

Rule 35. Correcting or Reducing a Sentence or Collateral; Setting Aside Forfeiture

(a) Correcting the Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) Reducing a Sentence.

(1) Upon Motion. A motion to reduce a sentence may be made not later than 120 days after the sentence is imposed or probation is revoked, or not later than 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or not later than 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. The court must decide a motion within a reasonable time.

(2) Sua Sponte by the Court. After notice to the parties and an opportunity to be heard, the court may reduce a sentence without motion, not later than 120 days after the sentence is imposed or probation is revoked, or not later than 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or not later than 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation.

(3) Permissible Reduction. Changing a sentence from a sentence of incarceration to a grant of probation constitutes a permissible reduction of sentence under this paragraph.

(c) Imposition of Sentence Defined. For purposes of this rule, a sentence is imposed when it is orally announced.

(d) Setting Aside Forfeiture. No forfeiture of collateral security or of an unsecured personal appearance bond shall be vacated unless application is made within 90 days after forfeiture and upon good cause shown.

(e) Reducing Collateral in Traffic Cases. The amount of collateral security required in a traffic case may be reduced by a judge or magistrate judge only if (1) such reduction has been specifically recommended in writing by the attorney for the government on a form separate from the notice of violation, or (2) the judge or magistrate judge states the reasons for the reduction in writing on a form separate from the notice of violation. In all such cases the clerk's office shall submit a monthly report of such reductions to the Chief Judge.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (b) of this rule reflects longstanding differences between the federal and local rules governing the basis and timing of motions to reduce sentence.

Paragraph (c) is new to both the local and federal rules. Although the wording is different, the meaning is intended to be the same.

Paragraph (d) of this rule, dealing with setting aside a forfeiture of collateral security, and paragraph (e), dealing with reduction of collateral in traffic cases, have no federal counterparts.

In addition, paragraph (e) of this rule, formerly paragraph (d), substitutes the clerk's office for the Central Violations Bureau as the entity that will submit reports of traffic collateral reductions to the Chief Judge. The Central Violations Bureau no longer exists.