

Alabama Rules of Criminal Procedure

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

Rule 26.2. Time of pronouncing judgment and sentence.

(a) UPON ACQUITTAL. When a defendant is acquitted of any charge, or of any count of any charge, judgment pertaining to that count or to that charge shall be pronounced and entered accordingly.

(b) UPON CONVICTION.

(1) Upon a determination of guilt on any charge, or on any count of any charge, judgment pertaining to that count or to that charge shall be pronounced and entered together with the sentence. Pronouncement of judgment may be delayed if necessary until such time as sentence can be pronounced.

(2) Upon a determination of guilt for any felony offense, the court shall, after receipt of the presentence report, unless a presentence report is not required, conduct a sentence hearing and pronounce sentence, or shall set a date for sentence hearing and pronouncement of sentence.

Committee Comments

Rule 26.2(a) specifies that judgment must be rendered without undue delay upon a partial acquittal as well as upon full acquittal in order to provide grounds for a motion by the defendant to set or reconsider conditions for release.

Rule 26.2(b) requires that, where the defendant has been convicted, the sentence be entered in the record along with the judgment. Alabama court decisions are to the same effect. "It is required that the judgment entry include the sentence imposed." *Evans v. State*, 36 Ala.App. 145, 53 So.2d 764 (1951); *Crane v. State*, 33 Ala.App. 284, 32 So.2d 784 (1947). Furthermore, the sentence must not be ambiguous but must be clearly expressed. *Jarnigan v. State*, 222 Ala. 143, 132 So. 50 (1930). Rule 32(b)(1), Fed.R.Crim.P., and Rule 621, Unif.R.Crim.P. (Proposed Final Draft 1974), also require that sentence be entered with the judgment. Because in many instances there will be a period of delay between adjudication of guilt and determination of sentence, pronouncement of judgment of conviction and sentence will be delayed until sentencing procedures have been completed. The form of the docket and judgment entry is specified in Rule 26.9(c).

Subsection (b)(2) provides for pronouncing sentence or setting the date of sentencing. The rule comports with present Alabama practice, where no specific time limit is set.