

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 5]

Proposed Amendment to Pa.R.Crim.P. 550 and Proposed Revision to the Comment to Pa.R.Crim.P. 591

The Criminal Procedural Rules Committee is considering recommending that the Supreme Court of Pennsylvania amend Rule 550 (Pleas of Guilty Before Magisterial District Judge in Court Cases) to increase the amount of time available to a defendant to withdrawal a guilty plea entered pursuant to Rule 550 and to provide a correlative revision to the Comment to Rule 591 (Withdrawal of Plea of Guilty or Nolo Contendere). This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed amendments to the rules precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Jeffrey M. Wasileski, Counsel
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 Criminal Procedural Rules Committee
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no later than Friday, September 20, 2013.

By the Criminal Procedural Rules Committee

NANCY L. BUTTS,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 550. Pleas of Guilty Before Magisterial District Judge in Court Cases.

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(D) A defendant who enters a plea of guilty under this rule may, within [10] 30 days after sentence, change the plea to not guilty by so notifying the magisterial district judge in writing. In such event, the magisterial district judge shall vacate the plea and judgment of sentence, and the case shall proceed in accordance with Rule 547, as though the defendant had been held for court.

(E) [Ten] Thirty days after the acceptance of the guilty plea and the imposition of sentence, the magisterial district judge shall certify the judgment, and shall forward the case to the clerk of courts of the judicial district for further proceedings.

Comment

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Prior to accepting a plea of guilty under this rule, it is suggested that the magisterial district judge consult with the attorney for the Commonwealth concerning the case, concerning the defendant's possible eligibility for ARD or other types of diversion, and concerning possible related offenses that might be charged in the same complaint. *See Commonwealth v. Campana*, 452 Pa. 233, 304 A.2d 432 (1973), vacated and remanded, 414 U.S. 808 (1973), on remand [, 414 U.S. 808 (1973), on remand], 455 Pa. 622, 314 A.2d 854 (1974).

Before accepting a plea:

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(d) The magisterial district judge should advise the defendant that, if the defendant wants to change the plea to not guilty, the defendant, within [10] 30 days after imposition of sentence, must notify the magisterial district judge who accepted the plea of this decision in writing.

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See Rule 590 and the Comment thereto for further elaboration of the required colloquy. *See also Commonwealth v. Minor*, 467 Pa. 230, 356 A.2d 346 (1976), overruled on other grounds in *Commonwealth v. Minarik*, 493 Pa. 573, 427 A.2d 623, 627 (1981); *Commonwealth v. Ingram*, 455 Pa. 198, 316 A.2d 77 (1974); *Commonwealth v. Martin*, 445 [A.2d] Pa. 49, 282 A.2d 241 (1971).

While the rule continues to require a written plea incorporating the contents specified in paragraph (C), the form of plea was deleted in 1985 because it is no longer necessary to control the specific form of written plea by rule.

Paragraph (C) does not preclude verbatim transcription of the colloquy and plea.

The time limit for withdrawal of the plea contained in paragraph (D) was increased from 10 days to 30 days in 2013 to place a defendant who enters a plea to a misdemeanor before a magisterial district judge closer to the position of a defendant who pleads guilty to the same offense in common pleas court or a defendant who pleads guilty to a summary offense before a magisterial district justice. A 30-day time period for withdrawal of the plea is consistent with the 30-day period for summary appeal and the 30-day common pleas guilty plea appeal period.

Withdrawal of the guilty plea is the only relief available before a magisterial district judge for a defendant who has entered a plea pursuant to this rule. Any further challenge to the entry of the plea must be sought at the court of common pleas.

At the time of sentencing, or at any time within the [10-day] 30-day period before transmitting the case to the clerk of courts pursuant to paragraph (E), the magis-

terial district judge may accept payment of, or may establish a payment schedule for, installment payments of restitution, fines, and costs.

* * * * *

Official Note: Rule 149 adopted June 30, 1977, effective September 1, 1977; Comment revised January 28, 1983, effective July 1, 1983; amended November 9, 1984, effective January 2, 1985; amended August 22, 1997, effective January 1, 1998; renumbered Rule 550 and amended March 1, 2000, effective April 1, 2001; amended December 9, 2005, effective February 1, 2006; **amended , 2013, effective , 2013.**

Committee Explanatory Reports:

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Report explaining the proposed changes to the rule increasing the time with withdrawal of the guilty plea from 10 to 30 days published for comment at 43 Pa.B. 4211 (July 27, 2013).

PART H. Plea Procedures

Rule 591. Withdrawal of Plea of Guilty or Nolo Contendere.

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Comment

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For a discussion of plea withdrawals when a guilty plea or plea of *nolo contendere* includes a plea agreement, see the Comment to Rule 590.

For procedures for plea withdrawals in third degree misdemeanor cases in which a guilty plea is entered before a magisterial district judge in a court case, see Rule 550(D).

Official Note: Rule 320 adopted June 30, 1964, effective January 1, 1965; Comment added June 29, 1977, effective September 1, 1977; Comment revised March 22, 1993, effective January 1, 1994; Comment deleted August 19, 1993, effective January 1, 1994; new Comment approved December 22, 1995, effective July 1, 1996; amended July 15, 1999, effective January 1, 2000; renumbered Rule 591 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised , 2013, effective , 2013.**

Committee Explanatory Reports:

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Report explaining the proposed revision to the Comment cross-referencing Rule 550 published for comment at 43 Pa.B. 4211 (July 27, 2013).

REPORT

***Proposed amendment to Pa.R.Crim.P. 550
Proposed revision to the Comment to
Pa.R.Crim.P. 591***

Withdrawal of Guilty Pleas under Rule 550

As directed by the Supreme Court of Pennsylvania in the case of *Commonwealth v. Garcia*, ___ Pa. ___, 43 A.3d 470 (Pa. 2012), the Committee has been examining the question of relief from a guilty plea to a third degree misdemeanor entered before a magisterial district judge (MDJ) pursuant to Rule 550.

Background

In *Garcia*, the defendant was charged with various offenses arising from an altercation. On the day of the preliminary hearing, the defendant entered a guilty plea

to a third degree misdemeanor before the MDJ pursuant to Rule 550 and a second degree misdemeanor charge was dropped. About a month later, defendant filed a counseled notice of appeal to the Superior Court as well as a notice of summary appeal in the common pleas court. The summary appeal was subsequently dismissed by the common pleas court and no appeal from that dismissal was taken.

In the Superior Court appeal, the defendant alleged that she had not been aware that she had entered a guilty plea but only “signed some papers” as part of an agreement with the prosecutor that “all the criminal charges would be dropped.” She alleged that she did not know she was pleading guilty to a misdemeanor charge that was part of a plea agreement. She stated that she failed to withdraw the guilty plea within 10 days, as provided by Rule 550(D), because she did not know that she had pled guilty.

The Superior Court concluded that Rule 550 provided no relief to a defendant who seeks to withdraw a guilty plea made before an MDJ after the ten-day period specified in Rule 550(D) has expired. *Commonwealth v. Garcia*, 5 A.3d 397 (Pa. Super. 2010). The Superior Court then created a procedure to cover this gap, holding that a defendant may file an appeal with the common pleas court within thirty days after the case is transferred there from the MDJ. If that appeal is denied, the defendant will have thirty days thereafter to appeal to the Superior Court. They developed this procedure by comparing the language in the Rule 550 Comment that states “[o]nce the case is forwarded as provided in this rule . . . the court of common pleas has exclusive jurisdiction over the case and any plea incident thereto,” with the provisions of Rule 720 that allows a defendant to file a notice of appeal within thirty days of imposition of sentence if the defendant did not file post-sentence motions.

Before the Pennsylvania Supreme Court, the Commonwealth argued that the Superior Court had no jurisdiction because there was no order of the court of common pleas for the Superior Court to review pursuant to 42 Pa.C.S. § 742 and there is no statutory authority for the Superior Court to review an appeal arising from an MDJ court. Additionally, the Commonwealth argued that the only relief from a guilty plea entered pursuant to Rule 550 is by withdrawal of the guilty plea as provided in the rule, including notifying the MDJ of the desire to withdraw the guilty plea.

The defendant argued that there is a gap in the rules that allows a defendant who enters a plea to an M3 before an MDJ to have fewer rights than a defendant who enters a plea to the same offense in the court of common pleas. Similarly, a defendant pleading to a summary offense before an MDJ would have more rights than a defendant pleading to an M3 before the same MDJ. The defendant also argued that once the MDJ certified the sentencing order in her case and forwarded the case to the common pleas court, the order became final and appealable to the Superior Court.

The Supreme Court reversed the Superior Court, finding that a final order from the court of common pleas had not been filed and the Superior Court had no jurisdiction to entertain appeals from orders of the district courts. Therefore the Supreme Court has no jurisdiction to review the matter either.

In a footnote at the end of the majority opinion, the Court stated:

We acknowledge what can be perceived as an inconsistency in the rules of procedure as applied to defendants who plead guilty to a misdemeanor in the district court as compared to defendants who plead to the same charge in the Court of Common Pleas and as applied to defendants who plead in the district court to misdemeanors as compared to defendants who plead in the district court to summary offenses. As we cannot reach that issue in this case, we recommend that the Criminal Procedural Rules Committee considered this conundrum.

Justice Saylor filed a concurrence in which he took note of the phrase “further proceedings” in the Rule 550(E) procedures for transfer of the case from the MDJ to the common pleas court and of the Pa.R.A.P. 905 obligation to transmit misfiled appeals to the correct court, suggesting that the appeal should have been transferred to the common pleas court for adjudication. He also notes his disagreement with the Commonwealth’s argument that the Rule 550(D) withdrawal-of-plea procedure forecloses all other avenue for withdrawal of a demonstrably involuntary plea.

Discussion

Initially, the Committee examined the circumstances in which relief would be sought for a Rule 550 guilty plea outside of the 10-day withdrawal period. The Committee concluded that the most likely scenario would be for a defendant who enters the plea *pro se* but subsequently seeks advice of counsel due to learning of some collateral consequence to the entry of the plea, such as ineligibility to enter the military or receive a professional license.

The Committee concluded that a majority of these types of cases could be resolved simply by permitting a defendant 30 days to withdraw the appeal. This would be consistent with the 30-day period for summary appeal and the 30-day common pleas guilty plea appeal period. In other words, the case would stay with the MDJ court for 30 days after the entry of the plea during which the plea could be withdrawn.

The Committee examined the history of Rule 550 to determine if there were any impediments to increasing the period for withdrawal of the guilty plea. Based on that history, the provisions regarding the time limitation for withdrawal of the guilty plea and the certification of the case to the court of common pleas were entirely products of the rules, implemented as a means of providing structure to statutory changes to MDJs’ jurisdiction to permit them to accept guilty pleas in third degree misdemeanor cases. The Committee concluded that the period for withdrawal as well as the period for certifying the case to the court of common pleas could be changed from 10 days to 30 as a rules matter.

This would be the only relief available while the case remained at the MDJ court. In those exceptional cases in which relief is sought after the 30-day period for withdrawal, further relief would have to be sought at the court of common pleas, likely by a motion to withdraw filed *nunc pro tunc*.

Therefore, the proposal provides for a simple change to the language to Rule 550 changing the period for withdrawal of the guilty plea from 10 to 30 days. Additionally, the time at which the case would be certified from the MDJ court to the court of common pleas would be increased from 10 to 30 days. Comment language would describe the reasoning for this change. Finally a cross-

reference to Rule 550 would be added to the Comment to Rule 591 (Withdrawal of Plea of Guilty or *Nolo Contendere*) to clarify that when a guilty plea to third degree misdemeanor is entered before an MDJ, the withdrawal of the plea would be made pursuant to Rule 550.

[Pa.B. Doc. No. 13-1383. Filed for public inspection July 26, 2013, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Philadelphia Municipal Court, Traffic Division; Joint Administrative Order No. 01 of 2013

Order

And Now, this 10th day of July, 2013, in accordance with the provisions of Act 17 of 2013, it is hereby *Ordered, Adjudged* and *Decreed* that effective on June 19, 2013:

(1) The Philadelphia Traffic Court shall be known as the “Philadelphia Municipal Court, Traffic Division.”

(2) All references to the “Philadelphia Traffic Court” in statutes, ordinances, rules, regulations, pleadings, notices, orders, reports and other forms shall be deemed to be references to the “Philadelphia Municipal Court, Traffic Division.”

(3) Until further notice, all hearings and other proceedings concerning prosecutions for summary offenses arising under the Vehicle Code, 75 Pa.C.S. § 101 *et seq.*, and ordinances enacted pursuant to Title 75 shall continue to be held at 800 Spring Garden Street, Philadelphia, PA 19123.

It Is Further Ordered, Adjudged and *Decreed* that in order to provide an efficient and cost-minimizing transition, the Philadelphia Municipal Court, Traffic Division may continue to use the current supply of citations, notices, orders, reports, stationary and other forms which contain references to the Philadelphia Traffic Court until such time as the current supply is depleted and updated forms can be ordered in a fiscally prudent manner.

This Administrative Order is issued in accordance with the April 11, 1986 order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration, Docket No. 1; and with the March 26, 1996 order of the Supreme Court of Pennsylvania, Eastern District, No. 164 Judicial Administration, Docket No. 1, as amended. As required by Pa.R.Crim.P. No. 105(D), this Order has been submitted to the Supreme Court’s Criminal Procedural Rules Committee for review and written notification has been received from the Committee certifying that this Order is not inconsistent with any general rule of the Supreme Court. This Order shall be filed with the Prothonotary in a docket maintained for Orders issued by the First Judicial District of Pennsylvania, and, as required by Pa.R.Crim.P. No. 105(E), two certified copies of this Order and a copy on a computer diskette, shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. This Order will become effective immediately. As required by Pa.R.Crim.P. No. 105(F) one certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts

and will also be published on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx> and posted on the First Judicial District's website at <http://courts.phila.gov>. Copies shall be published in *The Legal Intelligencer* and will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

By the Court

HONORABLE MARSHA H. NEIFIELD,
President Judge
Philadelphia Municipal Court

[Pa.B. Doc. No. 13-1384. Filed for public inspection July 26, 2013, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

**Crime Victim's Compensation Fund and Victim
Witness Services Fund; No. 0010-11-MD-2013;
AO No. AO-10-2013**

Administrative Order of Court

And Now, To Wit, this 12th day of July, 2013, this Court pursuant to Title 18, Section 11.1101, Costs, (a) *Approves* the increased assessment of the Crime Victim's Compensation Fund and Victim Witness Services Fund to a total of \$100.00, unless otherwise ordered by court. This cost shall be imposed at both the Magisterial District Courts (ungraded misdemeanors and misdemeanor 3) and the Common Pleas Court of the 12th Judicial District notwithstanding any statutory provision to the contrary.

Pursuant to Title 18, Section 11.1101 Costs (b) Disposition,

(1) Thirty-five dollars of the costs imposed under subsection (a)(1) and (2) plus 30% of the costs imposed under subsection (a)(1) which exceed \$60.00 (a total of \$47.00) shall be paid into the Crime Victim's Compensation Fund, and

(2) Twenty-five dollars of the costs imposed under subsection (a)(1) and (2) plus 70% of the costs imposed under subsection (a)(1) and (2) which exceed \$60.00 (a total of \$53.00) shall be paid into the Victim Witness Services Fund.

The costs assessed and collected under Section (b)(2) that exceed \$60.00 shall be returned by the Pennsylvania Commission on Crime and Delinquency to the County of Dauphin for victim witness services.

It Is Ordered that this Administrative Order shall be effective thirty (30) days after the publication thereof in the *Pennsylvania Bulletin*, and shall govern all matters then pending.

It Is Further Ordered that in accordance with Pa.R.Crim.P. 105, that District Court Administrator shall:

(a) File seven (7) certified copies hereof with the Administrative Office of Pennsylvania Courts,

(b) Distribution two (2) certified copies hereof to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*,

(c) File one (1) certified copy hereof with the Criminal Procedural Rules Committee,

(d) Cause a copy hereby to be published in the *Dauphin County Reporter* once a week for two successive weeks at the expense of the County of Dauphin, and

(e) Supervise the distribution hereof to all Judges and all members of the Criminal Bar of this Court.

By the Court

TODD A. HOOVER,
President Judge

[Pa.B. Doc. No. 13-1385. Filed for public inspection July 26, 2013, 9:00 a.m.]