

Alabama Rules of Criminal Procedure

Rule 26. Judgment; presentence report; sentence hearing; sentence.

Rule 26.1. Definitions; scope.

(A) DEFINITIONS.

- (1) "Judgment" means the adjudication of the court based upon a plea of guilty by the defendant, upon the verdict of the jury, or upon its own finding following a nonjury trial, that the defendant is guilty or not guilty.
- (2) "Sentence" means the pronouncement by the court of the penalty imposed upon the defendant after a judgment of guilty.
- (3) "Determination of guilty" means a verdict of guilty by a jury, a finding of guilty by a court following a nonjury trial, or the acceptance by the court of a plea of guilty.
- (4) "Sentencing Standards" means the worksheets, instructions, and sentence-length tables adopted by the Alabama Sentencing Commission and made effective under §§ 12-25-34.1 and 12-25-34.2, Ala. Code 1975.

(B) SCOPE.

- (1) This rule shall apply to capital cases only to the extent that the procedure in capital cases is not otherwise specified by law.
- (2) This rule shall apply to offenses designated in the Sentencing Standards only to the extent that the procedure in applicable Sentencing Standards cases is not otherwise specified in the Sentencing Standards.

[Amended eff. 5-7-2015.]

Committee Comments

The Alabama courts do not make a clear distinction between "judgment" and "sentence." Alabama decisions define judgment to mean the decision or sentence of the law, pronounced by the court. *Gentry v. State*, 35 Ala.App. 627, 51 So.2d 558 (1951); *Wright v. State*, 103 Ala. 95, 15 So. 506 (1893); *Gray v. State*, 55 Ala. 86 (1876).

When a defendant has been tried by a jury, the court's judgment must be based on the jury's verdict. *Marable v. State*, 229 Ala. 435, 157 So. 861 (1934); *Stephens v. State*, 22 Ala.App. 533, 118 So. 231, cert. denied, 218 Ala. 168, 118 So. 232 (1928). Where the defendant pleads guilty, judgment is based solely upon that plea. *Knowles v. State*, 280 Ala. 406, 194 So.2d 562 (1967).

In subsection (2) the term "sentence" as defined in this rule is intended to include any form of punishment and/or required action by the defendant that is ordered by the judge or required by law by virtue of the conviction, including probation, even where imposition of sentence must be suspended in order to place a person on probation.

This rule defines "determination of guilt." There is no absolute requirement in Alabama that the court enter a formal adjudication of guilty upon the record where the sentence is in compliance with a verdict of guilty, the reasoning being that a judgment of guilt is implied from the sentence. *Thames v. State*, 12 Ala.App. 307, 68 So. 474 (1915); *Shirley v. State*, 144 Ala. 35, 40 So. 269 (1906); *Driggers v. State*, 123 Ala. 46, 26 So. 512 (1898). A formal adjudication of guilt is required for the smooth operation of the rule. This is in keeping with dictum in *Driggers* that, "[t]he judgment entry in all criminal cases where there is a conviction should recite in express words that the defendant is adjudged guilty by the court as found by the jury. There should always be the judgment of the court upon his guilt." 123 Ala. 46, at 48, 26 So. 512, at 513.

The last sentence of paragraph (b)—"otherwise specified by the law"—refers to: Ala.Code 1975, §§ 13A-5-31 through 13A-5-36, as may be modified in *Beck v. State*, 396 So.2d 645 (Ala.1980); and Ala.Code 1975, §§ 13A-5-42 through 13A-5-53.

The term "judgment" as used in the specific statutes relating to appeals shall continue to mean from the date sentence is pronounced. See Ala.Code 1975, §§ 12-14-70(e) and 12-12-70.

Committee Comments to Amendment to Rule 26.1 Effective May 7, 2015

The Alabama Sentencing Standards were drafted by the Alabama Sentencing Commission pursuant to legislative mandate and were guided by historical sentencing data. The Sentencing Standards include both presumptive and voluntary worksheets, instructions, and sentence-length tables for specified offenses, depending on the offense or offenses of conviction. The Sentencing Standards may be periodically modified by the Commission. See § 12-25-1 et seq., Ala. Code 1975. Those Standards must be considered when an offender is sentenced for an applicable offense or offenses. The Sentencing Standards can be found at the Alabama Sentencing Commission's Web site:

www.sentencingcommission.alacourt.gov, under the heading "Publications," then, under the year 2013, "Presumptive and Voluntary Sentencing Standards Manual."

Note from the reporter of decisions: The order amending Rule 21.1 and Rule 26.1, effective May 7, 2015, and adopting the Committee Comments to Rule 26.1 Effective May 7, 2015, is published in that volume of the *Alabama Reporter* that contains Alabama cases from ____ So. 3d.