

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 333

(Delegate Amedori, *et al.*)

Judiciary

Judicial Proceedings

Courts - Criminal Cases - State's Right of Appeal

This bill provides that the State may appeal from a final judgment in a criminal case if the State alleges that the trial judge imposed or modified a sentence in violation of the Maryland Rules.

The bill will apply to any appeal pending or filed by the State on or after the October 1, 2003 effective date.

Fiscal Summary

State Effect: None. It is anticipated that any resulting appeals could be handled with existing resources.

Local Effect: None – see above.

Small Business Effect: None.

Analysis

Current Law: Section 12-302 of the Courts and Judicial Proceedings Article (CJ) provides that the State may appeal from a final judgment in a criminal case if the State alleges that the trial judge failed to impose the sentence specifically mandated by the Maryland Code.

Background: This bill is in response to a recent Maryland Court of Special Appeals decision, *Maryland v. Warfield*, 148 Md. App. 178 (2002).

Calvin Warfield was tried and convicted as a subsequent drug offender in November 1996. On February 4, 1997, he was sentenced to a mandatory ten-year sentence. A motion for reduction of sentence was filed on April 3, 1997 and denied the same day.

On March 9, 2001, Warfield filed a request to change his sentence structure. This motion was filed well past the 90-day period provided in the Maryland Rules. Nevertheless, after an evaluation of Warfield by the Department of Health and Mental Hygiene (DHMH) and a hearing on August 13, 2001, the court granted the request, committing Warfield to DHMH for residential treatment and prohibiting his release from treatment without consultation with the issuing judge.

The Carroll County State's Attorney appealed this ruling to the Court of Special Appeals. That court held that an appeal could not be based on a violation of the Maryland Rules, since under CJ 12-302 the only basis for an appeal was that the trial judge failed to impose the sentence specified by the Maryland Annotated Code.

The court reasoned that, prior to the enactment of CJ 12-302, the State had a common law right to appeal an action by a judge that exceeded the judge's authority. However, the use of the precise term "Code" in CJ 12-302 abolished the right to appeal based on either this common law authority, or on a provision of the Maryland Rules.

The U.S. Supreme Court has held that granting a state a retroactive right of appeal does not violate the constitutional ban on *ex post facto* laws. *Mallett v. North Carolina*, 181 U.S. 589 (1901).

Additional Information

Prior Introductions: None.

Cross File: SB 407 (Senator Jimeno) – Judicial Proceedings.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Legislative Services

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Analysis by: Rita A. Reimer

Direct Inquiries to:
(410) 946-5510

(301) 970-5510