

MARKUP OF RULE 29 SHOWING PROPOSED AMENDMENTS

March 25, 2015

KEY TO REPORTER'S CONVENTIONS

Original language = typeface without underscore

Strikethrough = removed

Underscore = addition to rule

Rule 29. Revision or Revocation of Sentence

(Applicable to District Court and Superior Court)

_____ (a) Revision or Revocation.

_____ (1) Illegal Sentences. The trial judge, upon the judge's own motion, or the written motion of the prosecutor, filed within sixty days after imposition of a sentence, may revise or revoke such sentence if the judge determines that any part of the sentence was illegal.

_____ (2) Unjust Sentences. The trial judge, upon his~~the~~ judge's own motion, or the written motion of a defendant, filed within sixty days after the imposition of a sentence; or within sixty days after issuance of a rescript by an appellate court on direct review, receipt by the trial court of a rescript issued upon affirmance of the judgment or dismissal of the appeal, or within sixty days after entry of any order or judgment of an appellate court denying review of, or having the effect of upholding, a judgment of conviction, may, upon such terms and conditions as ~~he~~the judge shall order, revise or revoke such sentence if it appears that justice may not have been done.

_____ (b) Affidavits. If a defendant~~party~~ files a motion pursuant to this rule, ~~he~~the other party shall file and serve and the prosecutor~~other party~~ may file and serve affidavits in support of their respective positions. The judge may rule on a motion filed pursuant to this rule on the basis of facts alleged in the affidavits without further hearing.

_____ (c) Notice. The defendant~~moving party~~ shall serve the prosecutor~~other party~~ with a copy of any motion and affidavit filed pursuant to this rule. If the judge orders that a hearing be held on the motion, the court shall give the parties reasonable notice of the time set for the hearing.

_____ (d) Place of Hearing. A motion filed pursuant to this rule may be heard by the trial judge wherever ~~he~~the judge is then sitting.

_____ (e) Appeal. An appeal from a final order under this rule may be taken to the Appeals Court, or the Supreme Judicial Court in an appropriate case, by either party.