

STATE OF MONTANA
SENTENCE REVIEW DIVISION OF THE SUPREME COURT

RULES

In accord with Title 46, Chapter 18, Part 9 of the Montana Code Annotated, the Sentence Review Division of the Supreme Court (hereinafter Division) hereby adopts the following rules which supersede all previous rules.

RULE 1. The Clerk of District Court (hereinafter Clerk) shall serve upon persons who have been sentenced to a term of 1 year or more in the State prison or to the custody of the Department of Corrections:

- 1) A copy of the Sentence and Judgment
- 2) Notice of the Right to Apply for Sentence Review
- 3) Two copies of the Application for Sentence Review

Forms shall be approved by the Division.

RULE 2. Within sixty (60) days after sentence was imposed, a defendant may apply for the sentence to be reviewed by the Division.

If an appeal to the Supreme Court or petition for post conviction relief is filed, the 60 day period commences when the appeal or petition is complete.

Application for review of sentence does not stay execution of the sentence.

RULE 3. The Division shall not consider issues which could have been or should have been addressed in District Court by appeal or post conviction relief.

RULE 4. Application for Sentence Review shall be filed with the Clerk for the county from which the defendant was sentenced. In the event the defendant has been sentenced in more than one county, separate applications shall be filed with each Clerk if defendant requests each sentence to be reviewed.

RULE 5. Upon filing the application for Sentence Review, the Clerk shall complete and file the Clerk's certificate of service and shall within ten (10) business days, serve a copy of the Application for Sentence Review upon the Judge who imposed the sentence, the County Attorney of the County from which the defendant was sentenced and defendant's counsel of record. The Clerk shall mail the original Certificate of Service and deliver all required documents to the Secretary for the Division (hereinafter Secretary).

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Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

RULE 6. Defendant, the State, and the sentencing Judge may file briefs within 30 days after notice of the application for review is served by the Clerk.

RULE 7. The Secretary shall record the date the application for review was received by the Clerk. If the application is untimely, the Secretary shall promptly notify the defendant to file within thirty (30) days a statement of reasons why the Division should hear a late application. The Division will review late applications only upon good cause shown.

RULE 8. The Secretary shall serve notice of the time and place for Review at least thirty (30) days before such hearing to each of the following:

- 1) The Judge who imposed the sentence;
- 2) The County Attorney for the county from which the defendant was sentenced;
- 3) The defendant;
- 4) The defendant's attorney of record;
- 5) Any other person who has requested notice.

RULE 9. Proceedings shall be informal to the extent possible. The Rules of Evidence do not apply.

RULE 10. The defendant shall have the right to appear and to be represented by counsel.

RULE 11. The Secretary shall provide to the Division from the District Court file such documents as the Division may require.

The Division shall consider only information which was available to the sentencing Judge at the time of sentencing.

RULE 12. The sentence imposed by the District Court is presumed correct. The sentence shall not be reduced or increased unless it is clearly inadequate or clearly excessive.

RULE 13. The Secretary shall file the original decision of the Division with the Clerk where defendant was sentenced and mail copies of the decision to:

- 1) The Judge who imposed sentence;
- 2) The County Attorney;
- 3) The criminal history repository of the Montana Department of Justice;
- 4) The defendant;
- 5) The defendant's attorney if represented by counsel;
- 6) The principal officer of the institution where defendant is incarcerated.

RULE 14. A record of proceedings before the Division shall be made by recording or otherwise and shall be retained for two years after a written decision is rendered.

RULE 15. Without convening the entire Division, the Presiding Officer may rule on procedural issues not affecting the substance of a review.

These rules are effective the 28th day of October, 2013.

SENTENCE REVIEW DIVISION

/s/
Presiding Officer, Hon. Loren Tucker

/s/
Member, Hon. Bradley G. Newman

/s/
Member, Hon. Kathy Seeley