

## **Rule 605. Advice to Defendant**

### **(a) On Judgment and Sentence After Plea of Not Guilty.**

(1) In all cases in which the defendant is found guilty and sentenced to imprisonment, probation or conditional discharge, periodic imprisonment, or to pay a fine, or in which a sentence of probation or conditional discharge has been revoked or the conditions attached to such a sentence have been modified, excluding cases in which the judgment and sentence are entered on a plea of guilty, the trial court shall, at the time of imposing sentence or modifying the conditions of the sentence, advise the defendant of the right to appeal, of the right to request the clerk to prepare and file a notice of appeal, and of the right, if indigent, to be furnished, without cost to the defendant, with a transcript of the proceedings at the trial or hearing.

(2) In addition to the foregoing rights, in cases in which the defendant has been convicted of a felony or a Class A misdemeanor or convicted of a lesser offense and sentenced to imprisonment, periodic imprisonment, or to probation or conditional discharge conditioned upon periodic imprisonment, or in which a sentence of probation or conditional discharge has been revoked or the conditions attached to such a sentence have been modified and a sentence or condition of imprisonment or periodic imprisonment imposed, the trial court shall advise the defendant of the right to have counsel appointed on appeal.

(3) At the time of imposing sentence or modifying the conditions of the sentence, the trial court shall also advise the defendant as follows:

A. that the right to appeal the judgment of conviction, excluding the sentence imposed or modified, will be preserved only if a notice of appeal is filed in the trial court within thirty (30) days from the date on which sentence is imposed;

B. that prior to taking an appeal, if the defendant seeks to challenge the correctness of the sentence, or any aspect of the sentencing hearing, the defendant must file in the trial court within 30 days of the date on which sentence is imposed a written motion asking to have the trial court reconsider the sentence imposed, or consider any challenges to the sentencing hearing, setting forth in the motion all issues or claims of error regarding the sentence imposed or the sentencing hearing;

C. that any issue or claim of error regarding the sentence imposed or any aspect of the sentencing hearing not raised in the written motion shall be deemed waived; and

D. that in order to preserve the right to appeal following the disposition of the motion to reconsider sentence, or any challenges regarding the sentencing hearing, the defendant must file a notice of appeal in the trial court within 30 days from the entry of the order disposing of the defendant's motion to reconsider sentence or order disposing of any challenges to the sentencing hearing.

**(b) On Judgment and Sentence Entered on a Plea of Guilty.** In all cases in which a judgment is entered upon a plea of guilty, other than a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

(1) that the defendant has a right to appeal;

(2) that prior to taking an appeal the defendant must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the trial court reconsider the sentence or to have the judgment vacated and for leave to withdraw the plea of

guilty, setting forth the grounds for the motion;

(3) that if the motion is allowed, the sentence will be modified or the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;

(4) that upon the request of the State any charges that may have been dismissed as a part of a plea agreement will be reinstated and will also be set for trial;

(5) that if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant and counsel will be appointed to assist the defendant with the preparation of the motions; and

(6) that in any appeal taken from the judgment on the plea of guilty any issue or claim of error not raised in the motion to reconsider the sentence or to vacate the judgment and to withdraw the plea of guilty shall be deemed waived.

For the purposes of this rule, a negotiated plea is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending.

**(c) On Judgment and Sentence Entered on a Negotiated Plea of Guilty.** In all cases in which a judgment is entered upon a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

(1) that the defendant has a right to appeal;

(2) that prior to taking an appeal the defendant must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion;

(3) that if the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;

(4) that upon the request of the State any charges that may have been dismissed as a part of a plea agreement will be reinstated and will also be set for trial;

(5) that if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant and counsel will be appointed to assist the defendant with the preparation of the motions; and

(6) that in any appeal taken from the judgment on the plea of guilty any issue or claim of error not raised in the motion to vacate the judgment and to withdraw the plea of guilty shall be deemed waived.

For the purposes of this rule, a negotiated plea is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending.

Amended June 22, 1967, effective June 23, 1967; amended June 26, 1970, effective September 1, 1970;

amended effective July 1, 1971, September 1, 1974, and July 1, 1975; amended April 1, 1992, effective August 1, 1992; amended October 5, 2000, effective November 1, 2000; amended October 1, 2001, effective immediately.

Committee Comments  
(Revised July 1, 1975)

This rule is derived from former Rule 27(6), as it existed before 1967, which in turn was derived from section 121-4(c) of the Code of Criminal Procedure. In 1967 the requirement that the stenographic transcript of the court's advice to the defendant and the defendant's answers be filed as a part of the common-law record was transferred to Rule 401, and the last sentence of the former rule was transferred to Rule 606(a).

This rule was amended in June, 1970, to add the last sentence, which requires the trial court to advise the defendant of the time within which his notice of appeal must be filed in order to preserve his right to appeal. See Rule 651(b) for a comparable provision.

The 1971 amendments remove the requirement that the court advise of their various rights defendants who plead guilty. They also extended the requirement that the advice be given in all cases, including misdemeanor cases, in which the defendant was convicted of an offense punishable by imprisonment for more than six months. In thus extending the requirement these amendments conformed the rule to the provisions of Rule 607, as amended the same year, dealing with the rights of indigents to appointed counsel and a report of proceedings. (See Committee Comments to that rule.) In 1974, Rule 607 was again amended to provide for a free transcript in all cases in which the defendant has been convicted and sentenced. Under the amended rule, however, the right to appointment of counsel is limited to cases in which the offense was a felony or a Class A misdemeanor, or in which the sentence involves some imprisonment, whether imposed as a sentence or as a condition to a sentence of probation or conditional discharge. This rule was again amended to conform its provisions with those of Rule 607. The language of both rules was changed to conform with the language of the Unified Code of Corrections.

In 1975, Rule 604(d) was added to provide that before appealing a judgment and sentence entered on a plea of guilty, the defendant must move in the trial court for vacation of the judgment and to withdraw the plea of guilty. Rule 605 was amended to designate the matter then contained in the rule as paragraph (a), and to add new paragraph (b), providing that on imposition of sentence the defendant shall be advised of the requirements of Rule 604(d).