Criminal Division
Vermont Attorney General's Office

Vermont Criminal Law Month

April – May 2012

Vermont Supreme Court Slip Opinions: Full Court Rulings

Includes three justice bail appeals

EVIDENCE OF LEWDNESS WAS SUFFICIENT

In re A.C., 2012 VT 30. DELINQUENCY: PRIOR BAD ACTS; SUFFICIENCY OF THE EVIDENCE FOR LEWDNESS.

Full court published entry order. Adjudication of delinquency based on prohibited acts pursuant to 13 V.S.A. § 2632 affirmed. 1) The defendant claimed his right to confrontation was violated when witnesses testified to statements by the victim that the defendant had touched her previously, when the victim was not available to be cross-examined because she had already testified. However, the defendant has not shown that the victim was not available to be cross-examined. The defendant never sought to recall her to testify after the statements were offered, nor was there any evidence that she would have been unavailable had the defendant attempted to recall her. 2) The court did not err in disallowing questioning of the victim about prior voluntary participation in touching, when referring to "many kids," and did not disallow such questions which involved the defendant. 3) There was no Rule 26 violation when witnesses testified to prior bad acts by another defendant; and the defendant did not object on Rule 26 grounds to testimony that did involve him, and there was no plain error. 4) The evidence was sufficient to support a finding of a lewd act where it showed that the defendant went up her skirt, touching her butt. Skoglund concurrence expresses concern over trial court's substitution of lewd act for lewd and lascivious conduct at the disposition hearing. Doc. 2011-057, April 19, 2012. http://info.libraries.vermont.gov/supct/current/eo2011-057.html

GROUND RULES FOR SITE VISIT DISCUSSED

State v. McCarthy, 2012 VT 34. SITE VISIT. JUROR ACQUAINTED WITH PROSECUTOR. SUFFICIENCY OF THE EVIDENCE: INVOLUNTARY MANSLAUGHTER.

Involuntary manslaughter affirmed. 1) The grant of the State's motion for a site visit by the jury was within the trial court's discretion. The court's finding that changes

to the scene since the event would be obvious and not prejudicial to the defendant, and that any confusion could be addressed with a cautionary instruction, was within its discretion. The court's instructions as given were sufficient to ward off any potential confusion. 2) Although this site visit could have been more tightly managed, given the court's repeated instructions regarding the limited purpose of the site visit, it was not an abuse of discretion to allow jurors some latitude as they walked around the general area; nor is the fact that the jurors were conversing among themselves evidence of improper extraneous influence, as the court repeatedly reminded them not to talk about the case, and this Court will presume that the jury followed those instructions. One juror's use of his arm to help him consider sight lines does not give rise to a suspicious taint by extraneous influences. 3) The court did not impermissibly assume the role of advocate and witness by recording observations on the record, out of the presence of the jury, about the conduct of the site visit. This was not testimony or advocacy, but was akin to the kinds of observations judges make in the course of their duties. 4) There was no bias requiring removal of a juror when the juror had a passing acquaintance with a prosecutor several years before the trial, and engaged in a brief exchange of pleasantries with counsel during the jury view. 5) The evidence was sufficient to support a finding of criminal negligence where the defendant set up a firing range at his home, oriented so that raising a gun barrel three inches to the right of the target and just under an inch above the target would result in the bullet hitting a neighbor's house, so that a relatively small error in aim could lead to catastrophic results; the range had an inappropriate backstop; and the defendant invited others, whom he did not know to be good shooters, to shoot powerful rifles completely unsuited to the setting. The fact that another person may have fired the fatal bullet was not an efficient intervening cause, because the defendant's actions set in motion a natural and continuous sequence, culminating in the victim's death. Doc. 2010-297, May 4, 2012.
http://info.libraries.vermont.gov/supct/current/op2010-297.html

TRANSFERRED INTENT NOT APPLICABLE TO AGGRAVATED ASSAULT

State v. Kolibas, full court opinion. AGGRAVATED ASSAULT: SPECIFIC INTENT AS TO IDENTITY OF VICTIM.

Lewd and lascivious conduct with a child affirmed; two counts of aggravated assault reversed. The defendant was charged with spiking a smoothie with Ambien and giving it to his daughter and his daughter's friend, so that he could molest the friend. The defendant claimed that he intended the drugged drink for his wife, and not the children. Over objection, the trial court gave an instruction on transferred intent, stating that the State was not required to prove that the defendant intended to drug a specific person, and that it was not a defense that he intended to drug a person other than someone who was harmed by his conduct. The State's information charged the defendant with intending to drug the children, and the statute requires an intent to cause stupor to another person by administering to the other person a drug. The information and the statute thus required a showing of a specific intent to drug the person named in the information, and the defendant defended on this basis. The instruction thus relieved the State of proving an essential element of the offense. Doc. 2010-254, May 17, 2012.
http://info.libraries.vermont.gov/supct/current/op2010-254.html

WRIT OF CORUM NOBIS NOT AVAILABLE WHERE PCR IS AVAILABLE

State v. Sinclair, 2012 VT 47. Full court opinion. WRIT OF CORUM NOBIS.

Denial of petition for writ of coram nobis affirmed. The writ of coram nobis is not the appropriate relief where the defendant challenges the adequacy of a plea colloquy, where he received a sentence which he has fully served, but which has enhanced a sentence he is currently serving. He thus qualifies as being a person "who is in custody under sentence," and therefore can file a petition for post-conviction relief. The writ is only available if there is no other remedy. Doc. 2010-475, June 8, 2012. http://info.libraries.vermont.gov/supct/current/op2010-475.html

Vermont Supreme Court Slip Opinions: 3 Justice Panel Rulings

Note: The precedential value of decisions of three-justice panels of the Vermont Supreme Court is governed by V.R.A.P. 33.1(c), which states that such decisions "may be cited as persuasive authority but shall not be considered as controlling precedent." Such decisions are controlling "with respect to issues of claim preclusion, issue preclusion, law of the case, and similar issues involving the parties or facts of the case in which the decision was issued."

DUI CONVICTION DID NOT VIOLATE CORPUS DELICTI RULE

State v. McGrath, three justice entry order. CORPUS DELICITI: CORROBORATING EVIDENCE OF OPERATING UNDER THE INFLUENCE.

DUI affirmed. The defendant argued that his conviction violated the corpus delicti rule because the only evidence of his intoxication at the time of operation was his own admission. However, the corroborating evidence was adequate, where the defendant was involved in a single-car accident; he was the only individual found at the scene; he exhibited signs of intoxication following the accident; and two law enforcement officers opined that he was intoxicated. This evidence was sufficient to support a logical and reasonable inference that the defendant was intoxicated when he was driving his car. Doc. 2011-167, April Term, 2012. http://www.vermontjudiciary.org/d-upeo/eo11-167.pdf

EXPERT TESTIMONY ABOUT DELAYED REPORTING WASN'T BOLSTERING

State v. Thibodeau-O'Connor, three justice entry order. EXPERT TESTIMONY IN CHILD SEXUAL ABUSE CASES: BOLSTERING; RELEVANCE.

Lewd and lascivious conduct with a child and three counts of sexual assault affirmed. Testimony by an expert concerning delayed reporting and blurred memory among child sexual abuse victims was neither direct comment on whether the complainant was telling the truth nor testimony that was tantamount to such an opinion. Instead, it was the sort of general profile evidence that has been consistently upheld to assist the jury to assess the credibility of the victim. The complainant's explanation of her own delayed reporting (she thought the abuse would stop), and the defendant's failure to attack her credibility based upon her imperfect memory of the events, did not render the expert testimony unnecessary. The complainant's explanation is precisely the sort of response that might seem implausible or incomprehensible to an adult lay juror without this expert testimony; and the admissibility of expert testimony is not dependent upon the defendant's tactical decision whether to challenge certain aspects of the victim's testimony. Doc. 2011-171, April Term, 2012. http://www.vermontjudiciary.org/d-upeo/eo11-171.pdf

COURT'S REJECTION OF PLEA AGREEMENT WASN'T VINDICTIVE

State v. Willoughby, three-justice entry order. REJECTION OF PLEA AGREEMENT; STATUTORY BAC INFERENCE BASED ON APPROXIMATE TIMES.

Civil license suspension affirmed. 1) Where the trial court considered a proposed plea agreement to be too lenient in the circumstances of a single car accident and a high BAC, and exercised its discretion to reject the recommended sentence and express its intention to impose a more severe sentence if the plea went forward, it was not doing so for vindictive purposes, nor was it otherwise acting inappropriately. 2) Use of the statutory inference based on two hours of operation was permissible even though the time frames given were approximations. The trial court could find that they were sufficiently accurate to determine that the test was performed within two hours of the accident. 3) Because use of the inference was proper, it is unnecessary to reach the claim that the trial court erred in finding a relation back based upon its own knowledge about rates of absorption and elimination of alcohol, rather than relying upon expert testimony. Doc. 2011-340, May Term, 2012. http://www.vermontjudiciary.org/d-upeo/eo11-340.pdf

KIDNAP SENTENCE BASED ON SECOND DEGREE MURDER SENTENCE WAS VALID

State v. Lizotte, three-justice entry order. SENTENCING: COMPARISON TO UNCHARGED CRIME.

Sentence of twenty-five years to life for, among other charges, kidnapping and assault and robbery, affirmed. The trial court did not err when it imposed a sentence of twenty-five years to life, stating that the case "is basically a second degree murder case, and you have some aggravating factors over the presumptive minimum term." The court did not err in likening the case to an attempted murder and imposing a sentence on that basis. The sentence was well within the statutory limit for kidnapping; and there was no improper consideration of unproven conduct. The

court based its decision on the particular facts of the defendant's crime, testified to in detail by the victim at sentencing. The court's comments about second-degree murder were to emphasize the particularly violent nature of the defendant's acts and the severity of the victim's injuries. These were both appropriate considerations at sentencing. Doc. 2011-198, May Term 2012. http://www.vermontjudiciary.org/d-upeo/eo11-198.pdf

EVIDENCE OF PRIOR ABUSE PROPERLY ADMITTED TO REBUT CLAIM THAT VICTIM WAS ACTING OUT OF SPITE

State v. Bigelow, three-justice entry order. CHARACTER EVIDENCE: REBUTTAL.

Violation of relief-from-abuse order affirmed. The trial court acted within its discretion when it permitted the defendant's wife to testify concerning two incidents in which he abused her, one of which formed the basis for the relief-from-abuse order. Throughout the trial defendant presented a defense suggesting that his wife had been improperly motivated concerning the incident in question, acting out of pettiness and spite rather than any need to protect herself other children. During trial the court warned defense counsel about this approach, noting that the defendant was possibly opening the door to evidence about his character. Despite this warning, the defendant gave a non-responsive answer during his direct testimony in which he stated that he wasn't there to hurt anyone, and that he was "a peaceful person." The trial court ruled that this testimony permitted impeachment by his wife about his peaceful nature, and that ruling was within its discretion. Doc. 2011-282, May Term, 2012. http://www.vermontjudiciary.org/d-upeo/eo11-282.pdf

United States Supreme Court Case Of Interest

Thanks to NAAG for this summary

Blueford v. Arkansas, 10-1320. At petitioner Blueford's murder trial, the jury was instructed on the greater offense of capital murder and three lesser-included offenses, and was told it could convict on one of them or acquit on all of them. A few hours after it starting deliberating, the jury forewoman reported that the jury was unanimous against guilt on the charges of capital murder and first-degree murder, was deadlocked on manslaughter, and had not voted on negligent homicide. After further deliberations, the jury reported that it could not reach a verdict, and the court declared a mistrial. By a 6-3 vote, the Court held that the Double Jeopardy Clause does not bar Arkansas from retrying Blueford on the charges of capital murder and first-degree murder. The Court concluded that the jury's report was not a final resolution that acquitted Blueford of those two charges; and that the trial court did not abuse its discretion by declaring a mistrial without ordering the jury to vote (contrary to Arkansas law) on whether to acquit on those two charges.
[http://www.supremecourt.gov/opinions/11pdf/10-1320.pdf]

Appellate Rule Changes

Rule 10 is abrogated and replaced with a new rule which is consistent with current practices concerning ordering and producing transcripts for appeals, particularly with respect to availability of an on-line order form. Rules 10(b)(8) and (b)(9) have been added to provide additional avenues for parties proceeding in forma pauperis to obtain a record of the proceedings without paying for a transcript. Rule 10(b)(8) allows the audio recording to be accepted as the official record of the proceedings if the record is under four hours. The amendment also abrogates Rule 10.1.

The amendment to Rule 29 specifies that an amicus brief must comply with Rule 32 form and filing requirements.

The amendment also makes the emergency amendments to Rule 30 that were promulgated and effective March 23, 2011 permanent. The amendments provide that in cases without an electronic case file, a litigant must file only a single paper copy and an electronic copy of the printed case, supplemental printed case, and exhibits. This change will expire June 30, 2013. In addition, new subdivision 30(i) allows service of these materials on represented parties is sufficient by electronic means. Unrepresented parties must receive a paper copy of these materials, unless the parties agree otherwise.

The amendment to Rule 30(f) requiring exhibits for inclusion in the printed case to be filed electronically does not alter the current system that inclusion of any exhibit in the printed case is at counsel's discretion.

The amendment to Rule 31 reduces to eight the number of paper briefs required to be filed by litigants and continues to require the filing of an electronic brief by represented parties.

The amendment to Rule 32 requires the filing of an electronic version of the printed case by represented parties, in addition to the electronic filing of the brief.

This Order, promulgated on **March 14, 2012**, and **effective May 14, 2012**, can be found by clicking on the following link:

http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDVRAP10_12_28-32_PERMANENT28(d)and30ABROGATION10.1_12.1_28.1.pdf

Amendment to Rules of Mandatory Continuing Legal Education

This amendment adds § 5(d) to the Rules for Mandatory Continuing Legal Education which provides that credit may be earned by presenting formal education and/or informational programs to non-lawyers, including but not limited to student groups, which are designed to broaden public knowledge and understanding of the law, and/or increase public support and respect for the legal system – up to two hours per reporting period. This amendment is not intended to award credit for instruction primarily aimed at the marketing of the presenter.

This Order, promulgated on **March 14, 2012**, and **effective July 1, 2012**, can be found by clicking on the following link:

http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDMCLE5(d).pdf

Proposed Criminal Rule Changes

a. Proposed Amendments to V.R.Cr.P. 11(c) and (d)

Vermont Rules of Criminal Procedure 11(c) and (d) would be amended to clarify that in misdemeanor cases, consistent with the provisions of Rule 43, the court may accept a plea of guilty or nolo contendere and find that such a plea is knowing and voluntary, without a colloquy in open court, upon submission of a plea by a defendant given in writing, upon a written waiver form which acknowledges understanding and voluntary waiver of all advisements and rights that are the subject of colloquy prescribed by Rules 11(c) and (d). Acceptance of a written plea by waiver in any case remains a matter committed to the discretion of the court. Pleas by waiver pursuant to plea agreement in certain misdemeanor cases have long been accepted in misdemeanor cases, and the amendment serves to clarify the practice. In each case, the judge must also find in writing that the plea is knowing and voluntary, and with adequate factual basis.

Rule 11(c)(7) would be amended to conform the rule governing colloquy as to the consequences of a criminal conviction to immigration, citizenship application, and U.S. entry of foreign nationals, to the decision in *Padilla v. Kentucky*, 559 U.S.___,130 S. Ct. 1473 (2010), 13 V.S.A. § 6565(c), and the broader rights advisement contemplated by proposed amendments to F.R.Cr.P. 11. The amendment adds the advisement that a defendant "may be denied admission to the United States in the future" as a consequence of conviction. The amendment also alters the beginning of the advisement to emphasize that the judge's obligation is to inquire whether a defendant understands that if they are not a United States citizen, immigration, citizenship, and admission consequences may ensue, rather than to inquire of a defendant on the record whether they are a United States citizen.

http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRCrP11(c)and(d).pdf

b. Proposed Amendments to V.R.Cr.P. 41

The proposed amendments to Rule 41 of the Vermont Rules of Criminal Procedure, consistent with Administrative Order No. 43, issued on January 20, 2012, provides specific procedures for the timely filing of documents associated with the issuance, denial and execution of search warrants, and the returns and inventories required following execution. The proposed amendments are intended to provide greater accountability for, and monitoring of, search warrants, whether granted or denied, executed or not, by establishing requirements for filing of warrant documents, and maintenance of a search warrant log and database by the clerk of each unit.

Rule 41(c) clarifies the status of warrant applications that are denied. In the event a warrant application is denied, the judge shall file the warrant documents with the clerk of court, for entry of

the application and the court's denial in the warrant log and database. If the denial occurs after hours, the judge must cause the warrant documents to be delivered to the clerk on the next business day for this purpose. A warrant application that is denied is a court record that must be preserved and stored pursuant to 4 V.S.A. § 740 and Administrative Order No. 43, even though it is not generally subject to public disclosure as a public record. See Vermont Rules for Public Access to Court Records §§ 6(b)(16), 7(a).

Rule 41(d)(5)(B) is added to address issues associated with issuance of a warrant for seizure of electronic storage media or the seizure or copying of electronically stored information. It is modeled on Federal Rules 41(e)(2)(B) and (f)(1)(B) which acknowledge that computers and other electronic storage media commonly contain such large amounts of information that it is often impractical for law enforcement to review all of the information during execution of the warrant at the search location. The rule authorizes a two-step process: officers may seize or copy the entire storage medium and review it later to determine what electronically stored information falls within the scope of the warrant. As with the federal rule, the ten-day execution period applies to the actual execution of the warrant and its on-site activity. The rule does not prevent a judge from imposing a deadline for the return of the storage media or access to the electronically stored information at the time the warrant is issued. However, no presumptive time is established given the practical difficulties of completing analysis of large volumes of data contained within electronic storage media. Although return dates must be established, the matter is within the discretion of the court in consideration of the specific case circumstances. The term "electronically stored information" is not defined in the rule. As with the federal rule, the meaning of the term is generally understood from the civil discovery context. The Reporter's Notes to 2009 amendments of V.R.C.P. 34(a) indicate that they were intended "to confirm that discovery of electronically stored information stands on equal footing with discovery of paper documents" and that "The scope of the term is meant to be expansive, including 'any medium'—even those that may be developed in the future."

The amendment also adopts a provision from recently amended Maine Rule of Criminal Procedure 41B(a)(1) which permits the court to authorize retention by the property owner of an electronic copy of such information that is necessary to avoid or mitigate business interruption or other disruptive consequences.

Rule 41(d)(6)(A) requires that upon issuance of a search warrant, the judge shall immediately deliver a copy of the signed warrant, and the original application and affidavit to the clerk of the court designated in the warrant. If the warrant is issued after business hours, the judge is required to ensure that the warrant documents are delivered to the clerk on the next business day for entries to be made into the warrant log and database. "Delivery" in this event would consist of the judge's actual delivery of the documents to the clerk, or transmission of the documents to the clerk via mail or reliable electronic means. Where the warrant is issued for a unit other than where the judge is assigned, the judge has the option of delivering the documents to the clerk of the unit of assignment for transmission to the clerk of the unit where the warrant originates. Where the warrant is issued after business hours in the presence of the judge, the rule contemplates that the applicant will bring one complete copy of the proposed search warrant and application documents to the judge, to remain in the judge's possession. The judge may also direct that the applicant deliver copies of all warrant documents to the clerk the next business day to ensure delivery. In the case of a warrant issued by reliable electronic means, the judge transmits the signed original or modified warrant and the affidavit to the clerk by an appropriate means, which may include electronic means as well.

Rule 41(d)(6)(B) establishes procedures for assignment of a warrant identification number by the clerk for each warrant application and associated documents. Upon filing, the warrant's identifying details and any subsequent activity on the warrant are entered by the clerk into a warrant log and database maintained in each unit. The amendment establishes a uniform practice of maintaining all search warrant documents in a secure location with all other warrant documents of the unit, pending lawful disclosure, court order, or other disposition of the documents. Under Vermont law, documents associated with search warrants issued by the court are public records. See 4 V.S.A. § 740, In re Sealed Documents, 172 Vt. 152, 159, 772 A.2d 518, 525 (2001), and Administrative Order No. 43, January 20, 2012. Search warrant documents are not subject to public disclosure until such time as the warrant has been executed and the return filed with the court. See 1 V.S.A. § 317(c)(5); Vermont Rules for Public Access to Court Records § 6(b)(15). The search warrant documents are then subject to public disclosure unless sealed pursuant to the Rules for Public Access to Court Records § 7(a). In determining whether to seal, or to grant public access to a sealed record, the court must apply the standards contained in In re: Sealed Documents,172 Vt. at 161-63, 772 A.2d at 526-28; see also In re Search Warrants, 2011 VT 88, ___ Vt. ____, 27 A.3d 345 (mem.).

Rules 41(d)(6)(B) and (C) direct that the warrant log and database be such as to permit monitoring of timely execution of warrants issued, and timely filing of returns and inventories following search. The log and database are to be updated as each phase of the warrant's execution, return, and inventory are completed. The rule contemplates that the Court Administrator through policies and protocols shall establish standards for the maintenance of the warrant log and database, the entries to be made by the clerks, and retrieval of statistical information as to search warrant practice of the courts.

Rule 41(e)(2) is amended to clarify return and inventory obligations with respect to seizure of electronic storage media and electronically stored information. The amendment provides that in such cases the inventory may be limited to a description of the physical storage media that were seized or copied. Thus, following seizure of such property, a return and inventory must be timely filed, even though intended subsequent analysis of the contents of the media may not be completed until a later date. The court has authority under the provisions of Rule 41(e)(3) to order an extension of the return date, or to direct that the inventory be supplemented by a specified future date, to address case-specific needs associated with the completion of searches of electronic storage media or large volumes of electronically stored information. The clarification facilitates prompt provision of the search warrant return, and consequent supervision of the circumstances of completion of search by the court.
Rule 41(e)(3) is amended to provide that following completion of the execution of the warrant, the return accompanied by the inventory must be filed as promptly as possible, and in no event later than five calendar days following execution, and the completion of the authorized search, unless extended by the court for good cause shown. Most searches are completed within a relatively short period of time, usually on the date that the warrant is executed. In some cases, involving intensive crime scene search and the collection and preservation of forensic evidence, a search may require a number of days for completion. "Completion" in these instances would occur upon the completion of on-site search and seizure, but would not extend to subsequent off-site examination or analysis of items seized. Rule 41(e)(2) clarifies return obligations with respect to seizure of electronic storage media and electronically stored information.

Whether a warrant is executed or not, or any property seized or not, the applicant is obliged to return the warrant to court, with a report of actions taken thereon. The amendment also requires that if no property is seized in consequence of the authorized search, a return must still be filed, so indicating.

For good cause shown upon certification by the applicant, the court may extend the period of time for filing of the return for a further period of time deemed reasonable. Good cause for extension would not be provided by normal or customary demands or press of business upon law enforcement officers, but upon case-specific showing of need, or specific unforeseen circumstances warranting date-specific and reasonable extension. Nor would extension of the return date serve as a substitute for recourse to the process and specific standards required for sealing of any search warrant records.

Rule 41(e)(6) serves to clarify that in cases where a search warrant is not executed within its authorized term, as a public record, it must be returned to the court by the applicant for filing with the entry on the return "warrant not executed". Whether executed or not, an issued search warrant remains a public document to be filed with and retained by the court.

Rule 41(h) adds the requirement that the search warrant application, the return and inventory all contain reference to the incident number, if any, assigned to the documents by the applicant, to facilitate the courts' record keeping and monitoring of search warrants and their activity.

These proposed rule amendments can be found at the following address:

http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRCrP41.pdf

c. Proposed Search Warrant Return and Inventory Form

In conjunction with the proposed amendments to V.R.Cr.P. 41, the Committee proposes the adoption of a Search Warrant and Return and Inventory Form.

This proposed form can be found at the following address:

http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRCrP41--Return%20and%20Inventory%20Form.pdf

d. Proposed Amendments to V.R.Cr.P. 44.2(c)

Rule 44.2(c) would be amended to provide consistency in treatment of withdrawal of counsel following entry of judgment of conviction, which occurs at time of sentencing pursuant to Rule 32(b). Some courts have entered the withdrawal of counsel automatically but at different points after conviction, and some have required a motion to withdraw before such entry is made at any point in time. The amendment provides for a consistent practice of automatic withdrawal, entered by the clerk of court, at 90 days following initial sentencing, the period during which a motion for reduction of sentence pursuant to 13 V.S.A. § 7042(a) must be filed, absent timely appeal. If a timely motion for reduction of sentence is filed, automatic withdrawal is not deemed to have occurred until the sentencing court has given its decision on that motion. A request to withdraw otherwise cognizable on motion would be permitted. After automatic withdrawal of appearance of counsel under the amended rule, a defendant has the right to secure counsel, or to make application for the appointment of counsel, to address post-conviction issues in the criminal division, such as to correct purported errors in plea agreement, sentence or sentence computations that go to the parties', and the court's, intended case disposition; or any remaining issue as to restitution that has not been addressed. A

defendant would have the same recourse in the event that a motion for reduction of sentence is sought following determination of an appeal from judgment of conviction.

This proposed amendment can be found at the following address:

http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRCrP44.2(c).pdf

Cases marked with an asterisk were handled by the AGO.

Vermont Criminal Law Month is published bi-monthly by the Vermont Attorney General's Office, Criminal Justice Division. Computer-searchable databases are available for Vermont Supreme Court slip opinions back to 1985, and for other information contained in this newsletter. For information contact David Tartter at (802) 828-5515 or dtartter@atg.state.vt.us.