

FINAL REPORT¹

Amendment to Pa.R.Crim.P. 462

DELAY IN SENTENCING FOLLOWING TRIAL DE NOVO IN SUMMARY CASES

On December 16, 2008, effective February 1, 2009, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 462 to permit a common pleas court judge following a trial *de novo* in a summary case to delay sentencing to determine the defendant's eligibility for intermediate punishment.² These amendments conform the procedures in Rule 462 with the procedures in the summary case rules that were adopted by the Court on January 25, 2007 to permit a delay in sentencing following a guilty plea in a summary case or a summary trial for determination of the availability of intermediate punishment.

Subsequent to the 2007 changes, the Committee discussed whether to add a comparable provision to the trial *de novo* rule, Rule 462, that would permit the common pleas judge to delay sentencing at the conclusion of the trial *de novo* in order to determine if the defendant is eligible for intermediate punishment. The Committee noted that Rules 409(C)(4), 414(C)(4), 424(C)(4), and 454(E), prior to the January 25th changes, required the sentence to be imposed at the time the plea is entered or at the conclusion of the trial with no provision for delaying imposition of sentence to determine eligibility for intermediate punishment. Similarly, Rule 462 requires, in the trial *de novo* following a summary appeal, that sentence be imposed at the time the verdict is announced in open court immediately upon the conclusion of trial. Although the Committee recognized that it is unlikely that a defendant who is accepted into summary intermediate punishment would appeal *de novo*, the members reasoned what is more

¹ The Committee's *Final 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 Committee's explanatory *Final Reports*.

² Mr. Justice Seamus P. McCaffery dissents.

likely is that a defendant, who did not receive intermediate punishment, for whatever reason, would appeal *de novo*. Furthermore, a common pleas judge also might be faced for the first time with a plea bargain of a guilty plea in exchange for receiving intermediate punishment.

A final consideration is that the question of eligibility for intermediate punishment could arise when the common pleas court determines, after the *de novo* trial, that the defendant is guilty and the judge or defendant seeks intermediate punishment for the first time. In this latter circumstance, the defendant would not have been prescreened prior to the trial *de novo*. Unless a jurisdiction addresses this situation through local practice, such as not permitting intermediate punishment if found guilty (rather than plead guilty) and always prescreening for eligibility prior to taking a negotiated plea, the situation could arise at common pleas similar to that faced by the magisterial district judges.

In view of these considerations, the Court amended Rule 462 to permit the trial judge following a trial *de novo* to delay sentencing until such time as a determination could be made as to the availability of intermediate punishment.