

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendments to Pa.R.Crim.P. 701

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rule 701 (Pleas of Guilty to Multiple Offenses), for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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Criminal Procedural Rules Committee
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All communications in reference to the proposal should be received by **Friday, March 6, 2015**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

January 28, 2015

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

Paul M. Yatron, Chair

RULE 701. PLEAS OF GUILTY TO MULTIPLE OFFENSES.

(A) Before the imposition of sentence, **with the agreement of the attorney for the Commonwealth**, the defendant may plead guilty to other offenses that the defendant committed within the jurisdiction of the sentencing court.

(B) When such pleas are accepted, the court shall sentence the defendant for all the offenses.

COMMENT: The objective of this rule is to enable the court to sentence the defendant on all outstanding charges within the jurisdiction of the sentencing court at one time.

This rule applies when a defendant is to be sentenced following a finding that the defendant violated probation or intermediate punishment, or when a defendant is to be recommitted following a finding that the defendant violated parole. See Rule 708(D) for the sentencing procedures in probation, intermediate punishment, or parole violation cases.

When a defendant is permitted to plead guilty to multiple offenses as provided in paragraph (A), if any of the other offenses involves a victim, the sentencing proceeding must be delayed to afford the Commonwealth adequate time to contact the victim(s), and to give the victim(s) an opportunity to offer prior comment on the sentencing or to submit a written and oral victim impact statement. See the Crime Victims Act, 18 P.S. § 11.201(5).

NOTE: Rule 1402 adopted July 23, 1973, effective 90 days hence; renumbered Rule 701 and amended March 1, 2000, effective April 1, 2001; *Comment* revised March 15, 2013, effective May 1, 2013 **[.] amended _____, 2015, effective _____, 2015.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

Final Report explaining the March 15, 2013 revision of the Comment concerning probation violation cases and the Crime Victims Act published with the Court's Order at 43 Pa.B. 1702 (March 30, 2013).

Report explaining the proposed amendment of paragraph to require the Commonwealth's agreement published for comment at 45 Pa.B. (_____, 2015).

REPORT

Proposed Amendments to Pa.R.Crim.P. 701

COMMONWEALTH AGREEMENT TO PLEAS ENTERED PURSUANT TO RULE 701

It has been suggested to the Committee that in some of the larger judicial districts, primarily Philadelphia, there is a problem with some defendants using Rule 701 as a means of “judge-shopping” to have more serious cases pled and sentenced by the judge who is perceived as more lenient.

Most jurisdictions have established procedures for ensuring the assignment of new cases against a particular defendant are assigned to the same judge as existing cases. In Philadelphia, however, due to the large case load, new cases are assigned by a more random procedure. As a result, under Rule 701, any defendant, who is facing more than one case, can unilaterally choose his sentencing judge simply by going to trial and being found guilty, or pleading guilty or *nolo contendere*, before the judge of his choosing, then using Rule 701 to bring all his other cases to that judge for plea and sentencing. This is accomplished without any input from the prosecution or other assigned judges. The practice appears to be most common in multiple DUI cases or cases that carry a mandatory sentence.

Background

When Rule 701 was adopted in 1973 (as then-Rule 1401), the Committee noted that the rule reflected sound sentencing policy, and that this is consistent with the positions of the American Bar Association, the Pennsylvania Bar Association, and the Task Force on Corrections of the National Advisory Commission on Criminal Justice Standards and Goals. For example, the benefits of such a policy are stated in the ABA Standards for Criminal Justice, Chapter 14—Pleas of Guilty, Standard 14.1.2 (1999) Commentary:

Allowing for consolidated guilty pleas enables a defendant to be sentenced simultaneously on all charges that he or she is facing in that government's courts. This reduces the governmental resources that must be devoted to the cases, while also allowing the defendant to take full advantage of any concurrent sentencing options that may be available. By

pleading to all offenses simultaneously, the defendant can complete his or her sentence without facing these additional charges, and can avoid the risk of having a detainer filed against the defendant on these other charges while serving his or her sentence.

One of the few appellate decisions interpreting this rule, *Commonwealth v. Kepner*, 34 A.3d 162 (Pa. Super. 2011), stated that “the purpose of Rule 701 is to allow a defendant the opportunity to be sentenced one time on all charges within a particular jurisdiction” but the trial court is not required to sentence a defendant on each count to which he or she pleads guilty. The Superior Court therefore concluded that the trial court did not create an illegal sentence in sentencing the defendant, who pled *nolo contendere* to burglary and criminal trespass, on only the criminal trespass count. A dissenting opinion by Judge Shogan argues that the case should be remanded for sentencing on the burglary charge, otherwise, the case would have a charge upon which there was a conviction to have no sentence.

The *Comment* to Rule 701 was revised in 2013,¹ as a part of an amendment package, to clarify that the rule was applicable to a defendant being sentenced for violation of probation or intermediate punishment or being recommitted for a parole violation. Additionally, the *Comment* was revised to provide for a delay in sentencing in this situation when one of the offenses involves a victim. This change was made to permit time to obtain the victim’s comments on the sentence or to obtain a victim impact statement in accordance with the Crime Victims’ Act, 18 P.S. §11.201.

Discussion

Based on this history, the Committee has concluded that the right of a defendant to consolidate his or her cases is not constitutionally based but rather defined by rule. Limitations, therefore, may be incorporated into the rule to address inequities. For example, the 2013 change noted above added a limitation to the defendant’s right to consolidate pleas and sentencing under this rule by adding a delay so that the prosecution may effectuate a victim’s rights in a case. With the 2013 change, the rule already contemplates a limitation on the defendant’s right to consolidate to provide for

¹ See *Final Report*, 43 Pa.B. 1702 (March 30, 2013).

prosecution-raised objections in certain cases. The Committee considers that the proposed change would similarly provide for prosecution input to prevent “judge-shopping.”

The proposed changes would not deprive the defendant of the right to plead guilty to all or some of his outstanding cases. It would simply put a limitation on the unilateral ability to choose the sentencing forum for all of his or her outstanding cases. Currently under Rule 701 only the defendant has the ability to consolidate cases, an ability which has been used in certain jurisdictions as a means of selecting a sentencing judge of choice. In providing for the prosecution to object to such consolidation, the Committee analogized to the mutual right to jury trial. The proposed amendments are intended to provide a more equitable “playing field” in this area.