

v. Booker, 543 U.S. 220 (2005). In *Booker* the Court held that the provision of the federal sentencing statute that makes the Guidelines mandatory, 18 U.S.C. §3553(b)(1), violates the Sixth Amendment right to jury trial. With this provision severed and excised, the Court held, the Sentencing Reform Act “makes the Guidelines effectively advisory,” and “requires a sentencing court to consider Guidelines ranges, see 18 U.S.C.A. §3553(a)(4) (Supp. 2004), but it permits the court to tailor the sentence in light of other statutory concerns as well, see §3553(a) (Supp. 2004).” *Id.* at 245–46. Subdivision (b)(1)(B) has been deleted because it treats the guidelines as mandatory.

Changes Made to Proposed Amendment Released for Public Comment. No changes were made to the text of the proposed amendment as released for public comment, but one change was made in the Committee Note. Here—as in the other *Booker* rules—the Committee deleted the reference to the Fifth Amendment from the description of the Supreme Court’s decision in *Booker*.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

Former Rule 35 permitted the correction of arithmetic, technical, or clear errors within 7 days of sentencing. In light of the increased complexity of the sentencing process, the Committee concluded it would be beneficial to expand this period to 14 days, including intermediate Saturdays, Sundays, and legal holidays as provided by Rule 45(a). Extension of the period in this fashion will cause no jurisdictional problems if an appeal has been filed, because Federal Rule of Appellate Procedure 4(b)(5) expressly provides that the filing of a notice of appeal does not divest the district court of jurisdiction to correct a sentence under Rule 35(a).

AMENDMENT BY PUBLIC LAW

1986—Subd. (b). Pub. L. 99-570 substituted “in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code. The court’s authority to lower a sentence under this subdivision includes the authority to lower such sentence to a level below that established by statute as a minimum sentence” for “to the extent that such assistance is a factor in applicable guidelines or policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)”.

1984—Pub. L. 98-473 amended Rule 35 generally. Prior to amendment, rule read as follows:

“Rule 35. Correction or Reduction of Sentence

“(a) CORRECTION OF SENTENCE. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

“(b) REDUCTION OF SENTENCE. A motion to reduce a sentence may be made, or the court may reduce a sentence without motion, within 120 days after the sentence is imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. The court shall determine the motion within a reasonable time. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-570, title I, §1009(b), Oct. 27, 1986, 100 Stat. 3207-8, provided that: “The amendment made by this section [amending this rule] shall take effect on the date of the taking effect of rule 35(b) of the Federal Rules of Criminal Procedure, as amended by section 215(b) of the Comprehensive Crime Control Act of 1984 [section 215(b) of Pub. L. 98-473, effective Nov. 1, 1987].”

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENTS

Section 2 of the Order of the Supreme Court dated Apr. 29, 1985, provided: “That the foregoing amend-

ments to the Federal Rules of Criminal Procedure [amending Rules 6, 11, 12.1, 12.2, 35, 45, 49, and 57] shall take effect on August 1, 1985 and shall govern all proceedings in criminal cases thereafter commenced and, insofar as just and practicable, all proceedings in criminal cases then pending. The amendment to Rule 35(b) shall be effective until November 1, 1986, when Section 215(b) of the Comprehensive Crime Control Act of 1984, Pub. L. 98-473, approved October 12, 1984, 98 Stat. 2015, goes into effect.” See section 22 of Pub. L. 100-182, set out below, for application of Rule 35(b) to conduct occurring before effective date of sentencing guidelines.

Pub. L. 98-473, title II, §235(a)(1), Oct. 12, 1984, 98 Stat. 2031, which originally provided for an effective date of Nov. 1, 1986 for the amendment to Rule 35 by section 215(b) of Pub. L. 98-473, was later amended to provide for an effective date of Nov. 1, 1987, with applicability only to offenses committed after the taking effect of such amendment. See Effective Date note set out under section 3551 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of this title.

APPLICATION OF RULE 35(b) TO CONDUCT OCCURRING BEFORE EFFECTIVE DATE OF SENTENCING GUIDELINES

Pub. L. 100-182, §22, Dec. 7, 1987, 101 Stat. 1271, provided that: “The amendment to rule 35(b) of the Federal Rules of Criminal Procedure made by the order of the Supreme Court on April 29, 1985, shall apply with respect to all offenses committed before the taking effect of section 215(b) of the Comprehensive Crime Control Act of 1984 [section 215(b) of Pub. L. 98-473, effective Nov. 1, 1987].”

AUTHORITY TO LOWER A SENTENCE BELOW STATUTORY MINIMUM FOR OLD OFFENSES

Subd. (b) of this rule as amended by section 215(b) of Pub. L. 98-473 and subd. (b) of this rule as in effect before the taking effect of the initial set of guidelines promulgated by the United States Sentencing Commission pursuant to chapter 58 (§991 et seq.) of Title 28, Judiciary and Judicial Procedure, applicable in the case of an offense committed before the taking effect of such guidelines notwithstanding section 235 of Pub. L. 98-473, see section 24 of Pub. L. 100-182, set out as a note under section 3553 of this title.

Rule 36. Clerical Error

After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

This rule continues existing law. *Rupinski v. United States*, 4 F.2d 17 (C.C.A. 6th). The rule is similar to Rule 60(a) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix].

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 36 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 37. Indicative Ruling on a Motion for Relief That Is Barred by a Pending Appeal

(a) RELIEF PENDING APPEAL. If a timely motion is made for relief that the court lacks au-