

**OP. NO. 03-081**

**RULES OF SUPREME COURT OF VIRGINIA: GENERAL RULES  
APPLICABLE TO ALL PROCEEDINGS – FINALITY OF JUDGMENTS,  
ORDERS AND DECREES.**

**CRIMINAL PROCEDURE: SENTENCE; JUDGMENT; EXECUTION OF  
SENTENCE – GENERAL PROVISIONS.**

**CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND  
SAFETY – DRUGS.**

**Court may modify sentence of defendant completing Department of  
Corrections' Therapeutic Community Program only if such modification  
occurs within 21 days of entry of sentencing order.**

The Honorable Henry A. Vanover  
Judge, Twenty-Ninth Judicial Circuit  
October 6, 2003

#### **Issue Presented**

You inquire whether § 18.2-254 allows a defendant, upon completion of the Department of Corrections' Therapeutic Community Program, to be returned to the court for a reduction or suspension of sentence.

#### **Response**

It is my opinion that a court may modify the sentence of a defendant, upon completion of the Department of Corrections' Therapeutic Community Program, only if such modification occurs within twenty-one days of entry of the sentencing order.

#### **Background**

You relate that defendants referred by court order to the Department of Corrections' Therapeutic Community Program pursuant to § 18.2-254 are returned to the court, upon successful completion of the program, for consideration of a reduction or suspension of sentence.

#### **Applicable Law and Discussion**

Section 18.2-254 provides for the commitment of convicted persons for substance abuse treatment. Section 18.2-254(A) requires that the judge or court order such person

to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program licensed by the Department of Mental Health, Mental Retardation and

Substance Abuse Services or by a similar program available through the Department of Corrections if the court imposes a sentence of one year or more ....

Section 18.2-254(B) provides that a court may commit persons convicted of drug-related offenses to any facility "licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services" to treat persons "for the intemperate use of narcotic or other controlled substances." Confinement at such a facility is treated as "confinement in a penal institution."<sup>1</sup> Section 18.2-254(B) further provides that,

[u]pon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

The Department of Corrections' Therapeutic Community Program is not a program licensed by the Department of Mental Health.<sup>2</sup>

Rule 1:1 of the Rules of the Supreme Court of Virginia provides, in part: "All final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer."<sup>3</sup>

Section 19.2-303 allows the court that hears the case to modify a felony sentence after the twenty-one-day period has elapsed if the person "has not actually been transferred to a receiving unit of the Department [of Corrections]."

When a person is committed to the Department of Corrections and assigned to its Therapeutic Community Program pursuant to § 18.2-254(A), the court has no jurisdiction to suspend or modify the sentence unless the suspension or modification occurs within twenty-one days of the initial sentencing order.<sup>4</sup> As previously noted, the Department of Mental Health, Mental Retardation and Substance Abuse Services has not licensed the Department of Corrections' Therapeutic Community Program.<sup>5</sup> Thus, § 18.2-254(B) does not apply to the Department's Therapeutic Community Program.

### **Conclusion**

Accordingly, it is my opinion that a court may modify the sentence of a defendant completing the Department of Corrections' Therapeutic Community Program only if such modification occurs within twenty-one days of entry of the sentencing order.

<sup>1</sup>Va. Code Ann. § 18.2-254(B) (LexisNexis Supp. 2003).

<sup>2</sup>A review of the Department of Mental Health's website does not list this program as a licensed facility. See Licensed Provider Search, *available at* <http://www.dmhmrzas.state.va.us/lpss/orglocsearch.asp> (last visited Sept. 23, 2003).

<sup>3</sup>See also *Va. Dep't of Corr. v. Crowley*, 227 Va. 254, 316 S.E.2d 439 (1984) (holding that orders releasing prisoners and suspending their sentences, which were entered after 21twenty-one-day period prescribed in Rule 1:1 had expired and prisoners had been transferred to penitentiary, were void for lack of jurisdiction).

<sup>4</sup>Va. Sup. Ct. R. 1:1; see also *Crowley*, 227 Va. at 259, 316 S.E.2d at 441 (quoting *In re Commonwealth, Dep't of Corr.*, 222 Va. 454, 463, 281 S.E.2d 857, 862 (1981)) (concluding that, pursuant to reading of Rule 1:1 and § 53-272, predecessor to § 19.2-303, trial court has no authority to suspend sentence, after expiration of twenty-one -day period, if prisoner has been committed and delivered to penitentiary); *Godfrey v. Williams*, 217 Va. 845, 846, 234 S.E.2d 301, 302 (1977) (affirming that Rule 1:1 grants trial court authority to modify or vacate final judgment within twenty-one days after entry, but does not authorize trial court to extend twenty-one -day limitation period).

<sup>5</sup>See *supra* note 2.

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