

RULES OF THE SENTENCE REVIEW DIVISION

In order to provide for the more effective administration of the review of sentences imposed on convicted felons in the State of Montana, in accordance with Title 46, Chapter 18, of the Montana Code Annotated, 1985, the Sentence Review Division of the Supreme Court by this order hereby adopted the following rules, thereby superseding all previous such rules.

RULE 1.

After notice and within sixty (60) days after a defendant is sentenced to a term of one year or more in the State Prison, the defendant may apply to have his sentence reviewed by the Sentence Review Division of the Supreme Court of Montana. It is the duty of trial counsel to protect the defendant's interest in this respect and the duty of the trial court to ensure that the defendant understands he has a right to review of the sentence imposed. If such review is requested, the sentence may be increased, decreased, affirmed as entered by the trial court, or otherwise altered by the Sentence Review Division. The filing of application for review of sentence does not stay execution of the sentence.

RULE 2.

The Clerks of the District Courts of the State of Montana shall serve upon persons sentenced to more than one (1) year in the State Prison a completed Montana Sentence Review Form No. 1, together with three (3) blank copies of Montana Sentence Review Form No. 2. The clerk shall further serve upon the defendant a copy of the court's Sentence and Judgment. Service shall also be made when a deferred or suspended sentence is revoked and the defendant is sentenced to more than one (1) year in the State Prison.

RULE 3.

The defendant's Application for Sentence Review (Montana Sentence Review Form No. 2) must be filed with the Clerk of the District Court for the county from which the defendant was sentenced. In the event the defendant has been sentenced and is serving time upon two sentences from separate counties, separate applications must be submitted to each Clerk of Court for the county from which the defendant was sentenced, if the defendant wants each sentence reviewed.

RULE 4.

The Clerk of the District Court will file the original copy of said application for Review of Sentence (Montana Sentence Review Form No. 2) in the court file of the defendant. The clerk will then complete Clerk's Certificate and Statement (Montana Sentence Review Form No. 3) and forward it, together with the original court file and other documents required by Form No. 3 to:

Sentence Review Division
P.O. Box 203002
Helena, Montana 59620

RULE 5.

The Clerk of the District Court shall forward said Clerk's Certificate and Statement, together with all documents required, to the secretary of the Sentence Review Division within ten (10) working days after receipt of the Application for Review of Sentence.

RULE 6.

The Clerk of the District Court shall forward a copy of the Application for Review of Sentence (Montana Sentence Review Form No. 2) to the Judge who imposed the sentence, to the County Attorney for the County from which the defendant was sentenced and to the Defendant's counsel of record.

RULE 7.

In the event the Application for Review of Sentence is filed more than sixty (60) days after the sentence is imposed, the Clerk shall proceed as if it were filed on time. However, the secretary of the Sentence Review Division shall thereafter promptly notify the defendant that the application is untimely and request the defendant file within thirty (30) days a statement of reasons why the Sentence Review Division should hear

the matter. The Sentence Review Division will rule upon such matters after said thirty (30) days has elapsed and may refuse to hear such application if the reasons for the late filing are insufficient. The Sentence Review Division will hear late applications which have been caused by the taking of an appeal to the Montana Supreme Court.

RULE 8.

When there is a pending appeal or request of post-conviction relief, the application for Sentence Review should not be filed until such time as the petition for post-conviction relief or the appeal has been determined, at which time the defendant shall be given sixty (60) days in which to file for review of the sentence.

RULE 9.

The Secretary of the Sentence Review Division shall not accept an Application for Review of Sentence directly; all such applications must be filed in compliance with MCA 46-18-903, which requires they be filed with the Clerk of the District Court.

RULE 10.

The Secretary of the Sentence Review Division shall keep a minute book in which shall be recorded the date and time the completed application for review was received by the Clerk of the District Court. The Sentence Review Division shall hear applications in the order they are received by the respective Clerk of Court unless circumstances make such order impractical or the Sentence Review Division orders otherwise.

The Sentence Review Division records are public records and open to public inspection except for decisions which are pending and which have not been released or finally approved by the judges.

RULE 11.

After the Application for Review is filed as herein provided, the Secretary of the Sentence Review Division shall accept for filing briefs concerning the review of sentence, and any material considered by the sentencing judge at the time of the imposition of sentence. The Sentence Review Division will not consider any new material, letters, petition, or matters which were not presented to the sentencing judge. Any briefs or memoranda must be submitted at least two weeks before the scheduled hearing date in order to allow the judges of the Sentence Review Division an opportunity to review such material before hearing.

RULE 12.

The Sentence Review Division shall meet at the Montana State Prison, Deer Lodge, Montana, at the Women's Correctional Center in Billings, Montana, or at some other convenient place, at such times as shall be approved by the Division. The Secretary shall notify each member of the dates of such meetings.

RULE 13.

The Secretary of the Sentence Review Division shall send notices of the time and place of such hearing at least thirty (30) days prior to such hearing to each of the following:

- A. The judge who imposed the sentence;
- B. The County Attorney for the county from which the defendant was sentenced;
- C. The defendant;
- D. The defendant's attorney of record in the District Court or such other attorney who has appeared in the case and made his or her appearance known to the Division;
- E. Any other person who has requested such notice.

RULE 14.

The Sentence Review Division's hearings shall be public. However, admission to the hearings shall be subject to the rules of admission into the Montana State Prison at Deer Lodge and the Montana Women's Prison at Billings generally. Proceedings shall be as informal as possible to allow full expression by all parties and their attorneys. The Rules of Evidence will serve as a guide but are not binding in the proceeding. The defendant shall have the right to appear and to be represented by counsel. For the purpose of this rule, the appearance of the defendant may be accomplished by a video conference so that all participants can see each other. The State may be represented by the County Attorney and/or the Attorney General, or their deputies.

RULE 15.

The record from which the Sentence Review Division shall conduct its review shall consist of the following:

- A. A copy of the information and affidavit in support of the motion for leave to file;
- B. A copy of any written plea agreement or transcript setting forth the terms of any oral agreement;
- C. A copy of the pre-sentence report;
- D. A copy of the sentence and judgment and reasons for same, or transcript containing the oral pronouncement of the reasons if not contained in the judgement;
- E. Other documents relied on by the sentencing judge.

Failure to include any of the foregoing items may be cause for the Sentence Review Division to decline to conduct the sentence review and the Sentence Review Division may remand the same to the Clerk of the District Court for compilation of the necessary documents. If the sentencing judge did not set forth his reasons for sentence, or did not consider a pre-sentence report, or if there are critical matters which should have been presented at the sentencing hearing, the Sentence Review Division may vacate the sentence and remand it for re-sentencing based upon proper documentation. In the event the sentence and judgment contains clerical errors, the Sentence Review Division may vacate the sentence require for re-sentencing or may correct such clerical errors in the interest of judicial economy.

RULE 16.

The primary objective of the Sentence Review Division is to provide for uniformity in sentencing when appropriate and to ensure that the interest of the public and the defendant are adequately addressed by the sentence. In reviewing the sentences the Sentence Review Division shall consider the correctional policy of the State of Montana as set forth in the Section 46-18-101 to protect society by preventing crime through punishment and rehabilitation of the convicted. The Sentence Review Division will hold an individual responsible and accountable for his/her actions and shall ensure that persons convicted of crime are dealt with in accordance with their individual characteristics, circumstances, needs and potentialities. The review shall be undertaken to assure that the sentence imposed is based on the following:

- A. The crime committed;
- B. The prospects of rehabilitation of the offenders;
- C. The circumstances under which the crime was committed;
- D. The criminal history of the offender.

The Sentence Review Division shall further review the sentences, with a view to removing dangerous and habitual offenders from society and providing corrective treatment for such long terms as needed. In other cases, the Sentence Review Division shall consider whether the offender could have been dealt with adequately by probation, suspended sentence or fine where such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual.

RULE 17.

The sentence imposed by the District Court is presumed correct, and the sentence will not be reduced or increased unless it is deemed clearly inadequate or excessive.

RULE 18.

The Sentence Review Division will not consider any matter or development subsequent to the imposition of the sentence in the District Court. Matters not to be considered include:

- A. Institutional adjustment;
- B. New social information;
- C. Institutional disciplinary actions pending or had against the defendant;
- D. Work report; or
- E. Inmate release plans.

RULE 19.

If the Sentence Review Division orders a different sentence than the one originally imposed, the District Court in a convenient county shall re-sentence the defendant as ordered by the Sentence Review Division.

A. The time served on any sentence reviewed shall be deemed to have been served on the sentence as revised by the Sentence Review Division.

B. The decision of the Sentence Review Division will be final. The decision and reason for such decision will be stated in a written opinion reported and published in the Montana Reports.

C. Copies of the decisions of the Sentence Review Division shall be furnished to the following:

1. The Clerk of the District Court from which the defendant was originally sentenced;
2. The judge who imposed the sentence reviewed;
3. The County Attorney for the county from which the defendant was originally sentenced;
4. The defendant;
5. The attorney for the defendant;
6. The principal officer of the institution where the defendant is confined.

RULE 20. - DELETED (REPETITIOUS WITH RULE 24)

RULE 21.

The defendant's attorney is entitled to inspect and copy any document filed with the Sentence Review Division.

RULE 22.

Rehearing may be ordered by the Sentence Review Division upon application in writing directed to the Sentence Review Division within thirty (30) days of notice of the Sentence Review Division's decision on the original application. Rehearing shall not stay any order or judgment previously made unless the Sentence Review Division specifically stays such previous order or judgment. Only one petition for rehearing shall be permitted by any applicant for Sentence Review, and the grounds therefore shall be clearly stated in said petition in accordance with rules governing rehearings in the Supreme Court of Montana.

RULE 23.

A record, by court reporter or by tape recording, shall be made of all proceedings before the Sentence Review Division, and preserved for five (5) years.

RULE 24.

A hearing shall be held on each application for sentence review within 180 days of the date of filing. The division in its discretion may grant a continuance of a scheduled hearing upon a showing of good cause by either the defendant or the State.

These rules are effective the first day of January, 1995.

Dated this 9th day of December, 1994.

Revised September 18, 1997.

Revised May 14, 1999.

MONTANA SENTENCE REVIEW FORM NO. 1

MONTANA SENTENCE REVIEW FORM NO. 2

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF _____

STATE OF MONTANA,
Plaintiff,

vs. NOTICE OF RIGHT TO APPLY
FOR SENTENCE REVIEW

Defendant

TO THE ABOVE NAMED DEFENDANT:

TAKE NOTICE

You are hereby notified that you may, within 60 days from this date, apply to the Sentence Review Division of the Supreme Court of Montana for a review of the sentence just imposed upon you in the above-entitled case.

You are advised that if you do apply for such review your sentence may be increased, decreased or affirmed without change.

You are herewith furnished three copies of Application for Review of Sentence, Montana Sentence Review Form No. 2. If you decide to file such Review Application, you will mail the original to the undersigned Clerk of Court and retain two copies for your use.

DATED this day of _____, 20__

Clerk

By _____ Deputy

The undersigned does hereby certify that a true copy of the above Notice was personally served upon the above-named defendant, together with three forms of application for Review as above recited on this date, together with a copy of the Judgment in this cause.

Clerk

By _____ Deputy

Name and address of Clerk to whom completed
Application for Review of Sentence
(Montana Sentence Review Form No. 2) must be mailed:

Clerk of the District Court

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
COUNTY OF _____

STATE OF MONTANA,
Plaintiff,

vs. APPLICATION FOR REVIEW OF SENTENCE

Defendant

TO: The Clerk of the above-captioned court:

The above-named defendant states:

(1) That on the day of _____, 20____, I was sentenced in the above-entitled action to serve years in the State Prison of Montana.

(2) That I request that the Sentence Review Division of the Supreme Court of Montana review my sentence.

(3) That I consent and agree that by making this application for review, my sentence may be increased, decreased or affirmed without change, and that there is no appeal from the decision herein to be made.

DATED this _____ day of _____, 20__

Instructions to the Defendant:

If you decide to file this application you will mail the original to the Clerk of the District Court for the county from which you were sentenced. The Clerk's address appears on Form No. 1.

MONTANA SENTENCE REVIEW FORM NO. 3

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF _____

STATE OF MONTANA,
Plaintiff,

vs.

Defendant

CLERK' S CERTIFICATE AND STATEMENT

TO: THE SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA,

The undersigned Clerk of the District Court does hereby certify and state:

(1) That the enclosed file in Cause No. _____ is the entire case file in such matter, with the exception of exhibits offered during the trial, which are not forwarded.

(a) A pre-sentence investigation was conducted and a report prepared.

Yes ___ No ___.

(b) A copy of the pre-sentence report is in the court file.

Yes ___ No ___.

(c) The sentence involved a plea bargain agreement.

Yes ___ No ___.

(d) The plea bargain agreement was in written form and the original of same is in the court file. Yes ___ No ___.

(e) A transcript was made of the sentencing hearing where the plea bargain agreement (whether written or oral) was discussed. Yes ___ No ___.

(f) A copy of the transcript is in the court file.

Yes ___ No ___.

If any document referred to is not in the court file, it is forwarded with the file if it is available.

(2) That any and all exhibits offered in this cause at the sentencing hearing, including medical and psychiatric reports, are included with the file.

(3) That copies of Montana Sentence Review Form No. 2, Application for Review of Sentence, have been served upon the Judge who sentenced the defendant and upon the County Attorney for the county from which defendant was sentenced.

Dated _____

The District Court Clerk shall mail this form, together with the complete court file to:

Court Administrator' s Office
Sentence Review Division
Montana Supreme Court
Room 315, Justice Building
Helena, MT 59620

Within ten (10) days of receipt of Application for Review of Sentence.