

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1240

Amending Criminal Rule 35
concerning correction and
modification of sentence.

IT IS ORDERED:

1. Paragraph (a) of Criminal Rule 35 is amended to read as follows:

(a) ~~Correction or Reduction of Sentence.~~

The court may correct an illegal sentence at any time. ~~The court may reduce a sentence within 120 days of the day it is imposed. If the defendant takes an appeal, and the judgment is affirmed or the appeal is dismissed, the court also may reduce a sentence within 120 days of the day on which jurisdiction over the case is returned to the trial court under Appellate Rule 507(b), unless the defendant petitions the United States Supreme Court for certiorari, in which case the 120 days commences on the day that the Supreme Court denies relief.~~

2. Paragraph (b) of Criminal Rule 35 is amended to read as follows:

(b) ~~Modification or Reduction of Sentence~~ ~~— Changed — Conditions — or Circumstances.~~ The court

(1) may modify or reduce a sentence at ~~any time during a term of imprisonment if it finds that conditions or circumstances have changed since the original sentencing hearing such that the purposes of the original~~

~~sentence are not being fulfilled. within 180 days of the distribution of the written judgment upon a motion made in the original criminal case;~~

~~(1) (2) The sentencing court is not required to~~ may not entertain a second or successive motion for similar relief brought under this paragraph on behalf of the same ~~petitioner.~~ defendant;

~~(2) (3) No sentence may be reduced or modified~~ may not reduce or modify a sentence so as to impose a term of imprisonment ~~which~~ that is less than the minimum required by ~~law.~~

~~(3) A motion made under this paragraph must be made in the original criminal case.~~

~~(4)~~ may not reduce a sentence imposed in accordance with a plea agreement between the defendant and the prosecuting attorney that provided for imposition of a specific sentence or a sentence equal to or less than a specified maximum; and

~~(5)~~ may not reduce a sentence below the minimum specified in a plea agreement between the defendant and the prosecuting attorney.

3. Paragraph (c) of Criminal Rule 35 is amended to read as follows:

(c) Victim's Rights. The victim may

comment on motions made under this rule as follows:

* * * *

4. Paragraph (d) of Criminal Rule 35 is amended to read as follows:

(d) Definitions. In this rule,

(1) "crime against a person" has the meaning given in AS 33.30.901; and

(2) "victim" has the meaning given in AS 12.55.185.

5. Criminal Rule 35 is amended to include new paragraphs (e) and (f) as follows:

(e) Appointed Counsel. An indigent defendant not already represented by counsel may request the court to appoint counsel for purposes of filing a motion under this rule. If the defendant is represented by appointed counsel, counsel may file with the court and serve on the prosecuting attorney a certificate that counsel

(1) does not have a conflict of interest;

(2) has completed a review of the facts and law related to sentence;

(3) has consulted with the applicant

and, if appropriate, with trial and appellate counsel; and

(4) has determined that a motion under this subsection would not warrant relief by the court.

(f) **Withdrawal of Appointed Counsel and Dismissal.** If appointed counsel has filed a certificate under (e) of this rule, and it appears to the court that the applicant is not entitled to relief, the court shall indicate its intention to permit counsel to withdraw and, if appropriate, to dismiss the motion. The applicant and the prosecuting attorney shall be given an opportunity to reply to the proposed withdrawal or dismissal. If the applicant files a response and the court finds that a motion under this rule would not warrant relief, the court shall permit counsel to withdraw and, if appropriate, dismiss the motion. If the court finds that a motion under this rule may warrant relief, the court may direct that the proceedings continue or take other appropriate action.

6. Sections 1, 2, and 5 of this order are adopted for the sole reason that the legislature has mandated the amendments.

7. The following note is added at the end of Criminal Rule 35:

NOTE to SCO 1240 : Ch. 79 §§ 29-31 SLA 1995, effective July 1, 1995, repealed and reenacted paragraphs (a) and (b) of Criminal Rule 35 and added paragraphs (e) and (f). Sections 1, 2,

and 5 of this supreme court order are adopted for the sole reason that the legislature has mandated the amendments.

Sec. 42 of ch. 79 SLA 1995 includes the following statement regarding the applicability of the changes to Criminal Rule 35: "Notwithstanding Rule 35, Alaska Rules of Criminal Procedure, as amended in secs. 29 - 31 of this Act, the trial court, under Rule 35(b), as amended by the Act, may reduce the sentence of a defendant sentenced before the effective date of this section if the defendant took an appeal and the sentence reduction occurs within 120 days of the day that jurisdiction is returned to the trial court under Rule 507(b), Alaska Rules of Appellate Procedure, unless the defendant petitions the United States Supreme Court for certiorari, in which case the 120 days commences on the day that the Supreme Court denies relief."

Ch. 7 § 6 SLA 1996, effective June 27, 1996, has the effect of amending Criminal Rule 35(b) as revised by the legislature in 1995. Ch. 7 § 6 SLA 1996 amends AS 12.55.125(j) to allow a defendant sentenced to a mandatory 99-year term of imprisonment under AS 12.55.125(a) to apply once for a modification or reduction of sentence after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010. It also amends AS 12.55.125(j) to allow a defendant sentenced to a definite term of imprisonment under AS 12.55.125(l) to apply once for a modification or reduction of sentence after serving the greater of one-half the definite term or 30 years.

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DATED: May 2, 1996

EFFECTIVE DATE: July 15, 1996

/s/
Chief Justice Compton

/s/
Justice Rabinowitz

/s/
Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Fabe