

Alabama Rules of Criminal Procedure

Rule 20. Motion for judgment of acquittal.

Rule 20.3. Motion for judgment of acquittal after verdict or judgment of conviction.

(a) **GENERALLY.** After a verdict or the entry of a judgment of conviction, the defendant may move for a judgment of acquittal, or the court, on its own motion, may grant a judgment of acquittal. It shall not be necessary to the making of the motion after a verdict or judgment of conviction that a similar motion have been made prior to the submission of the case to the factfinder.

(b) **TIME FOR MAKING MOTION.**

(1) *In general.* After the return of a verdict or after a judgment of conviction, but no later than thirty (30) days after the pronouncement of sentence, a defendant may move to have the judgment of conviction and any sentence thereon, or, in the case of a jury trial, the verdict and any judgment of conviction and any sentence thereon, set aside and to have a judgment of acquittal entered; or if following a jury trial a verdict was not returned, the defendant, within ten (10) days after the jury has been discharged (or before the start of a new trial in the event a new trial begins within the ten [10] days), may move for judgment of acquittal.

(2) *District and municipal courts.* In the district and municipal courts the thirty-day period provided for in subsection (1) of section (b) is reduced to fourteen (14) days.

(c) **JOINDER WITH OTHER MOTIONS.** A motion for judgment of acquittal may be made in addition to a motion for new trial under Rule 24.1 or a motion in arrest of judgment under Rule 24.2, or may be joined with either of those motions as an alternative prayer for relief within the same motion.

(d) **FINDING OF NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT OR NOT GUILTY AND NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT.** A defendant who has been found not guilty by reason of mental disease or defect or not guilty and not guilty by reason of mental disease or defect may file a motion for judgment of acquittal under this Rule 20.

(e) **PRESENTATION TO JUDGE NOT REQUIRED.** In order to perfect the filing of a motion for judgment of acquittal under this Rule 20, it is not necessary for the motion to be presented to the judge, nor is it required, in order to perfect its filing, that the motion be set for a date certain.

(f) DENIAL BY OPERATION OF LAW.

(1) *In general.* No motion for a judgment of acquittal under this Rule 20 shall remain pending in the trial court for more than sixty (60) days after the pronouncement of sentence, except as provided in this section. A failure by the trial court to rule on such a motion within the sixty (60) days allowed by this section shall constitute a denial of the motion as of the sixtieth day; provided, however, that with the express consent of the district attorney and the defendant or the defendant's attorney, which consent shall appear in the record, the motion may be carried past the sixtieth day to a date certain; if not ruled upon by the trial court as of the date to which the motion is continued, the motion is deemed denied as of that date, unless it has been continued again as provided in this section. The motion may be continued from time to time as provided in this section.

(2) *District and municipal courts.* In district and municipal courts the sixty-day period provided for in subsection (1) of section (f) is reduced to fourteen (14) days.

(g) TOLLING OF PERIOD FOR APPEAL FROM DISTRICT OR MUNICIPAL COURTS. The timely filing of a motion for judgment of acquittal after a judgment of conviction in the district or municipal court shall toll the running of the time for appeal, until the motion is denied.

[Amended eff. 7-1-98.]

**Committee Comments as Amended
Effective August 1, 1997**

Rule 20.3 provides a means of granting a delayed judgment of acquittal. It does not alter the following principle of law as expressed in *Tooson v. State*, 56 Ala.App. 613, at 615, 324 So.2d 327, at 329, cert. denied, 295 Ala. 426, 324 So.2d 333 (1975):

“In considering the question as to whether the trial court correctly overruled the motion to exclude, we can only consider the evidence which was before the trial court at the time the motion to exclude was made.”

(Citations omitted.) This rule provides that a defendant may make a motion for a judgment of acquittal after the jury has returned a verdict, or after a judgment of conviction is entered, without having made such a motion under Rule 20.2 before submission of the case to the factfinder. Compare Rule 50(b), Ala.R.Civ.P., which allows a motion for judgment notwithstanding the verdict only if a motion for a directed verdict has been made at the proper time.

Section (b) allows the motion to be made at any time from the time a verdict is returned or a judgment of conviction is entered until thirty (30) days following the sentencing (fourteen (14) days in a district or municipal court). If in a jury trial the jury is discharged without having returned a verdict, the defendant has ten (10) days in which to file the motion, or a shorter time if a new trial begins within the ten (10) days. The time periods, including the reduced period in district and municipal court, are consistent with the time limits allowed for motions filed pursuant to Rule 24.

Section (c), while allowing a motion for a judgment of acquittal to be filed as a separate motion, contemplates that the usual procedure will be to join in one motion the motion for a judgment of acquittal based on insufficiency of the evidence, and the motion for a new trial based on other grounds; nevertheless, it permits the filing of separate motions.

Section (d), in allowing a motion for judgment of acquittal to be filed by a defendant found not guilty by reason of mental disease or defect or not guilty and not guilty by reason of mental disease or defect, recognizes that while the finding is one of no guilt, it nevertheless may have adverse consequences for the defendant. See Ala.Code 1975, § 15-16-40 et seq.

Section (e) is comparable to Rule 24.3 dealing with motions for a new trial and motions in arrest of judgment.

Section (f) is comparable to Rule 24.4 and 24.5 of these Rules and is based on Rule 59.1, Ala.R.Civ.P. Like a motion for a new trial and a motion in arrest of judgment, a motion for a judgment of acquittal shall not remain pending in the trial court for more than 60 days after the motion is filed, unless all parties consent on the record to carrying the motion beyond 60 days to a date certain.

Section (g) is comparable to a provision of Rule 24.5. Rule 4(b), Ala.R.App.P., provides that in circuit court cases the filing of a post-sentence motion for a judgment of acquittal will toll the running of the time for appeal. Section (g) provides a tolling provision for such a motion in the district or municipal court made after a judgment of conviction.

Comment to Amendment Effective July 1, 1998

The amendment to Rule 20.3(f)(1) provides that a judgment of acquittal shall be denied by operation of law sixty (60) days after the pronouncement of sentence, rather than sixty (60) days after the filing of the motion. This change makes the time frame for the denial by operation of law of a judgment of acquittal consistent with the time frame for the denial by operation of law of a motion for a new trial and a motion in arrest of judgment. See Rule 24.4.