
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 28

SENTENCING PROCEDURES IN SPECIAL CASES

Application to review sentence because of assistance given or withheld

28.11.—(1) This rule applies where the Crown Court can reduce or increase a sentence on application by a prosecutor in a case in which—

- (a) since being sentenced, the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence; or
- (b) since receiving a reduced sentence for agreeing to give such assistance, the defendant has failed to do so.

(2) A prosecutor who wants the court to exercise that power must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) the defendant; and
- (c) in the application—
 - (i) explain why the sentence should be reduced, or increased, as appropriate, and
 - (ii) identify any other matter relevant to the court’s decision, including any sentencing guideline or guideline case.

(3) The general rule is that the application must be determined by the judge who passed the sentence, unless that judge is unavailable.

(4) The court must not determine the application in the defendant’s absence unless the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).

[Note. Under section 73 of the Serious Organised Crime and Police Act 2005(1), the Crown Court may pass a lesser sentence than it otherwise would have passed because the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence.

Under section 74 of the 2005 Act(2), where the Crown Court has sentenced a defendant a prosecutor may apply to the court—

- (a) *to reduce the sentence, if the defendant subsequently assists, or agrees to assist, in the investigation or prosecution of an offence; or*

(1) 2005 c. 15.

(2) 2005 c. 15; section 74 was amended by article 13 of, and paragraphs 1 and 19 of Schedule 15 to, S.I. 2010/976.

- (b) *to increase a reduced sentence to that which the court otherwise would have passed, if the defendant agreed to give such assistance but subsequently has knowingly failed to do so.*

Such an application may be made only where the defendant is still serving the sentence and the prosecutor thinks it is in the interests of justice to apply.]