

Motion to Correct an Invalid Sentence Checklist

Note: “The court may correct an invalid sentence, on its own initiative after giving the parties an opportunity to be heard, or on motion by either party,” but a valid sentence may not be modified after it has been imposed except as provided by law. [MCR 6.429\(A\)](#). If the court corrects an invalid sentence on its own initiative it must do so within 6 months of the entry of the judgment of conviction and sentence. *Id.*

- Determine whether the motion is timely under [MCR 6.429\(B\)](#):
 - A motion to correct an invalid sentence may be filed before the filing of a timely claim of appeal. [MCR 6.429\(B\)\(1\)](#).
 - If a claim of appeal has been filed, a motion to correct an invalid sentence may only be filed in accordance with the procedure set out in [MCR 7.208\(B\)](#) (postjudgment motions in criminal cases) or the remand procedure set out in [MCR 7.211\(C\)\(1\)](#) (motion to remand filed in Court of Appeals). [MCR 6.429\(B\)\(2\)](#).
 - If the defendant may only appeal by leave or fails to file a timely claim of appeal, a motion to correct an invalid sentence may be filed within the time for filing an application for leave to appeal under [MCR 7.205\(A\)\(2\)\(a\)](#) and [MCR 7.205\(A\)\(2\)\(b\)\(i\)-\(iii\)](#). [MCR 6.429\(B\)\(3\)](#). [MCR 7.205\(A\)\(2\)](#) requires the motion to be filed within the later of:
 - 6 months after entry of the judgment or order, [MCR 7.205\(A\)\(2\)\(a\)](#); or
 - 42 days after:
 - an order regarding appellate counsel if the defendant requested counsel within 6 months after entry of the judgment or order to be appealed;

- the filing of transcripts ordered under [MCR 6.425\(G\)\(1\)\(f\)](#) if the defendant requested counsel within 6 months after entry of the judgment or order to be appealed; or
- the filing of transcripts ordered under [MCR 6.433](#) if the defendant requested the transcripts within 6 months after entry of the judgment or order to be appealed. [MCR 7.205\(A\)\(2\)\(b\)\(i\)-\(iii\)](#).¹
- If the defendant is no longer entitled to appeal by right or by leave, he/she may seek relief under the procedure set out in [MCR 6.500](#) *et seq.* (motion for relief from judgment). [MCR 6.429\(B\)\(4\)](#).
- A filing by an unrepresented incarcerated individual “must be deemed timely filed if it was deposited in the institution’s outgoing mail on or before the filing deadline.” [MCR 1.112](#). “Proof of timely filing may include a receipt of mailing, a sworn statement setting forth the date of deposit and that postage has been prepaid, or other evidence (such as a postmark or date stamp) showing that the document was timely deposited and that postage was prepaid.” *Id.*
- Determine whether the sentence is invalid. A sentence may be invalid for any of the following reasons (this list may not be exhaustive):
 - when it is beyond statutory limits,
 - when it is based upon constitutionally impermissible grounds,
 - when it is based upon improper assumptions of guilt,
 - when it is based upon a misconception of law, or
 - when it conforms to local sentencing policy rather than individualized facts. See *People v Miles*, 454 Mich 90, 97 (1997).
- Apprise the parties that they must not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless they raised the issue at sentencing, in a proper motion for resentencing, or in a prior

¹A defendant relying on [MCR 7.205\(A\)\(2\)\(b\)](#) must explain, with supporting documentation, how the application meets the requirements. [MCR 7.205\(A\)\(2\)](#).

motion to remand filed in the Court of Appeals. [MCL 769.34\(10\)](#); [MCR 6.429\(C\)](#).

Note: In *People v Lockridge*, 498 Mich 358, 365, 399 (2015), the Court held that although “a sentencing court must determine the applicable guidelines range and take it into account when imposing a sentence,” the guidelines “are advisory only.” Because nothing in *Lockridge* specifically calls into question the standards currently governing appellate review of sentences imposed under the (now advisory) guidelines, it is unclear to what extent all of these standards remain good law.² However, the Court clarified that “the portion of [MCL 769.34\(10\)](#) that requires appellate affirmation of within-guidelines sentences that are based on accurate information without scoring errors is unconstitutional,” and the Court struck down that portion of [MCL 769.34\(10\)](#). *People v Posey*, ___ Mich ___, ___ (2023) (Justice WELCH did not join this section of the opinion, but she agreed that the first sentence of [MCL 769.34\(10\)](#) must be severed albeit for a different reason). Within-guidelines sentences must be reviewed for reasonableness, but there is a nonbinding rebuttable presumption of proportionality. *Id.* at ___ (Justice WELCH agreed with this remedy). *Lockridge* does not apply retroactively for purposes of collateral review under [MCR 6.500](#). *People v Barnes*, 502 Mich 265, 268 (2018).

² See, however, *People v Steanhouse (Steanhouse I)*, 313 Mich App 1, 38 (2015) (concluding that “the standards of review traditionally applied to the trial court’s scoring of the variables remain viable after *Lockridge*[, 498 Mich 358]”) (citations omitted).

