remand by the appellate court. See, e.g., *Commonwealth v. Jones*, 554 A.2d 50 (Pa. 1989) (sentencing court can, sua sponte, correct an illegal sentence even after the defendant has begun serving the original sentence) and *Commonwealth v. Cole*, 263 A.2d 339 (Pa. 1970) (inherent power of the court to correct obvious and patent mistakes).

Under this rule, the mere filing of a motion to modify sentence does not affect the running of the 30-day period for filing a timely notice of appeal. Any appeal must be filed within the 30-day appeal period unless the sentencing judge within 30 days of the imposition of sentence expressly grants reconsideration or vacates the sentence. See *Commonwealth v. Coleman*, 721 A.2d 798, 799, fn. 2 (Pa. Super. 1998). See also Pa.R.A.P. 1701(b)(3).

Once a sentence has been modified or reimposed pursuant to a motion to modify sentence under paragraph (D), a party wishing to challenge the decision on the motion does not have to file an additional motion to modify sentence in order to preserve an issue for appeal, as long as the issue was properly preserved at the time sentence was modified or reimposed.

**Official Note:** Rule 1409 adopted July 23, 1973, effective 90 days hence; amended May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; Comment revised November 1, 1991, effective January 1, 1992; amended September 26, 1996, effective January 1, 1997; Comment revised August 22, 1997, effective January 1, 1998; renumbered Rule 708 and amended March 1, 2000, effective April 1, 2001; amended February 26, 2002, effective July 1, 2002.

*Committee Explanatory Reports:*

Report explaining the January 1, 1992 amendments published at 21 Pa.B. 2246 (May 11, 1990); Supplemental Report published with the Court's Order at 21 Pa.B. 5329 (November 16, 1991).

Final Report explaining the September 26, 1996 amendments published with the Court's Order at 26 Pa.B. 4900 (October 12, 1996).

Final Report explaining the August 22, 1997 Comment revision that cross-references Rule 721 published with the Court's Order at 27 Pa.B. 4553 (September 6, 1997).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

Final Report explaining the February 26, 2002 amendments concerning the 30-day appeal period published with the Court's Order at 32 Pa.B. 1394 (March 16, 2002).

**Source**

The provisions of this Rule 708 amended February 26, 2002, effective July 1, 2002, 32 Pa.B. 1393. Immediately preceding text appears at serial pages (264345) to (264347).

**PART B. Post-Sentence Procedures**

**Rule 720. Post-Sentencing Procedures; Appeal.**

(A) TIMING.

(1) Except as provided in paragraphs (C) and (D), a written post-sentence motion shall be filed no later than 10 days after imposition of sentence.

(2) If the defendant files a timely post-sentence motion, the notice of appeal shall be filed:

- (a) within 30 days of the entry of the order deciding the motion;
- (b) within 30 days of the entry of the order denying the motion by operation of law in cases in which the judge fails to decide the motion; or
- (c) within 30 days of the entry of the order memorializing the withdrawal in cases in which the defendant withdraws the motion.

(3) If the defendant does not file a timely post-sentence motion, the defendant's notice of appeal shall be filed within 30 days of imposition of sentence, except as provided in paragraph (A)(4).

(4) If the Commonwealth files a timely motion to modify sentence pursuant to Rule 721, the defendant's notice of appeal shall be filed within 30 days of the entry of the order disposing of the Commonwealth's motion.

(B) OPTIONAL POST-SENTENCE MOTION.

(1) Generally.

(a) The defendant in a court case shall have the right to make a post-sentence motion. All requests for relief from the trial court shall be stated with specificity and particularity, and shall be consolidated in the post-sentence motion, which may include:

- (i) a motion challenging the validity of a plea of guilty or nolo contendere, or the denial of a motion to withdraw a plea of guilty or nolo contendere;
- (ii) a motion for judgment of acquittal;
- (iii) a motion in arrest of judgment;
- (iv) a motion for a new trial; and/or
- (v) a motion to modify sentence.

(b) The defendant may file a supplemental post-sentence motion in the judge's discretion as long as the decision on the supplemental motion can be made in compliance with the time limits of paragraph (B)(3).

(c) Issues raised before or during trial shall be deemed preserved for appeal whether or not the defendant elects to file a post-sentence motion on those issues.

(2) Trial Court Action.

(a) Briefing Schedule

Within 10 days after a post-sentence motion is filed, if the judge determines that briefs or memoranda of law are required for a resolution of the motion, the judge shall schedule a date certain for the submission of briefs or memoranda of law by the defendant and the Commonwealth.

(b) Hearing; Argument

The judge shall also determine whether a hearing or argument on the motion is required, and if so, shall schedule a date or dates certain for one or both.

(c) Transcript

If the grounds asserted in the post-sentence motion do not require a transcript, neither the briefs nor hearing nor argument on the post-sentence motion shall be delayed for transcript preparation.

(3) Time Limits for Decision on Motion.

The judge shall not vacate sentence pending decision on the post-sentence motion, but shall decide the motion as provided in this paragraph.

(a) Except as provided in paragraph (B)(3)(b), the judge shall decide the post-sentence motion, including any supplemental motion, within 120

days of the filing of the motion. If the judge fails to decide the motion within 120 days, or to grant an extension as provided in paragraph (B)(3)(b), the motion shall be deemed denied by operation of law.

(b) Upon motion of the defendant within the 120-day disposition period, for good cause shown, the judge may grant one 30-day extension for decision on the motion. If the judge fails to decide the motion within the 30-day extension period, the motion shall be deemed denied by operation of law.

(c) When a post-sentence motion is denied by operation of law, the clerk of courts shall forthwith enter an order on behalf of the court, and, as provided in Rule 114, forthwith shall serve a copy of the order on the attorney for the Commonwealth, the defendant's attorney, or the defendant if unrepresented, that the post-sentence motion is deemed denied. This order is not subject to reconsideration.

(d) If the judge denies the post-sentence motion, the judge promptly shall issue an order and the order shall be filed and served as provided in Rule 114.

(e) If the defendant withdraws a post-sentence motion, the judge promptly shall issue an order memorializing the withdrawal, and the order shall be filed and served as provided in Rule 114.

(4) Contents of Order.

An order denying a post-sentence motion, whether issued by the judge pursuant to paragraph (B)(3)(d) or entered by the clerk of courts pursuant to paragraph (B)(3)(c), or an order issued following a defendant's withdrawal of the post-sentence motion, shall include notice to the defendant of the following:

- (a) the right to appeal and the time limits within which the appeal must be filed;
- (b) the right to assistance of counsel in the preparation of the appeal;
- (c) the rights, if the defendant is indigent, to appeal in forma pauperis and to proceed with assigned counsel as provided in Rule 122; and
- (d) the qualified right to bail under Rule 521(B).

(C) AFTER-DISCOVERED EVIDENCE.

A post-sentence motion for a new trial on the ground of after-discovered evidence must be filed in writing promptly after such discovery.

(D) SUMMARY CASE APPEALS.

There shall be no post-sentence motion in summary case appeals following a trial de novo in the court of common pleas. The imposition of sentence immediately following a determination of guilt at the conclusion of the trial de novo shall constitute a final order for purposes of appeal.

**Comment**

See Rules 606, 608 and 622.

For post-sentence procedures after a sentence of death has been imposed, see Rule 811.

The purpose of this rule is to promote the fair and prompt disposition of all issues relating to guilty pleas, trial, and sentence by consolidating all possible motions to be submitted for trial court review, and by setting reasonable but firm time limits within which the motion must be decided. Because the post-sentence motion is optional, the defendant may choose to raise any or all properly preserved issues in the trial court, in the appellate court, or both.

**TIMING**

Paragraph (A) contains the timing requirements for filing the optional post-sentence motion and taking an appeal. Under paragraph (A)(1), the post-sentence motion must be filed within 10 days of imposition of sentence.

When a defendant files a timely post-sentence motion, the 30-day period for the defendant's direct appeal on all matters in that case—including all issues related to any informations and any charges consolidated against the defendant for trial—is triggered by the trial judge's decision on the post-sentence motion, the denial of the motion by operation of law, or the withdrawal of the post-sentence motion. The appeal period runs from the entry of the order. As to the date of entry of orders, see Pa.R.A.P. 108. See also *Commonwealth v. Miller*, 715 A.2d 1203 (Pa. Super. 1998), concerning the time for appeal following the withdrawal of a post-sentence motion. No direct appeal may be taken by a defendant while his or her post-sentence motion is pending. See paragraph (A)(2).

If no timely post-sentence motion is filed, the defendant's appeal period runs from the date sentence is imposed. See paragraph (A)(3). Under paragraph (A)(4), however, when the defendant has not filed a post-sentence motion but the Commonwealth files a timely motion to modify sentence under Rule 721, it is the entry of the order disposing of the Commonwealth's motion that commences the 30-day period during which the defendant's notice of appeal must be filed. See Rule 721(B)(2)(b).

All references to appeals in this rule relate to the defendant's right to appeal. The rule does not address or alter the Commonwealth's right to appeal. For Commonwealth challenges to sentences, see Rule 721.

**OPTIONAL POST-SENTENCE MOTION**

Paragraph (B) represents a departure from traditional Pennsylvania practice. It is intended to give the defendant the option of resubmitting for the trial judge's consideration issues that were raised before or during trial. Although the defendant may choose to raise only some issues in the post-sentence motion, the decision on the motion triggers the appeal period on all properly preserved issues. See paragraph (A)(2).

Under paragraph (B)(1)(c), any issue raised before or during trial is deemed preserved for appeal whether or not the defendant chooses to raise the issue in a post-sentence motion. It follows that the failure to brief or argue an issue in the post-sentence motion would not waive that issue on appeal as long as the issue was properly preserved, in the first instance, before or during trial. Nothing in this rule, however, is intended to address Pa.R.A.P. 1925(b) or the preservation of appellate issues once an appeal is filed. See *Commonwealth v. Lord*, 553 Pa. 415, 719 A.2d 306 (1998) (any issues not raised in a 1925(b) statement will be deemed waived).

Nothing in this rule precludes the judge from granting a motion for extraordinary relief before sentencing under the special provisions of Rule 704(B). But see Rule 704(B)(3).

Under paragraph (A)(1), if a defendant chooses to file a post-sentence motion, the motion must be filed within 10 days of imposition of sentence. The filing of the written post-sentence motion triggers the time limits for decision on the motion, including any supplement to it filed pursuant to paragraph (B)(1)(b). See paragraph (B)(3)(a).

For procedures governing post-sentence challenges to the sufficiency of the evidence, see Rule 606(A)(6) and (A)(7). For challenges to the weight of the evidence, see Rule 607(A).

In those cases in which a petitioner under the Post Conviction Relief Act has been granted leave to file a post-sentence motion or to appeal nunc pro tunc, the filing of the post-sentence motion or the notice of appeal must comply with the timing requirements contained in paragraph (A) of this rule. See the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541 et seq.

#### BRIEFS; TRANSCRIPTS; ARGUMENT

Under paragraph (B)(2)(a), the judge should determine, on a case-by-case basis, whether briefs or memoranda of law are required for a fair resolution of the post-sentence motion. If they are not needed, or if a concise summary of the relevant law and facts is sufficient, the judge should so order. Any local rules requiring briefs or oral argument are inconsistent with this rule. See Rule 105(B)(1).

Under paragraph (B)(2)(c), the judge, in consultation with defense counsel and the attorney for the Commonwealth, should determine what, if any, portions of the notes of testimony must be transcribed so that the post-sentence motion can be resolved. The judge should then set clear deadlines for the court reporter to insure timely disposition of the motion. Nothing in this rule precludes the judge from ordering the transcript or portions of it immediately after the conclusion of the trial or the entry of a plea.

Paragraph (B)(1)(b) permits the trial judge to entertain a supplemental post-sentence motion at his or her discretion, as long as the decision on the supplemental issue(s) is made within the time limits of paragraph (B)(3).

For the recording and transcribing of court proceedings generally, see Rule 115. The requirements for the record and the writing of an opinion on appeal are set forth in the Pennsylvania Rules of Appellate Procedure.

There is no requirement that oral argument be heard on every post-sentence motion. When argument is to be heard, however, the judge should determine whether the post-sentence motion argument must be argued before the judge alone, or before a panel sitting en banc. It is recommended that, except in extraordinary circumstances, the post-sentence motion be heard by the judge alone. The judge may make any rulings that could be made by a court en banc. See *Commonwealth v. Norris*, 256 Pa. Super. 196, 389 A.2d 668 (1978). On the powers of courts en banc, see *Commonwealth v. Bonser*, 215 Pa. Super. 452, 258 A.2d 675 (1969). For cases in which there has been a change of venue, see Rule 584.

When oral argument is heard on the post-sentence motion, the defendant need not be present.

#### DISPOSITION

Under paragraph (B)(3), once the defendant makes a timely written post-sentence motion, the judge retains jurisdiction for the duration of the disposition period. The judge may not vacate the order imposing sentence pending decision on the post-sentence motion. This is so whether or not the Commonwealth files a motion to modify sentence. See Rule 721.

Paragraph (B)(3)(b) permits one 30-day extension of the 120-day time limit, for good cause shown, upon motion of the defendant. In most cases, an extension would be requested and granted when new counsel has entered the case. Only the defendant or counsel may request such an extension. The judge may not, sua sponte, extend the time for decision: a congested court calendar or other judicial delay does not constitute “good cause” under this rule.

The possibility of an extension is not intended to suggest that 120 days are required for decision in most cases. The time limits for disposition of the post-sentence motion are the outer limits. Easily resolvable issues, such as a modification of sentence or a guilty plea challenge, should ordinarily be decided in a much shorter period of time.

If the trial judge decides the motion within the time limits of this rule, the judge may grant reconsideration on the post-sentence motion pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701.1, but the judge may not vacate the sentence pending reconsideration. Rule 720(B)(3). The reconsideration period may not be used to extend the timing requirements set forth in paragraph (B)(3) for decision on the post-sentence motion: the time limits imposed by paragraphs (B)(3)(a) and (B)(3)(b) continue to run from the date the post-sentence motion was originally filed. The trial judge's reconsideration must therefore be resolved within the 120-day decision period of paragraph (B)(3)(a) or the 30-day extension period of paragraph (B)(3)(b), whichever applies. If a decision on the reconsideration is not reached within the appropriate period, the post-sentence motion, including any issues raised for reconsideration, will be denied pursuant to paragraph (B)(3)(c).

Under paragraph (B)(3)(a), on the date when the court disposes of the motion, or the date when the motion is denied by operation of law, the judgment becomes final for the purposes of appeal. See Judicial Code, 42 Pa.C.S. §§ 102, 722, 742, 5105(a) and *Commonwealth v. Bolden*, 472 Pa. 602, 373 A.2d 90 (1977).

An order entered by the clerk of courts under paragraph (B)(3)(c) constitutes a ministerial order and, as such, is not subject to reconsideration or modification pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701.

If the motion is denied by operation of law, paragraph (B)(3)(c) requires that the clerk of courts enter an order denying the motion on behalf of the court and immediately notify the attorney for the Commonwealth, the defendant's attorney, or the defendant if unrepresented, that the motion has been denied. This notice is intended to protect the defendant's right to appeal. The clerk of courts also must comply with the filing, service, and docket entry requirements of Rule 114.

The disposition of a motion to modify a sentence imposed after a revocation hearing is governed by Rule 708 (Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition).

#### CONTENTS OF ORDER

Paragraph (B)(4) protects the defendant's right to appeal by requiring that the judge's order denying the motion, the clerk of courts' order denying the motion by operation of law, or the order entered memorializing a defendant's withdrawal of a post-sentence motion, contain written notice of the defendant's appeal rights. This requirement ensures adequate notice to the defendant, which is important given the potential time lapse between the notice provided at sentencing and the resolution of the post-sentence motion. See Rule 704(C)(3). See also *Commonwealth v. Miller*, 715 A.2d 1203 (Pa. Super. 1998), concerning the contents of the order memorializing the withdrawal of a post-sentence motion.

When a defendant withdraws a post-sentence motion in open court and on the record, the judge should orally enter an order memorializing the withdrawal for the record, and give the defendant notice of the information required by paragraph (B)(4). See *Commonwealth v. Miller*, supra.

#### MISCELLANEOUS

*Commonwealth v. Grant*, 572 Pa. 48, 813 A.2d 726 (2002), which overrules *Commonwealth v. Hubbard*, 472 Pa. 259, 372 A.2d 687 (1977), provides that a defendant should wait until collateral review to raise ineffective counsel claims.

Under paragraph (B)(1)(a), the grounds for the post-sentence motion should be stated with particularity. Motions alleging insufficient evidence, for example, must specify in what way the evidence was insufficient, and motions alleging that the verdict was against the weight of the evidence must specify why the verdict was against the weight of the evidence.

Because the post-sentence motion is optional, the failure to raise an issue with sufficient particularity in the post-sentence motion will not constitute a waiver of the issue on appeal as long as the issue was preserved before or during trial. See paragraph (B)(1)(c).

Under paragraph (B)(1)(a)(ii), a challenge to the sufficiency of the evidence would be made in a motion for judgment of acquittal. See Rule 606.

A post-sentence challenge to a guilty plea under this rule is distinct from a motion to withdraw a guilty plea prior to sentence. See Rule 591. Cf. Standards Relating to Pleas of Guilty § 2.1(a)(ii), ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE (Approved Draft, 1968). Properly preserved issues related to guilty pleas need not be raised again in the post-sentence motion, but the defendant may choose to do so. A key consideration for the defendant is whether the record will be adequate for appellate review. If counsel is uncertain about the record, it is recommended that the guilty plea be challenged in the post-sentence motion.

Issues properly preserved at the sentencing proceeding need not, but may be raised again in a motion to modify sentence in order to preserve them for appeal. In deciding whether to move to modify sentence, counsel must carefully consider whether the record created at the sentencing proceeding is adequate for appellate review of the issues, or the issues may be waived. See *Commonwealth v. Jarvis*, 444 Pa. Super. 296, 663 A.2d 790 (1995). See also Rule 704(C)(4). As a general rule, the motion to modify sentence under paragraph (B)(1)(a)(v) gives the sentencing judge the earliest opportunity to modify the sentence. This procedure does not affect the court's inherent powers to correct an illegal sentence or obvious and patent mistakes in its orders at any time before appeal or upon remand by the appellate court. See, e.g., *Commonwealth v. Jones*, 520 Pa. 385, 554 A.2d 50 (1989) (sentencing court can, sua sponte, correct an illegal sentence even after the defendant has begun serving the original sentence) and *Commonwealth v. Cole*, 437 Pa. 288, 263 A.2d 339 (1970) (inherent power of the court to correct obvious and patent mistakes).

Once a sentence has been modified or reimposed pursuant to a motion to modify sentence under paragraph (B)(1)(a)(v) or Rule 721, a party wishing to challenge the decision on the motion does not have to file an additional motion to modify sentence in order to preserve an issue for appeal, as long as the issue was properly preserved at the time sentence was modified or reimposed.

Commonwealth challenges to sentences are governed by Rule 721. If the defendant files a post-sentence motion, the time limits for decision on the defendant's motion govern the time limits for disposition of the Commonwealth motion to modify sentence, regardless of which motion is filed first. See Rule 721(C)(1). If the defendant elects to file an appeal and the Commonwealth files a motion to modify sentence, decision on the Commonwealth's motion triggers the defendant's 30-day appeal period. See Rule 720(A)(4).

Given that the Commonwealth has 10 days to file a motion to modify sentence under Rule (B)(1), it is possible that the defendant might elect to file a notice of appeal under Rule 720 (A)(3) followed by the Commonwealth's filing a timely motion to modify sentence. When this occurs, the defendant's notice of appeal is rendered premature, because the entry of the order disposing of the Commonwealth's motion to modify sentence then becomes the triggering device for the defendant's notice of appeal. In this situation, counsel for the defendant should be aware that Pa.R.A.P. 905(a) addresses this problem. In response to an extensive history of appeals that were quashed because of the premature filing of the notice of appeal, the last sentence of Pa.R.A.P. 905(a) was drafted to create a legal fiction that treats a premature notice of appeal as filed after the entry of the appealable order. For a discussion of this provision, see Darlington, McKeon, Schuckers, and Brown, *Pennsylvania Appellate Practice*, 2d., § 905.3.

For bail proceedings pending the outcome of the post-sentence motion, see Rules 521 and 523.

Unlike ineffective counsel claims, which are the subject of *Commonwealth v. Grant*, 572 Pa. 48, 813 A.2d 726 (2002), paragraph (C) requires that any claim of after-discovered evidence must be raised promptly after its discovery. Accordingly, after-discovered evidence discovered during the post-sentence stage must be raised promptly with the trial judge at the post-sentence stage; after-discovered evidence discovered during the direct appeal process must be raised promptly during the direct appeal process, and should include a request for a remand to the trial judge; and after-

discovered evidence discovered after completion of the direct appeal process should be raised in the context of the PCRA. See 42 Pa.C.S. § 9545(b)(1)(ii) and (b)(2) (PCRA petition raising after-discovered evidence must be filed within 60 days of date claim could have been presented). *Commonwealth v. Kohan*, 825 A.2d 702 (Pa. Super. 2003), is superseded by the 2005 amendments to paragraphs (A) and (C) of the rule.

Although there are no post-sentence motions in summary appeals following the trial de novo pursuant to paragraph (D), nothing in this rule is intended to preclude the trial judge from acting on a defendant's petition for reconsideration. See the Judicial Code, 42 Pa.C.S. § 5505. See also *Commonwealth v. Dougherty*, 451 Pa. Super. 248, 679 A.2d 779, 784 (1996). The time for appeal in summary cases following a trial de novo runs from the imposition of sentence.

**Official Note:** Previous Rule 1410, adopted May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; rescinded March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994, and replaced by present Rule 1410. Present Rule 1410 adopted March 22, 1993 and amended December 17, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996. Comment revised September 26, 1996, effective January 1, 1997; amended August 22, 1997, effective January 1, 1998; Comment revised October 15, 1997, effective January 1, 1998; amended July 9, 1999, effective January 1, 2000; renumbered Rule 720 and amended March 1, 2000, effective April 1, 2001; amended August 21, 2003, effective January 1, 2004; amended March 3, 2004, effective July 1, 2004; Comment revised June 4, 2004, effective November 1, 2004; amended June 8, 2005, effective August 1, 2005; Comment revised January 18, 2007, effective August 1, 2007.

*Committee Explanatory Reports:*

Final Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Report explaining the December 17, 1993 amendments published with the Court's Order at 24 Pa.B. 334 (January 15, 1994).

Final Report explaining the September 13, 1995 amendments concerning bail published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the September 26, 1996 Comment revision on Rule 1409 procedures published at 26 Pa.B. 4900 (October 12, 1996).

Final Report explaining the August 22, 1997 amendments to paragraphs (A)(4) and (B)(3) published with the Court's Order at 27 Pa.B. 4553 (September 6, 1997).

Final Report explaining the Comment references to Rule 1124A (Challenges to the Weight of the Evidence) and to *Commonwealth v. Dougherty* published with the Court's Order at 27 Pa.B. 5594 (November 1, 1997).

Final Report explaining the July 9, 1999 amendments to paragraphs (A)(2) and (B)(4) concerning time for appeal and contents of the order entered following withdrawal of post-sentence motion, and revision of the Comment adding the citation to *Commonwealth v. Lord*, published with the Court's Order at 29 Pa.B. 3836 (July 24, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the August 21, 2003 changes to Rule 720 concerning the timeliness of filings and the order published at 33 Pa.B. 4438 (September 6, 2003).

Final Report explaining the March 3, 2004 amendments updating the cross-references correlative to the March 3, 2004 changes to the motions rules published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the June 8, 2005 changes concerning ineffective counsel claims and concerning after-discovered evidence published with the Court's Order at 35 Pa.B. 3545 (June 25, 2005).

Final Report explaining the January 18, 2007 revision of the last paragraph of the Comment clarifying the time for appeal following a trial de novo published with the Court's Order at 37 Pa.B. 526 (February 3, 2007).

#### Source

The provisions of this Rule 720 amended August 21, 2003, effective January 1, 2004, 33 Pa.B. 4436; amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547; amended June 4, 2004, effective November 1, 2004, 34 Pa.B. 3105; amended June 8, 2005, effective August 1, 2005, 35 Pa.B. 3543; amended February 2, 2007, effective August 1, 2007, 37 Pa.B. 523. Immediately preceding text appears at serial pages (312463) to (312471).

### **Rule 721. Procedures for Commonwealth Challenges to Sentence; Sentencing Appeals.**

#### (A) Commonwealth Challenges to Sentence

(1) The Commonwealth may challenge a sentence by filing a motion to modify sentence, by filing an appeal on a preserved issue, or by filing a motion to modify sentence followed by an appeal.

(2) Sentencing issues raised by the Commonwealth at the sentencing proceeding shall be deemed preserved for appeal whether or not the Commonwealth elects to file a motion to modify sentence on those issues.

#### (B) Timing

(1) Motion for Modification of Sentence. A Commonwealth motion for modification of sentence shall be filed no later than 10 days after imposition of sentence.

#### (2) Appeal of Sentence.

##### (a) Appeal Directly from Order Imposing Sentence.

(i) If the defendant has filed a post-sentence motion, and the Commonwealth elects to challenge the sentence by filing an appeal directly from the order imposing sentence, notice of the Commonwealth's appeal shall be filed within 30 days of the entry of the order disposing of the defendant's post-sentence motion pursuant to Rule 720(B)(3).

(ii) If the defendant has not filed a post-sentence motion, the Commonwealth's notice of appeal shall be filed within 30 days of the imposition of sentence.

##### (b) Appeal following Disposition of Commonwealth Motion to Modify Sentence.

(i) If the defendant has filed a post-sentence motion, the Commonwealth's notice of appeal shall be filed within 30 days of the entry of the

orders disposing of the Commonwealth's and the defendant's motions pursuant to paragraph (C)(1).

(ii) If the defendant has not filed a post-sentence motion, the Commonwealth's notice of appeal shall be filed within 30 days of the entry of the order disposing of the Commonwealth's motion pursuant to paragraph (C)(2).

(C) Trial Court Action; Disposition

If the attorney for the Commonwealth files a timely motion for modification of sentence pursuant to paragraph (A)(1), the judge shall dispose of the motion as provided in this paragraph.

(1) If the defendant has filed a post-sentence motion, the judge shall not vacate sentence but shall decide the Commonwealth's motion and the defendant's post-sentence motion simultaneously. The Rule 720(B)(3) time limits for deciding the defendant's post-sentence motion, including the automatic denial provisions, shall apply to the disposition of the Commonwealth's motion. The starting date for disposition of both motions shall be the date on which the defendant filed the post-sentence motion.

(2) If the defendant has not filed a post-sentence motion, the judge shall not vacate sentence but shall decide the Commonwealth's motion within 120 days of the filing of the motion. If the judge fails to decide the Commonwealth's motion within 120 days, the motion shall be deemed denied by operation of law.

(D) Entry of Order by Clerk of Courts

(1) When the Commonwealth's motion for modification of sentence is denied by operation of law, the clerk of courts shall forthwith:

- (a) enter an order on behalf of the court denying the Commonwealth's motion for modification of sentence by operation of law; and
- (b) furnish a copy of the order, by mail or personal delivery, to the attorney for the Commonwealth, the defendant, and defense counsel.

(2) An order entered by the clerk of courts pursuant to this section shall not be subject to reconsideration.

**Comment**

Rule 721 clarifies the procedures for Commonwealth challenges to sentences in light of the post-sentence procedures adopted in 1993. See Rule 720. This rule does not address any other type of Commonwealth challenge or Commonwealth appeals generally.

Historically, the Commonwealth has been required to raise a discretionary sentencing issue at the sentencing hearing or in a post-trial motion to modify sentence in order to preserve the issue for appellate review. See *Commonwealth v. Eyster*, 401 Pa. Super. 477, 585 A.2d 1027 (1991) (en banc), appeal denied 529 Pa. 646, 602 A.2d 857 (1992). Challenges to the legality of a sentence, however, are not waived if the Commonwealth fails to timely file a motion for modification. See *Commonwealth v. Smith*, 529 Pa. 380, 598 A.2d 268 (1991).

Under Rule 721, the Commonwealth's motion for modification of sentence is optional, as long as any discretionary sentencing issue is properly preserved at the time sentence was imposed. Before

forgoing trial court review and proceeding with a direct appeal, the attorney for the Commonwealth must therefore be sure that the record created at the sentencing proceeding is adequate for appellate review of the issue, or the issue may be waived. See *Commonwealth v. Jarvis*, 444 Pa. Super. 295, 663 A.2d 790 (1995), at n. 1.

As a general rule, a motion for modification of sentence gives the sentencing judge the earliest opportunity to modify the sentence. This procedure does not affect the court's inherent powers to correct an illegal sentence or obvious and patent mistakes in its orders at any time before appeal or upon remand by the appellate court. See, e.g., *Commonwealth v. Jones*, 520 Pa. 385, 554 A.2d 50 (1989) (sentencing court can, sua sponte, correct an illegal sentence even after the defendant has begun serving the original sentence) and *Commonwealth v. Cole*, 437 Pa. 288, 263 A.2d 339 (1970) (inherent power of the court to correct obvious and patent mistakes).

Once a sentence has been modified or reimposed pursuant to a motion to modify sentence under this rule or Rule 720(B)(1)(a)(v), a party wishing to challenge the decision on the motion does not have to file an additional motion to modify sentence in order to preserve an issue for appeal, as long as the issue was properly preserved at the time the sentence was modified or reimposed.

#### *Trial Court Action*

Paragraph (C) sets forth the procedures for trial court action on the Commonwealth's motion for modification. Key to the timing of the judge's decision on the Commonwealth's motion is whether the defendant files a post-sentence motion.

#### *Rule 720 Motion Filed*

Under paragraph (C)(1), if the defendant has filed a post-sentence motion, the judge is not permitted to vacate sentence and must decide the defendant's post-sentence motion and the Commonwealth's motion simultaneously. The date on which the defendant's post-sentence motion is filed, see Rule 720(A)(1), triggers the time limit within which the judge must also dispose of the Commonwealth's motion, regardless of which motion is filed first. If the judge fails to decide the Commonwealth's motion within this time limit, the motion is deemed denied by operation of law. See Rule 720(B)(3).

#### *Rule 720 Motion Not Filed*

When the defendant has not filed a post-sentence motion, the disposition of the Commonwealth's motion is governed by paragraph (C)(2). The judge may not vacate sentence, but has 120 days to decide the Commonwealth's motion or the motion is deemed denied by operation of law. If the judge decides the motion within the 120-day limit and then agrees to reconsider, the reconsideration must be resolved within the original 120-day time limit. The judge may not vacate sentence in order to reconsider the motion or otherwise use the reconsideration period to extend the 120-day time limit. It follows that even if the defendant has filed a notice of appeal, the procedural exceptions provided in Pa.R.A.P. 1701(b)(3) do not apply to challenges to sentences.

See also the Rule 720 Comment under "Disposition."

#### *Entry of Order by Clerk of Courts*

Under paragraph (D)(1), when a Commonwealth motion to modify sentence has been denied by operation of law, the clerk of courts must enter an order on behalf of the court and furnish copies to the attorney for the Commonwealth, the defendant, and defense counsel. The clerk of courts' order is ministerial and not subject to reconsideration. See paragraph (D)(2). The clerk of courts also must comply with the filing, service, and docket entry requirements of Rule 114.

#### *Appeal of Sentence*

Paragraph (B)(2) contains the timing requirements for Commonwealth notices of appeal.

#### *No Commonwealth Motion to Modify Sentence Filed*

Paragraph (B)(2)(a) covers the time for filing a notice of appeal when the Commonwealth has elected not to file a motion to modify sentence with the trial judge. The time for filing the Commonwealth's notice of appeal under this paragraph depends on whether the defendant has filed a post-sentence motion. When the defendant files a post-sentence motion, paragraph (B)(2)(a)(i) provides that the entry of the order disposing of the defendant's post-sentence motion triggers the 30-day period during which the Commonwealth's notice of appeal must be filed. If no post-sentence motion is filed, it is the imposition of sentence that triggers the Commonwealth's 30-day appeal period. See Rule 721(B)(2)(a)(ii).

Given that a defendant has 10 days to file a post-sentence motion under Rule 720(A)(1), it is possible that the Commonwealth might file a notice of appeal under paragraph (B)(2)(a)(ii) followed by the defendant's filing a timely post-sentence motion. When this occurs, the Commonwealth's notice of appeal is rendered premature, because it is the entry of the order disposing of the defendant's post-sentence motion that becomes the triggering device for the Commonwealth's notice of appeal. In this situation, counsel for the Commonwealth should be aware that Pa.R.A.P. 905(a) addresses this problem. In response to an extensive history of appeals which were quashed because of the premature filing of the notice of appeal, the last sentence of Pa.R.A.P. 905(a) was drafted to create a legal fiction that treats a premature notice of appeal as filed after the entry of the appealable order. For a discussion of this provision, see Darlington, McKeon, Schuckers, and Brown, *Pennsylvania Appellate Practice*, 2d., § 905.3.

*Commonwealth Motion to Modify Sentence Filed*

Paragraph (B)(2)(b) covers the time for filing the notice of appeal when the Commonwealth has elected to file a motion to modify sentence with the trial judge. As in paragraph (B)(2)(a), the time for notice depends on whether the defendant files a post-sentence motion. If the defendant has filed a post-sentence motion, the disposition of the Commonwealth's and the defendant's motion is simultaneous. See Rule 721(C)(1). If the defendant does not file a post-sentence motion, the 30-day appeal period begins to run from the entry of the order disposing of the Commonwealth's motion pursuant to the time limit of paragraph (C)(2).

**Official Note:** Rule 1411 adopted August 22, 1997, effective January 1, 1998; renumbered Rule 721 and amended March 1, 2000, effective April 1, 2001; Comment revised March 3, 2004, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007.

*Committee Explanatory Reports:*

Final Report explaining the new rule published with the Court's Order at 27 Pa.B. 4553 (September 6, 1997).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the March 3, 2004 amendments updating the cross-references correlative to the March 3, 2004 changes to the motions rules published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the January 18, 2007 amendments clarifying the time for appeal in paragraph (B)(2)(a)(ii) published with the Court's Order at 37 Pa.B. 526 (February 3, 2007).

**Source**

The provisions of this Rule 721 amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547; amended February 2, 2007, effective August 1, 2007, 37 Pa.B. 523. Immediately preceding text appears at serial pages (312471), (299437) to (299438) and (303705) to (303707).

**Rule 722. Contents of Order for Expungement.**

Every order for expungement shall include:

- (1) the defendant's name, date of birth, and social security number;
- (2) the OTN;
- (3) the district justice docket number and the magisterial district number, or the Municipal Court docket number;
- (4) the court of common pleas docket number, if any;
- (5) the specific charges, as they appear on the charging document, to be expunged;
- (6) the date of arrest and the criminal justice agency which made the arrest;
- (7) the disposition;
- (8) the reason for expungement; and
- (9) the criminal justice agencies upon which certified copies of the order shall be served.

**Comment**

This rule sets forth the information that must be included in every expungement order, but is not intended to be an exclusive list.

When a summons instead of an arrest warrant is issued pursuant to Rule 518, the date of the summons constitutes the "date of arrest" for purposes of paragraph (6).

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102.

The "reason for expungement" in paragraph (8) means, for example, acquittal, successful completion of ARD, or age.

**Official Note:** Rule 9017 adopted February 24, 1993, effective July 1, 1993; renumbered Rule 722 and Comment revised March 1, 2000, effective April 1, 2001.

*Committee Explanatory Reports:*

Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 1134 (March 13, 1993).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

[Next page is 8-1.]

7-26

(325812) No. 389 Apr. 07

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