

Judges, disability after verdict or finding of guilt, see rule 25.

Remedies on motion attacking sentence of prisoner in Federal custody, see section 2255 of Title 28, Judiciary and Judicial Procedure.

Several defendants, inability of jury to agree as to verdict, see rule 31.

Rule 34. Arrest of Judgment

The court on motion of a defendant shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after verdict or finding of guilty, or after plea of guilty or *nolo contendere*, or within such further time as the court may fix during the 7-day period.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

This rule continues existing law except that it enlarges the time for making motions in arrest of judgment from 3 days to 5 days. See Rule II (2) of Criminal Appeals Rules of 1933, 292 U.S.C. 661.

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

The words “on motion of a defendant” are added to make clear here, as in Rule 33, that the court may act only pursuant to a timely motion by the defendant.

The amendment to the second sentence is designed to clarify an ambiguity in the rule as originally drafted. In *Lott v. United States*, 367 U.S. 421 (1961) the Supreme Court held that when a defendant pleaded *nolo contendere* the time in which a motion could be made under this rule did not begin to run until entry of the judgment. The Court held that such a plea was not a “determination of guilty.” No reason of policy appears to justify having the time for making this motion commence with the verdict or finding of guilt but not with the acceptance of the plea of *nolo contendere* or the plea of guilty. The amendment changes the result in the *Lott* case and makes the periods uniform. The amendment also changes the time in which the motion may be made to 7 days. See the Advisory Committee’s Note to Rule 29.

CROSS REFERENCES

Enlargement of time not permitted for motion under this rule, see rule 45.

Rule 35. Correction or Reduction of Sentence

(a) CORRECTION OF A SENTENCE ON REMAND. The court shall correct a sentence that is determined on appeal under 18 U.S.C. 3742 to have been imposed in violation of law, to have been imposed as a result of an incorrect application of the sentencing guidelines, or to be unreasonable, upon remand of the case to the court—

(1) for imposition of a sentence in accord with the findings of the court of appeals; or

(2) for further sentencing proceedings if, after such proceedings, the court determines that the original sentence was incorrect.

(b) REDUCTION OF SENTENCE FOR CHANGED CIRCUMSTANCES. The court, on motion of the Government made within one year after the imposition of the sentence, may reduce a sentence to reflect a defendant’s subsequent, substantial assistance in the investigation or prosecution of another person who has committed an offense, in accordance with the guidelines and policy

statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code. The court may consider a government motion to reduce a sentence made one year or more after imposition of the sentence where the defendant’s substantial assistance involves information or evidence not known by the defendant until one year or more after imposition of sentence. The court’s authority to reduce a sentence under this subsection¹ includes the authority to reduce such sentence to a level below that established by statute as a minimum sentence.

(c) CORRECTION OF SENTENCE BY SENTENCING COURT. The court, acting within 7 days after the imposition of sentence, may correct a sentence that was imposed as a result of arithmetical, technical, or other clear error.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 30, 1979, eff. Aug. 1, 1979; Apr. 28, 1983, eff. Aug. 1, 1983; Oct. 12, 1984, Pub. L. 98-473, title II, §215(b), 98 Stat. 2015; Apr. 29, 1985, eff. Aug. 1, 1985; Oct. 27, 1986, Pub. L. 99-570, title I, §1009(a), 100 Stat. 3207-8; Apr. 30, 1991, eff. Dec. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

The first sentence of the rule continues existing law. The second sentence introduces a flexible time limitation on the power of the court to reduce a sentence, in lieu of the present limitation of the term of court. Rule 45(c) abolishes the expiration of a term of court as a time limitation, thereby necessitating the introduction of a specific time limitation as to all proceedings now governed by the term of court as a limitation. The Federal Rules of Civil Procedure (Rule 6(c)) [28 U.S.C., Appendix], abolishes the term of court as a time limitation in respect to civil actions. The two rules together thus do away with the significance of the expiration of a term of court which has largely become an anachronism.

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

The amendment to the first sentence gives the court power to correct a sentence imposed in an illegal manner within the same time limits as those provided for reducing a sentence. In *Hill v. United States*, 368 U.S. 424 (1962) the court held that a motion to correct an illegal sentence was not an appropriate way for a defendant to raise the question whether when he appeared for sentencing the court had afforded him an opportunity to make a statement in his own behalf as required by Rule 32(a). The amendment recognizes the distinction between an illegal sentence, which may be corrected at any time, and a sentence imposed in an illegal manner, and provides a limited time for correcting the latter.

The second sentence has been amended to increase the time within which the court may act from 60 days to 120 days. The 60-day period is frequently too short to enable the defendant to obtain and file the evidence, information and argument to support a reduction in sentence. Especially where a defendant has been committed to an institution at a distance from the sentencing court, the delays involved in institutional mail inspection procedures and the time required to contact relatives, friends and counsel may result in the 60-day period passing before the court is able to consider the case.

The other amendments to the second sentence clarify ambiguities in the timing provisions. In those cases in which the mandate of the court of appeals is issued prior to action by the Supreme Court on the defendant’s petition for certiorari, the rule created problems

¹ So in original. Probably should be “subdivision”.