

Alabama Rules of Criminal Procedure

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

Rule 26.9. Pronouncement of judgment and sentence; minute entries.

(a) PRONOUNCEMENT OF JUDGMENT. Judgment shall be pronounced in open court. A judgment of conviction shall set forth the plea, the verdict, the findings, if any, and the adjudication. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly.

(b) PRONOUNCEMENT OF SENTENCE. In pronouncing sentence, the court shall:

(1) Afford the defendant an opportunity to make a statement in his or her own behalf before imposing sentence.

(2) State that a credit will be allowed on the sentence, as provided by law, for time during which the defendant has been incarcerated on the present charge.

(3) Explain to the defendant the terms of the sentence.

(4) Inform the defendant as to the defendant's right to appeal; provided, however, in cases in which the defendant has entered a plea of guilty, the court shall advise the defendant of his or her right to appeal only in those cases in which the defendant (i) has entered a plea of guilty, but before entering the plea of guilty has expressly reserved his or her right to appeal with respect to a particular issue or issues, or (ii) has timely filed a motion to withdraw the plea of guilty and the motion has been denied, either by order of the court or by operation of law. When informing the defendant of his or her right to appeal, the court shall also advise the defendant that if he or she is indigent, counsel will be appointed to represent him or her on appeal if the defendant so desires, and that a copy of the record and the reporter's transcript will be provided at no cost to the defendant for purposes of appeal, if the appeal is from a judgment and sentence of the circuit court.

(c) MINUTE ENTRIES.

(1) *Case action summary sheet.* The clerk of the circuit court shall maintain for each criminal case docketed, including youthful offender cases but excepting misdemeanor traffic cases, a case action summary sheet or sheets properly identified by the style of the case and the case number. There shall be legibly entered upon the case action summary sheet notations of all papers filed with the circuit clerk, all processes issued and returns made thereon, all appearances, and all motions, rulings, orders, verdicts, and judgments. All

entries shall show the date of the proceeding or action noted. These entries shall include, but shall not be limited to, the appointment, appearance, and waiver of counsel; the presence of counsel at each proceeding; the charge(s); the defendant's arraignment or any waiver thereof (including the plea of the defendant); the selection, swearing, empaneling, and charging of the jury and any alternate jurors selected; the verdict and the findings of the jury; the adjudication; the allocution; and the pronouncement of the sentence (including, where appropriate, the period and terms of confinement); the assessment of any fines, costs, restitution, and reimbursement of attorney fees; the period of probation and conditions relating thereto; credit for time incarcerated on the present charge; and notice of appeal.

If the judge files a separate order, the circuit clerk does not have to duplicate that separate order onto the case action summary sheet, but may enter on the case action summary sheet a notation indicating that a separate order has been filed.

(2) *Form and contents of entries.* The entries on case action summary sheets shall not require any particular language or form. The judge shall sign or initial all rulings or orders entered thereon.

(3) *Filing of entries.*

(i) Copy of the Case Action Summary Sheet to Case File. Upon the disposition of a case and after all entries have been completed, the clerk of the circuit court shall file the case action summary sheet or sheets in numerical order with the sheets from other cases in docket books and shall place a copy of the case action summary sheet or sheets in the case file. The case action summary sheet or sheets shall be the official minutes of the case and shall have the same force and effect as the entries previously contained in "minute books." These case action summary sheets may be maintained in the same manner as all other court records.

(ii) Retroactive Effect of Rule. All notations entered on case action summary sheets prior to the adoption of this rule shall be sufficient minute entries if the entry otherwise substantially complies with the substantive provisions of this rule.

(iii) Sufficiency of the Case Action Summary Sheets as Record. The case action summary sheets shall be sufficient record of the actions in a particular case.

(4) *Admissibility into evidence of the case action summary sheet.* A certified copy of the case action summary sheet shall be admissible in any court of this state as evidence of a conviction or any other action recorded thereon, if

evidence of the conviction or other action is otherwise admissible. A certified copy of the case action summary sheet shall be prima facie evidence of the jurisdiction of the court maintaining the sheet, both as to the offense and as to the defendant, and of all facts recited therein; provided, however, that if the trial court determines that any of the information recorded on the case action summary sheet may be prejudicial to the defendant, the court may admit the case action summary sheet into evidence and inform the jury of the fact of conviction as indicated by the sheet, but not allow the jury to view the prejudicial matters.

(5) *Sentence entries in cases where the defendant is sentenced to death.* If the defendant is sentenced to death, then the sentence entry shall include, but shall not be limited to, the following information:

(i) A statement indicating before whom the sentence hearing was conducted (i.e., the trial judge and trial jury, the trial judge and another jury, or the trial judge alone);

(ii) The jury's advisory verdict, along with its vote, unless waived, in which event the entry shall note that the defendant voluntarily waived the right to an advisory verdict after having been expressly informed thereof by the court;

(iii) A statement indicating that the trial judge, in deciding the sentence, ordered, received, and reviewed the written presentence report;

(iv) A statement indicating that the trial judge heard evidence from the state and the defendant concerning the presentence report and gave each the opportunity to respond to the other's evidence and that each did respond or waived the right to do so;

(v) A statement indicating that the trial judge permitted the state and the defendant the opportunity to present argument concerning the existence of aggravating and mitigating circumstances and that each did present such argument or waived the right to do so, and, further, that the judge permitted the state and the defendant the opportunity to make argument as to the appropriate sentence, and that each did so or waived the right to do so;

(vi) A statement a) indicating that the trial judge considered the evidence presented at the trial, in the presentence report, and at the sentence hearing; b) setting out the judge's specific findings concerning the existence or nonexistence of each aggravating circumstance enumerated in Ala.Code 1975, § 13A-5-49, each mitigating circumstance enumerated in § 13A-5-51, and any additional mitigating circumstances

offered pursuant to § 13A-5-52; and c) summarizing the facts of the crime and the defendant's participation therein;

(vii) A statement indicating that the trial judge weighed any aggravating and mitigating circumstances in evidence and considered the recommendation of the jury in its advisory verdict (unless the right to an advisory verdict was waived);

(viii) A statement indicating that the judge found the aggravating circumstance(s) outweighed the mitigating circumstances, if any; and

(ix) Any other order of the court concerning the transfer of the inmate to the prison system pursuant to Rule 8, A.R.App.P.

(6) *Appeals*. A copy of the case action summary sheet shall be included in the clerk's portion of the record on appeal. That copy shall be preceded by the clerk's index of included documents, exhibits, and separately filed orders of the trial judge.

[Amended 9-19-91, eff. 10-1-91; Amended eff. 8-1-2002.]

Committee Comments

In Alabama, the right of a defendant to make a statement on his own behalf exists by common law only when there has been a felony conviction. In *Bowles v. State*, 241 Ala. 142, 1 So.2d 665 (1941), the accused was convicted on a charge of misdemeanor, and the court was not required, before pronouncing sentence, to ask the accused why the judgment of the court should not be pronounced against him. However, Alabama decisions require that, in a felony conviction, the court must ask the convicted person if he has anything to say as to why sentence of the law should not be imposed upon him. See, e.g., *Thomas v. State*, 280 Ala. 109, 190 So.2d 542 (1966); *McGuff v. State*, 49 Ala.App. 88, 268 So.2d 868, cert. denied, 289 Ala. 746, 268 So.2d 877 (1972).

Subsection (1) of section (b) allows defendant the right of allocution regardless of the gravity of the sentence imposed. The right may be lost, however, if defendant's presence at sentencing is waived under Rules 26.7 and 9.1(b).

Subsection (2) is taken from ABA Standards for Criminal Justice, *Sentencing Alternatives and Procedures* 18-6.6(a)(iii) (2d ed. 1986), and requires that the court, at the time of sentencing, assure that the record accurately reflects the time already spent in custody. Report of the Alabama Comparative Committee to the Department of Court Management of the State of Alabama, at p. 30.

Before Act No. 58, Acts of Alabama, 1975 (2d Spec.Sess.), the law in Alabama provided that time spent incarcerated by the defendant before conviction did not count as a credit toward the sentence imposed. See, e.g., *Ryan v. State*, 100 Ala. 105, 14 So. 766 (1894); *Teepie v. State*, 54 Ala.App. 357, 308 So.2d 717, cert. denied, 294 Ala. 772, 313 So.2d 162 (1975); *Robinson v. State*, 47 Ala.App. 51, 249 So.2d 872 (1971); *Ex parte Cofield*, 42 Ala.App. 344, 164 So.2d 716 (1964).

Ala.Code 1975, § 15-18-5, provides that upon conviction and imprisonment for any felony or misdemeanor, the sentencing court shall order that the convicted person be credited with all of his actual time spent incarcerated pending trial for such offense.

Under subsection (3), the explanation of the sentence should include the terms of probation, the length and order of sentences if there are more than one, whether the new sentence is to be added onto or served concurrently with a sentence which the defendant is then serving, and whether any special circumstances are contemplated as part of the sentence.

Subsection (4) provides that the court shall inform the defendant of his right to appeal from a judgment.

In Alabama, the right to appeal is guaranteed by statute. Ala.Code 1975, § 12-22-130; see also *State v. Bibby*, 47 Ala.App. 240, 252 So.2d 662 (1971); *McCray v. State*, 46 Ala.App. 588, 246 So.2d 475 (1971). Except in death penalty cases, the appealing party is required to give some notice of intention to have appellate review to invoke the jurisdiction of the appellate court. An automatic appeal is taken in death penalty cases without any action by either the defendant or his counsel. See Ala.Code 1975, §§ 12-22-15 and 13A-5-55. In Alabama, the defendant has forty-two (42) days after sentencing to take an appeal. See Rule 4(b), A.R.App.P.

The rule conforms to the ABA, Standards for Criminal Justice, on the subject. Under ABA Standards for Criminal Justice, *Criminal Appeals* 21-2.1(b) (2d ed. 1986), the court imposing sentence assumes the burden of advising the defendant that he has the right of review and that the right must be exercised within a specified time. The Comparative Committee in Alabama recommended adoption of this standard. Report of the Alabama Comparative Committee to the Department of Court Management of the State of Alabama at p. 342.

Subsection (4) also provides that the court advise the defendant that if he is indigent, counsel will be appointed to represent him on appeal, if he desires, and that a copy of the record and reporter's transcript will be provided at no cost to him for purposes of appeal.

Rule 26.9(c) is intended to simplify the method by which the clerk maintains criminal records and to prevent the need to duplicate entries on the case action summary sheet in a separate minute book. This section is not intended to change the information required in a minute entry, but is intended to eliminate the need for a particular form or for an elaborate recital. This section does not eliminate the need to show the presence of counsel at each stage of the proceedings, or the waiver thereof; nor does this rule eliminate the need to show that proceedings such as the entry of the plea occurred in open court.

Although not required, judges are encouraged to explain on the record or by separate order the reasons for their sentence in individual cases. This practice, if utilized, should help facilitate the development of precedents to which judges can refer for guidance in designing appropriate sentences within the wide ranges authorized by law. Without benchmarks, it is inevitable that the sentence in any given case will be based almost entirely on the personal experiences, judgment, and perceived expectations of the sentencing judge. Over time, case precedents will help structure and preserve judicial discretion. By making precedents available for review and comparison, disparate sentencing practices should be minimized.

By stating the reasons for a particular sentence, a judge can also help reduce, and perhaps eliminate, what might otherwise be perceived by the public, a victim, or a defendant, as an inappropriate sentence, and thereby bolster confidence in the criminal justice system.

Note from the reporter of decisions: The order amending Rule 26.9(b), effective August 1, 2002, is published in that volume of *Alabama Reporter* that contains Alabama cases from 810 So.2d.