

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

INTRODUCTION

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 and are underlined; 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
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
fax: (717) 231-9521
e-mail: criminalrules@pacourts.us*

no later than Friday, September 20, 2013.

July 17, 2013

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

Nancy L. Butts, Chair

Jeffrey M. Wasileski
Counsel

RULE 550. PLEAS OF GUILTY BEFORE MAGISTERIAL DISTRICT JUDGE IN COURT CASES.

(A) In a court case in which a magisterial district judge is specifically empowered by statute to exercise jurisdiction, a defendant may plead guilty before a magisterial district judge at any time up to the completion of the preliminary hearing or the waiver thereof.

(B) The magisterial district judge may refuse to accept a plea of guilty, and the magisterial district judge shall not accept such plea unless there has been a determination, after inquiry of the defendant, that the plea is voluntarily and understandingly tendered.

(C) The plea shall be in writing:

(1) signed by the defendant, with a representation by the defendant that the plea is entered knowingly, voluntarily, and intelligently; and

(2) signed by the magisterial district judge, with a certification that the plea was accepted after a full inquiry of the defendant, and that the plea was made knowingly, voluntarily, and intelligently.

(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: In certain cases, what would ordinarily be a court case within the jurisdiction of the court of common pleas has been placed within the jurisdiction of magisterial district judges. See Judicial Code, 42 Pa.C.S. § 1515(a)(5), (5.1), (6), (6.1), and (7). This rule provides the procedures to implement this expanded jurisdiction of magisterial district judges.

In those cases in which either the defendant declines to enter a plea of guilty before the magisterial district judge or the magisterial district judge refuses to accept a plea of guilty, the case is to proceed in the same manner as any other court case.

This rule applies whenever a magisterial district judge has jurisdiction to accept a plea of guilty in a court case.

Under paragraph (A), it is intended that a defendant may plead guilty at the completion of the preliminary hearing or at any time prior thereto.

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, 455 Pa. 622, 314 A.2d 854 (1974).

Before accepting a plea:

(a) The magisterial district judge should be satisfied of jurisdiction to accept the plea, and should determine whether any other related offenses exist that might affect jurisdiction.

(b) The magisterial district judge should be satisfied that the defendant is eligible under the law to plead guilty before a magisterial district judge, and, when relevant, should check the defendant's prior record and inquire into the amount of damages.

(c) The magisterial district judge should advise the defendant of the right to counsel. For purposes of appointment of counsel, these cases should be treated as court cases, and the Rule 122 (Appointment of Counsel) procedures should be followed.

(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.

(e) The magisterial district judge should make a searching inquiry into the voluntariness of the defendant's plea. A colloquy similar to that suggested

in Rule 590 should be conducted to determine the voluntariness of the plea. At a minimum, the magisterial district judge should ask questions to elicit the following information:

- (1) that the defendant understands the nature of the charges pursuant to which the plea is entered;
- (2) that there is a factual basis for the plea;
- (3) that the defendant understands that he or she is waiving the right to trial by jury;
- (4) that the defendant understands that he or she is presumed innocent until found guilty;
- (5) that the defendant is aware of the permissible range of sentences and/or fines for the offenses charged;
- (6) that the defendant is aware that the magisterial district judge is not bound by the terms of any plea agreement tendered unless the magisterial district judge accepts such agreement; and
- (7) that the defendant understands that the plea precludes consideration for ARD or other diversionary programs.

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

If a plea is not entered pursuant to this rule, the papers must be transmitted to the clerk of courts of the judicial district in accordance with Rule 547. After the time set forth in paragraph (A) for acceptance of the plea of guilty has expired, the magisterial district judge no longer has jurisdiction to accept a plea.

Regardless of whether a plea stands or is timely changed to not guilty by the defendant, the magisterial district judge must transmit the transcript and all supporting documents to the appropriate court, in accordance with Rule 547.

Once the case is forwarded as provided in this rule and in Rule 547, the court of common pleas has exclusive jurisdiction over the case and any plea incident thereto. The case would thereafter proceed in the same manner as any other court case, which would include, for example, the collection of restitution, fines, and costs; the establishment of time payments; and the supervision of probation in those cases in which the magisterial district judge has accepted a guilty plea and imposed sentence.

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.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the August 22, 1997 amendments, that clarify the procedures following a district justice's acceptance of a guilty plea and imposition of sentence in a court case published with the Court's order at 27 Pa.B. 4549 (September 6, 1997).

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 December 9, 2005 changes to the rule clarifying the magisterial district judges' exercise of jurisdiction published with the Court's Order at 35 Pa.B. (, 2005).

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. (, 2013).

RULE 591. WITHDRAWAL OF PLEA OF GUILTY OR *NOLO CONTENDERE*.

(A) At any time before the imposition of sentence, the court may, in its discretion, permit, upon motion of the defendant, or direct, *sua sponte*, the withdrawal of a plea of guilty or *nolo contendere* and the substitution of a plea of not guilty.

(B) When a defendant moves for the withdrawal of a plea of guilty or *nolo contendere*, the attorney for the Commonwealth shall be given 10 days to respond.

COMMENT: Under paragraph (A), when a defendant moves to withdraw a plea of guilty or *nolo contendere*, ordinarily the motion should be filed in writing before the date of the sentencing hearing. For the procedures governing motions, see Chapter 5 Part F(1). However, nothing in this rule would preclude a defendant from making an oral and on-the-record motion to withdraw a plea at the sentencing hearing prior to the imposition of sentence.

When the defendant orally moves to withdraw a plea of guilty or *nolo contendere* at the sentencing hearing, the court should conduct an on-the-record colloquy to determine whether a fair and just reason to permit the withdrawal of the plea exists. If the court finds that there is not a fair and just reason, then the motion should be denied, and the court should proceed to sentencing. If the court finds that there may be a fair and just reason, then pursuant to paragraph (B), the court must give the attorney for the Commonwealth 10 days to respond to the motion.

Under paragraph (B), the trial court may not permit the withdrawal of a guilty plea or plea of *nolo contendere* until the expiration of the 10 days from the date on which the attorney for the Commonwealth receives the defendant's motion to withdraw the plea, unless the attorney for the Commonwealth responds prior to the expiration, nor may it compel the attorney for the Commonwealth to respond prior to the expiration of the 10-day period.

After the attorney for the Commonwealth has had an opportunity to respond, a request to withdraw a plea made before sentencing should be liberally allowed. See

Commonwealth v. Randolph, 718 A.2d 1242 (Pa. 1998);
Commonwealth v. Forbes, 299 A.2d 268 (Pa. 1973).
When a defendant is permitted to withdraw a guilty plea or
plea of *nolo contendere* under this rule and proceeds with a
non-jury trial, the court and the parties should consider
whether recusal might be appropriate to avoid prejudice to
the defendant. See, e.g., *Commonwealth v. Pierce*, 527
A.2d 973 (Pa. 1987).

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).**

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.**

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COMMITTEE EXPLANATORY REPORTS:

***Committee Note explaining the August 12, 1993 deletion of the
Comment published with the Court's Order at 23 Pa.B. 4215
(September 4, 1993).***

***Final Report explaining the new Comment approved on December
22, 1995 published with the Court's Order at 26 Pa.B. 8 (January 6,
1996).***

Final Report explaining the July 15, 1999 amendments concerning the requirements for the withdrawal of a plea published with the Court's Order at 29 Pa.B. 4057 (July 31, 1999).

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

Report explaining the proposed revision to the Comment cross-referencing Rule 550 published for comment at 43 Pa.B. (, 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 withdraw, 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.