

1 **5-801. [~~Reduction of sentence~~] Correction or reduction of sentence.**

2 A. [~~Reduction of sentence.~~ A motion to reduce a sentence may be filed within ninety
3 (90) days after the sentence is imposed, or within ninety (90) days after receipt by the court of a
4 mandate issued upon affirmance of the judgment or dismissal of the appeal, or within ninety (90)
5 days after entry of any order or judgment of the appellate court on direct appeal denying review
6 of, or having the effect of upholding, a judgment of conviction. A motion to reduce a sentence may
7 also be filed upon revocation of probation as provided by law. Changing a sentence from a sentence
8 of incarceration to a sentence of probation shall constitute a permissible reduction of sentence
9 ~~under this paragraph.~~ **Correction of sentence for clear error.** A court may correct an illegal
10 sentence at any time under Rule 5-802 NMRA and may correct a sentence imposed in an illegal
11 manner within thirty (30) days after a sentence is imposed. If the corrected sentence results in more
12 onerous sentencing terms, the court shall hold a hearing with the parties and defendant to discuss
13 the effects of the correction.

14 B. **Reduction of sentence.** A motion to reduce a sentence may be filed within ninety
15 (90) days of any of the following:

16 (1) filing of the written judgment and sentence;

17 (2) after receipt by the court of a mandate issued upon affirmance of the
18 judgment or dismissal of the appeal;

19 (3) after entry of any order or judgment of the appellate court on direct appeal
20 denying review of, or having the effect of upholding, a judgment of conviction; or

21 (4) after entry of a written order revoking probation.

1 C. **Effect of motion to reduce sentence on notice of appeal.** A motion to reduce
2 sentence shall serve to toll the time for filing a notice of appeal if filed within thirty (30) days of
3 the written judgment and sentence or order revoking probation.

4 D. **Probation in lieu of incarceration permitted.** Changing a sentence from a
5 sentence of incarceration to a sentence of probation shall constitute a permissible reduction of
6 sentence under this paragraph.

7 ~~[B:]~~ E. **Mandatory sentence.** This rule does not apply to the death penalty or a mandatory
8 sentence.

9 [As amended, effective March 1, 1986; August 1, 1989; August 1, 1992; as amended by Supreme
10 Court Order No. 09-8300-006, effective May 6, 2009; as amended by Supreme Court Order No.
11 14-8300-014, effective for all cases filed on or after December 31, 2014; as amended by Supreme
12 Court Order No. S-1-RCR-2024-00071, effective for all cases pending or filed on or after
13 December 31, 2025.]

14 **Committee commentary.** — ~~[Motions to correct clerical mistakes in judgments, orders or~~
15 ~~other parts of the record and errors in the record arising from oversight or omission should be~~
16 ~~brought under Rule 5-113(B) NMRA. Motions challenging the legal validity of a conviction or a~~
17 ~~sentence should be brought under Rule 5-802 or Rule 5-803 NMRA. This rule authorizes motions~~
18 ~~seeking discretionary reduction of a sentence.]~~ Modeled in part on Rule 35 of the Federal Rules of
19 Criminal Procedure, Rule 5-801 NMRA permits a district court to correct a sentence for clear error
20 and to consider a reduction of sentence on motion of the defendant. As with Rule 35 of the Federal
21 Rules of Criminal Procedure, it permits alteration of a sentence that “resulted from arithmetical,
22 [or] technical” error. Rule 5-113(B) NMRA accounts for corrections of “clerical” errors.

1 ~~[This rule was originally drafted to be substantially the same as Rule 35 of the Federal~~
2 ~~Rules of Criminal Procedure. Prior to the adoption of Rule 5-801 NMRA there was confusion as~~
3 ~~to when the district court could modify a sentence. The New Mexico rule was that the district court~~
4 ~~could modify a sentence of a prisoner during the same term of the conviction, even if the defendant~~
5 ~~had already commenced to serve his sentence. See *State v. White*, 1962 NMSC 139, ¶ 12, 71 N.M.~~
6 ~~342, 378 P.2d 379. The district court, however, lost all power to modify a judgment after the filing~~
7 ~~of the notice of appeal. See *id.* ¶ 14. The Rules of Criminal Procedure for the District Courts~~
8 ~~abolished the concept of terms of court and therefore it was desirable to have a specific rule setting~~
9 ~~forth the limits of power of the district court.~~

10 ~~The rule, as originally drafted, limited the period of time that district court could modify a~~
11 ~~sentence to a period of thirty (30) days after imposition of sentence. Rule 5-801 was revised in~~
12 ~~1988 to comply with the Supreme Court's decision in *Hayes v. State*, 1988 NMSC 021, 106 N.M.~~
13 ~~806, 751 P.2d 186. In *Hayes*, the Supreme Court held that if the motion to reduce a sentence is~~
14 ~~filed within thirty (30) days after the mandate on appeal, the trial court could reduce the sentence~~
15 ~~within a reasonable time after the filing of the motion. *Id.* ¶ 8. The Supreme Court suggested that~~
16 ~~ninety (90) days from a timely filed motion was a reasonable time. See also Rule 35, Federal Rules~~
17 ~~of Criminal Procedure for the United States District Courts.~~

18 ~~Under this rule, no modification of sentence can be considered by the trial court after the~~
19 ~~filing of notice of appeal. However, the trial court may modify the sentence within thirty (30) days~~
20 ~~after receipt of the mandate.~~

21 ~~This rule is not to be construed as allowing the reduction, deferral or suspension of a~~
22 ~~sentence unless such modification of sentence is consistent with applicable New Mexico law.~~

1 ~~A motion under this rule that is filed not later than thirty (30) days after the filing of the~~
2 ~~judgment tolls the time for appeal under the Rules of Appellate Procedure. See Rule 12-~~
3 ~~201(D)(1)(b) NMRA (2016); see also State v. Romero, 2014-NMCA-063, ¶¶ 5-13, 327 P.3d~~
4 ~~525 (concluding that timely filing of post-judgment motion under Rule 5-801 suspends finality of~~
5 ~~judgment until a written ruling on the motion is entered).]~~

6 This rule, as with the modern iteration of Rule 35 of the Federal Rules of Criminal
7 Procedure, dispenses with the common law principle that a district court retains inherent and
8 unlimited jurisdiction to correct illegal sentences at any time. See Fed. R. Crim. P. 35 advisory
9 comm. notes (1991) (recognizing that Fed. R. Crim P. 35 aligns with the Sentencing Reform Act
10 of 1984, which repealed the district court’s indefinite jurisdiction to correct a sentence). The length
11 of time in which a district court retains jurisdiction to correct an illegal sentence for clear error is
12 restricted to thirty (30) days, consistent with the time for appealing sentences. See State v. Romero,
13 2023-NMSC-008, ¶ 29 n.4, 528 P.3d 640. This limit “reduce[s] the likelihood of jurisdictional
14 questions in the event of an appeal and to provide the parties with an opportunity to address the
15 court’s correction of the sentence, or lack thereof, in any appeal of the sentence.” Id. (quoting Fed.
16 R. Crim. P. 35 advisory comm. notes (1991)).

17 As the time limits for filing a notice of appeal are shorter than the time limits for a motion
18 to reduce sentence, a motion to reduce sentence will only serve to toll those limits if filed within
19 the time for filing the notice of appeal. See Rule 12-201(D)(1)(b) NMRA; see also State v.
20 Romero, 2014-NMCA-063, ¶¶ 5-13, 327 P.3d 525 (concluding that timely filing of post-judgment
21 motion under Rule 5-801 suspends finality of judgment until a written ruling on the motion is
22 entered under Rule 5-121 NMRA). In the previous iteration of this rule, this was solely stated in

1 the commentary. However, the Committee believes that this fundamentally important issue should
2 be stated in the rule, and it is now placed in Paragraph C.

3 Post-appeal, motions to reduce sentence must be filed within ninety (90) days. The trial
4 court may reduce the sentence within a “reasonable time” after the filing of the motion. *Romero,*
5 2014-NMCA-063, ¶ 8. The Supreme Court has suggested that ninety (90) days from a timely filed
6 motion constitutes a “reasonable time.” *See Hayes v. State*, 1988-NMSC-021, 106 N.M. 806, 751
7 P.2d 186; *see also* Rule 5-121 (encouraging prompt orders and requiring the court to “enter the
8 judgment and order within a reasonable time after submission.”)

9 The authority to correct a sentence under Paragraph A of this rule is intended to be very
10 narrow and to extend only to those cases in which an obvious error or mistake has occurred in the
11 sentence; that is, the error must be of the sort that, if appealed, would almost certainly result in a
12 remand of the case to the trial court for correction of an illegal sentence under the rule. Paragraph
13 A of this rule is not an opportunity for the court to reconsider the application or interpretation of
14 sentencing statutes or for the court simply to change its mind about the appropriateness of the
15 sentence. Nor should it be used to reopen issues previously resolved at the sentencing hearing. The
16 Committee did not intend that the rule relax any requirement that the parties state all objections to
17 a sentence at or before the sentencing hearing. Motions challenging the legal validity of a
18 conviction or a sentence should be brought under Rules 5-802 or 5-803 NMRA.

19 This rule requires a district court to hold a hearing to correct an illegal sentence only when
20 “the corrected sentence results in more onerous sentencing terms.” *See* Fed. R. Crim. P. 35
21 advisory comm. notes (1991) (recognizing that a court may correct an illegal sentence sua sponte);
22 *State v. Sommer*, 1994-NMCA-070, ¶ 8, 118 N.M. 58, 878 P.2d 1007. The defendant must be
23 present at the hearing. *See Sommer*, 1994-NMCA-070, ¶ 8 (holding that “a defendant need not be

1 present at a hearing to reconsider a sentence, except where the hearing results in the terms of the
2 sentence being made more onerous”).

3 [~~As amended by Supreme Court Order No. 14-8300-014[, effective for all cases filed on or after~~
4 ~~December 31, 2014]; as amended by Supreme Court Order No. 16-8300-014[, effective for all~~
5 ~~cases pending or filed on or after December 31, 2016]; as amended by Supreme Court Order No.~~
6 S-1-RCR-2024-00071.]