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	2003 Regular Session bill information current as of July 4, 2003 - 1:20 a.m.								
<a href="#">Sponsors</a>	<a href="#">Title</a>	<a href="#">Synopsis</a>	<a href="#">History</a>	<a href="#">Sponsor List</a>	<a href="#">Subjects</a>	<a href="#">Statutes</a>	<a href="#">Documents</a>	<a href="#">Up to the Minute</a>	<a href="#">Another Bill</a>

**HOUSE BILL 333**

**CHAPTER NUMBER: 141**  
*File Code: Criminal Law - Procedure*  
*Crossfiled with: SENATE BILL 407*

**Sponsored By:**

Delegates Amedori, O'Donnell, and Sophocleus

**Entitled:**

Courts - Criminal Cases - State's Right of Appeal

**Synopsis:**

Authorizing the State to appeal from a final judgment in a criminal case if the State alleges that the trial judge imposed or modified a sentence in violation of the Maryland Rules.

**History by Legislative Date****House Action**

2/3 First Reading Judiciary  
 2/5 Hearing 2/18 at 1:00 p.m.  
 2/18 Hearing cancelled  
 Hearing 2/21 at 1:00 p.m.  
 3/18 Favorable with Amendments Report by Judiciary  
 Favorable with Amendments Report Adopted  
 Second Reading Passed with Amendments  
 3/19 Third Reading Passed (133-3)  
 3/30 Returned Passed  
 4/22 Signed by the Governor Chapter 141

**Senate Action**

3/20 First Reading Judicial Proceedings  
 3/31 Favorable Report by Judicial Proceedings  
 3/30 Favorable Report Adopted  
 Second Reading Passed  
 3/31 Third Reading Passed (45-0)

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**Sponsored by:**

Delegate Carmen Amedori, District 5A  
Delegate Anthony J. O'Donnell, District 29C  
Delegate Theodore Sophocleus, District 32

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**Bill indexed under the following Subjects:**

APPEALS -see also- JUDICIAL REVIEW  
COURTS -see also- CIRCUIT; APPEALS; DISTRICT; ORPHANS'; etc.  
CRIMES AND PUNISHMENTS -see also- PENALTIES; SENTENCES; etc.  
JUDGES  
RULES AND REGULATIONS  
SENTENCES -see also- DEATH PENALTY  
TRIALS

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**Bill affects the following Statute:**

Courts and Judicial Proceedings  
( 12-302 )

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**Documents:**

**Bill Text (Displayed in Rich Text Format):** First Reading, Third Reading, Enrolled

**Fiscal Note (Displayed in Word Format):** Available

**Amendments (Displayed in WordPerfect 8 Format):**

**House**

Number: 462111/01 Offered on: March 18, 2003 at: 11:43 a.m. Status: Adopted

**Roll Call Votes (Legislative dates are shown):**

**House**

March 19, 2003: Third Reading Passed (133-3)

**Senate**

March 31, 2003: Third Reading Passed (45-0)

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<a href="#">Top</a>	<a href="#">Sponsors</a>	<a href="#">Title</a>	<a href="#">Synopsis</a>	<a href="#">History</a>	<a href="#">Sponsor List</a>	<a href="#">Subjects</a>	<a href="#">Statutes</a>	<a href="#">Documents</a>	<a href="#">Up to the Minute</a>	<a href="#">Another Bill</a>
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# HOUSE BILL 333

E2

3lr1068  
CF 3lr1985

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By: **Delegates Amedori, O'Donnell, and Sophocleus**  
Introduced and read first time: February 3, 2003  
Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

### 2 **Courts – Criminal Cases – State's Right of Appeal**

3 FOR the purpose of authorizing the State to appeal from a final judgment in a  
4 criminal case if the State alleges that the trial judge imposed or modified a  
5 sentence in violation of the Maryland Rules; providing for the application of this  
6 Act; and generally relating to the State's right to appeal from a final judgment  
7 in a criminal case.

8 BY repealing and reenacting, with amendments,  
9 Article – Courts and Judicial Proceedings  
10 Section 12–302(c)(2)  
11 Annotated Code of Maryland  
12 (2002 Replacement Volume)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
14 MARYLAND, That the Laws of Maryland read as follows:

### 15 **Article – Courts and Judicial Proceedings**

16 12–302.

17 (c) In a criminal case, the State may appeal as provided in this subsection.

18 (2) The State may appeal from a final judgment if the State alleges that  
19 the trial judge failed to impose the sentence specifically mandated by the Code OR  
20 IMPOSED OR MODIFIED A SENTENCE IN VIOLATION OF THE MARYLAND RULES.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to  
22 any appeal pending or filed by the State on or after the effective date of this Act.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2003.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE

House Bill 333  
Judiciary

(Delegate Amedori, *et al.*)

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Courts - Criminal Cases - State's Right of Appeal

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This bill provides that the State may appeal from a final judgment in a criminal case if the State alleges that the trial judge imposed or modified a sentence in violation of the Maryland Rules.

The bill will apply to any appeal pending or filed by the State on or after the October 1, 2003 effective date.

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Fiscal Summary

**State Effect:** None. It is anticipated that any resulting appeals could be handled with existing resources.

**Local Effect:** None – see above.

**Small Business Effect:** None.

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Analysis

**Current Law:** Section 12-302 of the Courts and Judicial Proceedings Article (CJ) provides that the State may appeal from a final judgment in a criminal case if the State alleges that the trial judge failed to impose the sentence specifically mandated by the Maryland Code.

**Background:** This bill is in response to a recent Maryland Court of Special Appeals decision, *Maryland v. Warfield*, 148 Md. App. 178 (2002).

Calvin Warfield was tried and convicted as a subsequent drug offender in November 1996. On February 4, 1997, he was sentenced to a mandatory ten-year sentence. A motion for reduction of sentence was filed on April 3, 1997 and denied the same day.

On March 9, 2001, Warfield filed a request to change his sentence structure. This motion was filed well past the 90-day period provided in the Maryland Rules. Nevertheless, after an evaluation of Warfield by the Department of Health and Mental Hygiene (DHMH) and a hearing on August 13, 2001, the court granted the request, committing Warfield to DHMH for residential treatment and prohibiting his release from treatment without consultation with the issuing judge.

The Carroll County State's Attorney appealed this ruling to the Court of Special Appeals. That court held that an appeal could not be based on a violation of the Maryland Rules, since under CJ 12-302 the only basis for an appeal was that the trial judge failed to impose the sentence specified by the Maryland Annotated Code.

The court reasoned that, prior to the enactment of CJ 12-302, the State had a common law right to appeal an action by a judge that exceeded the judge's authority. However, the use of the precise term "Code" in CJ 12-302 abolished the right to appeal based on either this common law authority, or on a provision of the Maryland Rules.

The U.S. Supreme Court has held that granting a state a retroactive right of appeal does not violate the constitutional ban on *ex post facto* laws. *Mallett v. North Carolina*, 181 U.S. 589 (1901).

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#### **Additional Information**

**Prior Introductions:** None.


**Cross File:** SB 407 (Senator Jimeno) – Judicial Proceedings.

**Information Source(s):** State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Legislative Services

**Fiscal Note History:** First Reader - February 11, 2003  
ncs/cer

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Analysis by: Rita A. Reimer 

Direct Inquiries to:  
(410) 946-5510   
(301) 970-5510

Department of Legislative Services  
Maryland General Assembly

<b>FISCAL NOTE INFORMATION ATTACH TO BILL</b>
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**TO:** House Committee -  
→ Chairman, Judiciary

Senate Committee -  
Chairman, Judicial Proceedings

Bill Sponsor, Delegate Amedori, Carmen

**DATE:** March 20, 2003

**FROM:** John F. Rixey  
Coordinating Analyst

**RE:** **House Bill 0333**  
This is a Third Reader w/no change or favorable

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We have examined the third reader bill for the above mentioned bill and have found no change in the original fiscal note.

cc: Fiscal Note File

JFR/ncs

# HOUSE BILL 333

E2

3lr1068  
CF 3lr1985

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By: **Delegates Amedori, O'Donnell, and Sophocleus**

Introduced and read first time: February 3, 2003

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2003

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

### 2 **Courts – Criminal Cases – State's Right of Appeal**

3 FOR the purpose of authorizing the State to appeal from a final judgment in a  
4 criminal case if the State alleges that the trial judge imposed or modified a  
5 sentence in violation of the Maryland Rules; providing for the application of this  
6 Act; and generally relating to the State's right to appeal from a final judgment  
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13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
14 MARYLAND, That the Laws of Maryland read as follows:

### 15 **Article – Courts and Judicial Proceedings**

16 12-302.

17 (c) In a criminal case, the State may appeal as provided in this subsection.

18 (2) The State may appeal from a final judgment if the State alleges that  
19 the trial judge ~~failed~~;

20 (I) FAILED to impose the sentence specifically mandated by the  
21 Code; OR

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

**[Brackets]** indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



2

**HOUSE BILL 333**

1                    (II) IMPOSED OR MODIFIED A SENTENCE IN VIOLATION OF THE  
2 MARYLAND RULES.

3           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to  
4 any appeal pending or filed by the State on or after the effective date of this Act.

5           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 2003.

Approved:

\_\_\_\_\_  
Governor.

\_\_\_\_\_  
Speaker of the House of Delegates.

\_\_\_\_\_  
President of the Senate.



HB0333/462111/1



BY: House Judiciary Committee

AMENDMENT TO HOUSE BILL NO. 333  
(First Reading File Bill)

In line 19, strike “failed” and substitute “;

(I) FAILED”;

in the same line, after “Code” insert a semicolon; and in the same line, after “OR” insert:

“(II)”

**HB0333/462111/1**

BY: House Judiciary Committee

AMENDMENT TO HOUSE BILL NO. 333  
(First Reading File Bill)

In line 19, strike “failed” and substitute “:

(I) FAILED”;

in the same line, after “Code” insert a semicolon; and in the same line, after “OR” insert:

“(II)”.

REPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1417

September Term, 2001

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STATE OF MARYLAND

v. *A/IB*

CALVIN LAMONT WARFIELD

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Davis,  
Salmon,  
Beck, Sr., Raymond E. (special\_y  
assigned),

JJ.

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Opinion by Davis, J.  
Dissenting Opinion by Beck, J.

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Filed: November 27, 2002

*Copy to Judge Galloway*  
*adc*  
*12/2/2002*

Appellant, the State of Maryland, requests relief from an order entered in the Circuit Court for Carroll County (Galloway, J.) granting a modification of sentence more than ninety days beyond the date sentence was passed upon appellee, Calvin Lamont Warfield. Appellee had been sentenced under the subsequent drug offender statute, Md. Code Ann., art. 27, § 286, mandating a ten-year sentence. The sentence was modified to allow entry into a drug treatment program.

Appellant filed the instant appeal, raising the question rephrased as follows:

Did the trial court err in modifying the original sentence to allow drug treatment where the request for modification was made more than ninety days after the sentence was imposed, in contravention of Maryland Rule 4-345(b), and where there was no finding of fraud, mistake, or irregularity in the original sentencing?

Appellee timely filed a Motion to Dismiss the Appeal, raising two questions as follows:

- I. Does the State have a right to appeal in this case?
- II. Assuming, *arguendo*, that the State has a right to appeal in this case, is its appeal premature?

We answer appellee's first question in the negative and therefore do not reach his second question; we grant the motion to dismiss the appeal.

### **FACTUAL BACKGROUND**

Appellee was tried and convicted as a subsequent drug offender by way of a bench trial on November 20, 1996. On February 4, 1997, he was sentenced to a mandatory ten-year sentence under art. 27, § 286(c), at which time the lower court specifically chose not to include drug treatment in the sentence even though it was at liberty to do so. A motion for reduction of sentence was timely filed on April 3, 1997 and denied the same day.

On March 9, 2001, appellee filed a request to change sentence structure. After an evaluation of appellee by the Department of Health and Mental Hygiene (DHMH) and a hearing on August 13, 2001, the lower court granted the request, committing appellee to the DHMH for residential treatment with an order prohibiting release from treatment without consultation with the issuing judge.

### **LEGAL ANALYSIS**

The central dispute in the case *sub judice* is the right of the State to appeal under the circumstances described above. Appellee concedes and appellant concurs that the lower court erred in modifying appellee's sentence based upon a motion filed well past the ninety-day period provided for in Maryland Rule 4-345. However, appellee argues in his motion to dismiss that the State

has no right to appeal and therefore has no means of relief regarding the improper action.

Appellant argues that its right to appeal is based upon Md. Code (2002 Repl. Vol.), Cts. & Jud. Proc. (C.J.) § 12-302(c)(2), which provides that "[t]he State may appeal from a final judgment if the State alleges that the trial judge failed to impose the sentence specifically mandated by the Code." Appellant argues that the proper interpretation of the term "Code" includes the Maryland Rules and thus it should be able to appeal the action of the lower court in the case *sub judice*.

Prior to the enactment of C.J. § 12-302 the State had a common law right to appeal an action by a judge that exceeded his authority. *State Ex Parte rel. Sonner v. Shearin*, 272 Md. 502 (1974). Subsequent to enactment of the statute, the Court of Special Appeals, in *State v. Cardinell*, 90 Md. App. 453 (1992), ruled that the legislature must have intended the term "Code" to include the Maryland Rules, otherwise they could be violated with impunity. The Court of Appeals disagreed with the Court of Special Appeals regarding the definition, stating that "Code" does not include Rules, but found that the enactment of the statute did not extinguish the common law right to "appeal an action that was outside the jurisdiction of the lower court." *Cardinell v. State*, 335 Md. 381, 398 (1994). Just prior to the decision of the Court

of Appeals in *Cardinell*, it also found, in *Chertkov v. State*, 335 Md. 161, 168-69 (1994), that the term "Code" does not include the Maryland Rules.

More recently, the Court of Appeals overturned its previous ruling in *Cardinell*, finding that the codification of the right to appeal a criminal sentence extinguished the common law right. *State v. Green*, 367 Md. 61 (2001). The *Green* Court, however, addressed a situation in which the authority to sentence was exceeded. In a footnote, it specifically chose not to address a violation of the Maryland Rules. A concurring opinion criticized the Court for not resolving the issue and argued that "Code" should include the Rules, allowing the State the right to appeal. *Id.* at 84-85.

In overruling *Cardinell*, the Court of Appeals proclaimed in *Green*:

Today, we announce that the State does not, under Maryland law, enjoy a common law right to appeal an allegedly illegal criminal sentence, thus, overruling our prior decision in *Cardinell*. In reaching this conclusion, we acknowledge that, ordinarily, under the doctrine of *stare decisis*, a court's previous decisions should not be lightly set aside. As we explained in *Townsend v. Bethlehem-Fairfield Shipyard, Inc.*, 186 Md. 406, 417, 47 A.2d 365, 370 (1946):

"It is a well recognized and valuable doctrine that decisions, once made on a question involved in a case before a court, should not

thereafter be lightly disturbed or set aside (except by a higher court). This is because it is advisable and necessary that the law should be fixed and established as far as possible, and the people guided in their personal and business dealings by established conclusions, not subject to change because some other judge or judges think differently."

. . .

Cognizant as we are of the important policies behind the doctrine of *stare decisis*, we nonetheless are satisfied that our decision today is the right one. Never before *Cardinell*, or since, has this Court recognized the common law right to appeal discovered by the *Cardinell* majority. We are convinced that *Cardinell* was wrongly decided. Accordingly, today's ruling corrects that error and establishes once and for all that there is now no common law right of appeal under Maryland law.

*Green*, 367 Md. at 78-79.

It is noteworthy that, in *Green*, the State claimed that it had a right of appeal pursuant to C.J. § 12-302(c)(2) and the Court held that such a right of direct appeal did exist. Courts & Jud. Proc. § 12-302(c)(2) provides that in any criminal case "[t]he State may appeal from a final judgment if the State alleges that the trial judge failed to impose the sentence specifically mandated by the Code." The State, in *Green*, had argued that the petitioner's initial sentence pursuant to Md. Ann. Code (1996 Repl. Vol., 2002 Supp.), art. 27 § 643B(c) was a mandatory sentence and

not subject to modification. Accordingly, the State argued that the circuit court had no authority to modify the sentence by committing the petitioner to the Department of Health and Mental Hygiene, pursuant to Md. Code (2000 Repl. Vol.), Health-Gen. (H.G.) § 8-507. Alternatively, the State averred that the circuit court lacked authority to modify the sentence because more than ninety days had passed after sentencing and thus the modification was untimely under Maryland Rule 4-345(b).

The Green Court agreed with the State, holding that the original sentence was mandatory; citing *Jones v. State*, 336 Md. 255 (1994), the Court further held that prior decisions of the Court made clear that once the predicate requirements for imposition of the § 643B(c) sentencing provisions have been established, a sentencing court has no choice but to impose the mandatory minimum penalty prescribed. *Green*, 367 Md. at 82-83.

Relying on *Clark v. State*, 348 Md. 722 (1998), the State argues that the Court of Appeals had concluded that "the trial court had no authority to reduce [p]etitioner's criminal sentence by committing him to a drug treatment program." *Id.* at 732. The Court of Appeals in *Clark* observed that the time limit set forth in Maryland Rule 4-345(b) governs when a defendant can be committed to a drug treatment facility as part of his or her sentence. It does not matter when the circuit court acts on a motion filed within

ninety days after conviction, the Court held, but there is no authority to amend a sentence when a motion is filed after the ninety-day period expires unless the sentence involved fraud, mistake, or irregularity.

Pointing to the fact that appellant's motion, in the case *sub judice*, was filed more than four years after his sentencing on February 4, 1997, the State argues that *Clark* is controlling.

The issue we must address in this appeal is the State's right *vel non* to appeal. In *Clark*, the petitioner entered a guilty plea for possession of cocaine with intent to distribute and wearing, carrying, or transporting a handgun and received a sentence of seventeen years' imprisonment on April 13, 1994. Subsequent to the denial of his motion on June 20, 1994 requesting a modification of sentence, petitioner filed, on March 21, 1996, a motion pursuant to H.G. § 8-507, requesting permission to participate in a drug treatment program. Finding that petitioner's request was filed more than ninety days after his sentence was imposed, the court dismissed the motion for lack of jurisdiction. The petitioner had claimed, in *Clark*, that the circuit court is permitted to commit an incarcerated individual to drug treatment even if the ninety-day period for modification of sentence pursuant to Maryland Rule 4-345 has expired, citing the language of H.G. § 8-507, which provides ". . . the court may commit the defendant as a condition of release,

after conviction, or at any other time the defendant voluntarily agrees to treatment to the Department [of Health and Mental Hygiene] for inpatient, residential, or outpatient treatment."

(Emphasis added.) The *Clark* Court ultimately held:

If the court does not commit the defendant to a drug treatment facility at that time [when convicted], a court can still modify its sentence and commit a defendant to a drug treatment program, if a timely motion is filed within ninety days after conviction. Maryland Rule 4-345(b). It does not matter when the court acts on such a timely filed motion, only that it be filed timely. After the 90[-]day period expires without a motion being filed, the court has no authority to amend a sentence, unless the sentence involved "fraud, mistake, or irregularity." Maryland Rule 4-345(b). Because none of these circumstances was alleged in appellant's motion, the circuit court correctly dismissed appellant's motion for lack of jurisdiction.

*Clark*, 348 Md. at 732 (quoting *Clark v. State*, 115 Md. App. 208, 218 (1997)).

Thus, the task before the Court of Appeals, in *Clark*, was to glean the legislative intent in the drafting of Maryland's drug treatment laws as expressed in H.G. § 8-507. No mention was made of the State's right to appeal in *Clark*.

As we have noted, the Court of Appeals in *Green* held that the State had a right of appeal pursuant to C.J. § 12-302(c)(2) because the sentence imposed was specifically mandated by the code. The State's assignment of error rests on the premise that the action of

the circuit court in modifying appellee's sentence more than ninety days after sentencing constitutes a failure to impose the sentence specifically mandated by the code. Although Judge Wilner, in his concurring opinion, joined in by Judge Harrell, expressed the view that the Green Court should have squarely addressed the issue, Green unquestionably overruled the Cardinell Court's recognition of the common law right of appeal. As a consequence of the Court's decision in Green, the State's alternative argument that "Code" includes the Maryland Rules remains a question most recently answered by Chertkov.

In the case *sub judice*, any right that the State may have to appeal must rest on C.J. § 12-302(c)(2), allowing such an appeal only in the circumstances where the trial judge failed to impose the sentence "specifically mandated by the Code."<sup>1</sup> No legislative

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<sup>1</sup>It should be noted that appellee was sentenced under art. 27, § 286(c) which provides under subsection (3): "This subsection does not prevent, prohibit, or make ineligible a convicted defendant from participating in the rehabilitation program under Title 8, Subtitle 5 of the Health-General Article, because of the length of sentence, if imposed under subsection (b)(1) of this section." In Green, the Court of Appeals noted the distinction between § 286(c)(3) and § 286(f), observing, "Based on the plain language of [§] 286(f) and a comparison to [§] 286(c)(3) . . . we hold that the trial court does not have discretion to sentence a defendant, who violated [§] 286(f), to drug treatment prior to the serving of the mandatory portion of the sentence." Green, 367 Md. at 83 (quoting State v. Wheeler, 118 Md. App. 142, 153 (1997)). Thus, § 286(c)(3), by its terms, permits participation in any drug treatment program under H.G. § 8-507 by one who stands convicted of the offense for which appellant was found guilty. Were we

- 10 -

that the Green Court should have squarely addressed the issue, Green unquestionably overruled the Cardinell Court's recognition of the common law right of appeal. As a consequence of the Court's decision in Green, the State's alternative argument that "Code" includes the Maryland Rules remains a question most recently answered by Chertkov.

In the case sub judice, any right that the State may have to appeal must rest on C.J. § 12-302(c)(2), allowing such an appeal only in the circumstances where the trial judge failed to impose the sentence "specifically mandated by the Code."<sup>1</sup> No legislative enactment, i.e., art. 27, § 28 (f), therefore, prohibits the court from ordering one convicted of the subsequent offense at issue into a drug treatment program; it is only the failure to timely order

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<sup>1</sup>It should be noted that appellee was sentenced under art. 27, § 286(c) which provides under subsection (3): "This subsection does not prevent, prohibit, or make ineligible a convicted defendant from participating in the rehabilitation program under Title 8, Subtitle 5 of the Health-General Article, because of the length of sentence, if imposed under subsection (b)(1) of this section." In Green, the Court of Appeals noted the distinction between § 286(c)(3) and § 286(f), observing: "Based on the plain language of [§] 286(f) and a comparison to [§] 286(c)(3) . . . we hold that the trial court does not have discretion to sentence a defendant, who violated [§] 286(f), to drug treatment prior to the serving of the mandatory portion of the sentence." Green, 367 Md. at 83 (quoting State v. Wheeler, 118 Md. App. 142, 153 (1997)). Thus, § 286(c)(3), by its terms, permits participation in any drug treatment program under H.G. § 8-507 by one who stands convicted of the offense for which appellant was found guilty. Were we confronted in the case sub judice with a § 286(f) violation, such a violation would involve a Code violation, rather than simply a violation of Maryland Rules of Procedure.

Although the Court of Appeals in *Green* considered addressing the question of whether the language, "mandated by the Code," found in C.J. § 12-302(c)(2) was intended to encompass the Maryland Rules, Chertkov had addressed the subject seven years earlier. Judge Bell (now Chief Judge), speaking for the Court, observed that Ch. 49 of the Acts of 1976 prescribed the manner of direct appeals from judgments in criminal cases. The Court specifically noted that the General Assembly did not legislate with respect to collateral challenges or motions to correct illegal sentences under present Maryland Rule 4-345(a). Chertkov concluded that the legislature did not authorize an appeal from the denial of a motion to correct an illegal sentence, but rather only an appeal from the final judgment in the criminal case. Speaking directly to the issue before us, Judge Bell explained:

Prior to the enactment, in 1973, of [C.J.] [§] 12-302(c), as part of Code revision, see Ch. 2 of the Acts of the First Extraordinary Session of 1973, the predecessor to [C.J.] § 12-302(c)(2), . . . , the State was authorized "to appeal where there was an 'illegal' sentence." When, however, [C.J.] [§] 12-302(c) became effective, this Court observed that it "placed in serious question, if it did not completely eliminate, the State's right to appeal an illegal sentence as recognized in the earlier cases and reiterated in [*State ex rel.*] *Sonner* [*v. Shearin*, 272 Md. 502 (1974)]." Moreover, with its enactment, present [C.J.] [§] 12-302(c)(2) "specifie[d] the type of illegality which must be alleged for the State to be entitled to appeal." And it did so clearly and unambiguously; when it

referred to a failure to impose the sentence specifically mandated by the Code, it was not referring to the Maryland Rules or anything else other than the statutory law of this State. There is no justification, therefore, for expanding the meaning of [C.J.] [§] 12-302(c)(2) to encompass more.

Chertkov, 335 Md. at 168-69 (citations and footnote omitted).

While we are certainly mindful of the holding and the emphatic concurring opinion in *Green*, the last pronouncement on the question presently before us is contained in *Chertkov*. Consequently, we are constrained to conclude that the reference in C.J. § 12-302 to the "Code" does not encompass the Maryland Rules and that, therefore, the criminal sentence imposed in the case *sub judice*, while meted out in contravention of Maryland Rule 4-345, does not give rise to the right to appeal by the State.

APPEAL DISMISSED.

COSTS TO BE PAID BY CARROLL  
COUNTY.

REPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1417

September Term, 2001

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STATE OF MARYLAND

v.

CALVIN LAMONT WARFIELD

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Davis,  
Salmon,  
Beck, Sr., Raymond E. (specially  
assigned),

JJ.

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Dissenting Opinion by Beck, J.

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Filed: November 27, 2002

I respectfully disagree with the majority in their interpretation of existing case law with regard to the State's common law right to appeal a violation of the Maryland Rules.

I will agree that the Maryland Rules are not at this time part of the Maryland Code, as a result of *Cardinell v. State*, 335 Md. 381, 398 (1994), and *Chertkov v. State*, 335 Md. 161, 168-169 (1994). I also agree that as a result of those rulings, C.J. § 13-302 cannot be a basis for the State to appeal a rule violation. However, I disagree with the majority's interpretation of *State v. Green*, 367 Md. 61 (2001), stating that the Court of Appeals ruled that the common law right to appeal a Rule violation was extinguished by the enactment of C.J. § 13-302.

In *Green*, the Court merely stated that the enactment of C.J. § 13-302 extinguished the State's common law right to appeal. The action at issue was a Code violation. Whether or not the common law right to appeal a Rule violation still existed was never addressed. They expressly refused to rule as to whether violation of a Maryland Rule could be appealed under C.J. § 13-302, but as could be seen from the Wilner concurring opinion, clearly the issue was whether or not the Code includes the Rules. Because a Rule violation was not addressed by the Court of Appeals, this Court was free to find that because the Maryland Rules are not part of the Code it follows that the common law

common law right to appeal a Code violation. If the Code and the Rules are not the same thing, then neither are the State's common law rights to appeal the Code and the Rules. One may exist while the other is extinguished.

It is inconceivable that the Legislature intended with the enactment of C.J. § 13-302 to create a situation in which the Maryland Rules can be violated with impunity. Such an action would have the effect of giving no decision finality, and no case, whether civil or criminal, a termination point. Sentences could be modified at anytime despite the clear direction of Maryland Rule 4-345 to limit modification to 90 days absent a finding of fraud, mistake, or irregularity

The Legislature has enacted no laws that specifically prohibit the State from appealing a rule violation and without such language the courts are free to, and should, preserve the common law right of the State to file such an appeal. During recent sessions of the Legislature, there has been concern regarding delayed rulings on timely filed motions to modify sentences. Some decisions have been held for years, causing the Legislature to consider a law that would limit the amount of time the decision could be held. Although no bill has yet been successful, clearly the Legislature is concerned with having finality for cases in a reasonable amount of time.

Certain rules are designed to give a judge discretion regarding strict compliance by litigants. Others provide for no

Certain rules are designed to give a judge discretion regarding strict compliance by litigants. Others provide for no discretion recognizing that they must be strictly adhered to in order for a case to proceed in an orderly and equitable fashion.

The result of the ruling here, if upheld by the Court of Appeals, could have a catastrophic effect on both the lower courts and the citizens of the State of Maryland. The Maryland Rules need no longer exist, for there would be no reason for either the courts or litigants to abide by them. The extent to which this decision could throw the lower courts into chaos is too great to even contemplate at this point.

## Rule 4-345

## MARYLAND RULES

ration of that period. *Tucker v. State*, 89 Md. App. 295, 598 A.2d 479 (1991).

**No authority to extend 30-day filing period.** — A motion for sentence review under this Rule is in the nature of a motion addressed to the revisory power of the circuit court within the meaning of Rule 1-204 (a), and, for that reason, the court has no authority to extend the 30-day period allowed for filing the motion. *Green v. State*, 96 Md. App. 601, 626 A.2d 975, cert. denied, 332 Md. 702, 632 A.2d 1208 (1993).

**Review of imposition or reimposition of sentence.** — Where rule requires application for review of sentence to be held within 30 days of imposition of sentence, it shall be interpreted as meaning to allow sentence review either following the imposition of the original sentence or following the reimposition of a previously suspended sentence. *Collins v. State*, 321 Md. 103, 581 A.2d 426 (1990).

Where defendant had not previously sought review of the sentence imposed, and later suspended, he was not barred from review of sentence when the sentencing judge reimposed the previously suspended sentence. *Collins v. State*, 321 Md. 103, 581 A.2d 426 (1990).

Defendant was entitled to an appeal, claiming that he was denied a review of his sentence imposed after the trial court found that he had violated probation, where the refusal of the circuit court to review his sentence was effectively a "final order." *Collins v. State*, 326 Md. 423, 605 A.2d 130 (1992).

**Privilege against self-incrimination.** — Under both the Fifth Amendment and article

22 of the Maryland Declaration of Rights, a witness who has been convicted and sentenced for a criminal offense is entitled to invoke the privilege against self-incrimination with regard to that offense during the 30-day period for seeking appellate review or sentence review by a three-judge circuit court panel. Furthermore, if an appeal or application for leave to appeal or application for sentence review under the statute and this Rule is filed, the right to claim the privilege continues during the pendency of the direct appellate or sentence review proceedings. *Ellison v. State*, 331 Md. 244, 528 A.2d 1271 (1987).

**What is a final order.** — A circuit administrative judge's order denying an application for a review of a sentence was a "final order" and, therefore, appealable. *Collins v. State*, 321 Md. 103, 581 A.2d 426 (1990).

**Appeal of review panel orders.** — When a sentence review panel increases the sentence imposed or directed to be executed by the judge, the order of the panel is appealable subject to the limited scope of appellate review noted in *Teasley v. State*, 298 Md. 364, 47 A.2d 337 (1984). *Rendelman v. State*, 73 Md. App. 329, 533 A.2d 1339 (1987).

**Increase of sentence barred.** — Appellant's sentence was "imposed" before the court increased it, therefore, this Rule barred the increase. *Simpkins v. State*, 88 Md. App. 607, 596 A.2d 655 (1991), cert. denied, 328 Md. 94, 612 A.2d 1316 (1992).

Quoted in *Greco v. State*, 347 Md. 423, 701 A.2d 419 (1997); *Webster v. State*, 359 Md. 465, 754 A.2d 1004 (2000).

### Rule 4-345. Sentencing — Revisory power of court.

(a) **Illegal sentence.** The court may correct an illegal sentence at any time.

(b) **Modification or reduction — Time for.** The court has revisory power and control over a sentence upon a motion filed within 90 days after its imposition (1) in the District Court, if an appeal has not been perfected, and (2) in a circuit court, whether or not an appeal has been filed. Thereafter, the court has revisory power and control over the sentence in case of fraud, mistake, or irregularity, or as provided in section (e) of this Rule. The court may not increase a sentence after the sentence has been imposed, except that it may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

(c) **Notice to victims.** The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, § 11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, § 11-503 that states (1) that a motion to modify or reduce a sentence has been filed; (2) that the motion has been denied without a hearing or the date, time, and

## Rule 4-345

## MARYLAND RULES

### (n) **Effect of vacation or modification of sentence by another court.**

If the sentence under review is vacated or modified by a court of competent jurisdiction before the Review Panel renders its decision, the Review Panel shall dismiss the original application and give the defendant a reasonable opportunity, but not less than ten days, to file a new application for review of the sentence as modified if it is subject to review under the Review of Criminal Sentences Act. (Amended Jan. 20, 1999, effective July 1, 1999; Oct. 5, 1999; Dec. 16, 1999, effective Jan. 1, 2000; Jan. 8, 2002, effective Feb. 1, 2002.)

#### **Effect of amendments.**

The 2002 amendment substituted "Criminal Procedure Article, §§ 8-102 — 8-109" for "Article 27, §§ 645JA-645JG" in (a) and substi-

tuted "Criminal Procedure Article, §§ 8-103 — 8-108" for "Article 27, §§ 645JC-645JE" in the cross reference note following (f).

## **Rule 4-345. Sentencing — Revisory power of court.**

Quoted in *United States v. Parker*, 262 F.3d 415 (4th Cir. 2001).

Cited in *Hillard v. State*, 141 Md.App. 199,

784 A.2d 1134 (2001); *Oken v. State*, 367 Md. 191, 786 A.2d 691 (2001).

## **Rule 4-351. Commitment record.**

(a) **Content.** When a person is convicted of an offense and sentenced to imprisonment, the clerk shall deliver to the officer into whose custody the defendant has been placed a commitment record containing:

- (1) The name and date of birth of the defendant;
- (2) The docket reference of the action and the name of the sentencing judge;
- (3) The offense and each count for which the defendant was sentenced;
- (4) The sentence for each count, the date the sentence was imposed, the date from which the sentence runs, and any credit allowed to the defendant by law;
- (5) A statement whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of the preceding term or to any other outstanding or unserved sentence.

**Cross references.** — See Code, Criminal Procedure Article, § 6-216(c) concerning

Maryland Sentencing Guidelines Worksheets prepared by a court.

(b) **Effect of error.** An omission or error in the commitment record or other failure to comply with this Rule does not invalidate imprisonment after conviction. (Amended Jan. 20, 1999, effective July 1, 1999; Jan. 8, 2002, effective Feb. 1, 2002.)

**Source.** — This Rule is derived from former Rule 777 and M.D.R. 777.

#### **Effect of amendments.**

The 2002 amendment substituted "Criminal Procedure Article, § 6-216(c)" for "Article 27,

§ 643C(c)(1)" in the cross reference note following (a)(5).

State v. Ward, 31 Md. App. 65, 354 A.2d 834 (1976).

Cited in Bell Atl. of Md., Inc. v. Intercom Sys. Corp., 366 Md. 1, 782 A.2d 791 (2001).

§ 12-302. Same — Exceptions.

(a) *District Court, administrative agency, or local legislative body.* — Unless a right to appeal is expressly granted by law, § 12-301 does not permit an appeal from a final judgment of a court entered or made in the exercise of appellate jurisdiction in reviewing the decision of the District Court, an administrative agency, or a local legislative body.

(b) *Contempt.* — Section 12-301 of this subtitle does not apply to appeals in contempt cases, which are governed by §§ 12-304 and 12-402 of this title.

(c) *Criminal case.* — In a criminal case, the State may appeal as provided in this subsection.

(1) The State may appeal from a final judgment granting a motion to dismiss or quashing or dismissing any indictment, information, presentment, or inquisition.

(2) The State may appeal from a final judgment if the State alleges that the trial judge failed to impose the sentence specifically mandated by the Code.

(3) (i) In a case involving a crime of violence as defined in § 14-101 of the Criminal Law Article, and in cases under §§ 5-602 through 5-609 and §§ 5-612 through 5-614 of the Criminal Law Article, the State may appeal from a decision of a trial court that excludes evidence offered by the State or requires the return of property alleged to have been seized in violation of the Constitution of the United States, the Constitution of Maryland, or the Maryland Declaration of Rights.

(ii) The appeal shall be made before jeopardy attaches to the defendant. However, in all cases the appeal shall be taken no more than 15 days after the decision has been rendered and shall be diligently prosecuted.

(iii) Before taking the appeal, the State shall certify to the court that the appeal is not taken for purposes of delay and that the evidence excluded or the property required to be returned is substantial proof of a material fact in the proceeding. The appeal shall be heard and the decision rendered within 120 days of the time that the record on appeal is filed in the appellate court. Otherwise, the decision of the trial court shall be final.

(iv) If the State appeals on the basis of this paragraph, and if on final appeal the decision of the trial court is affirmed, the charges against the defendant shall be dismissed in the case from which the appeal was taken. In that case, the State may not prosecute the defendant on those specific charges or on any other related charges arising out of the same incident.

(v) Pending the prosecution and determination of an appeal taken under paragraph (1) or (3) of this subsection, the defendant shall be released on personal recognizance bail. If the defendant fails to appear as required by the terms of the recognizance bail, the trial court shall subject the defendant to the penalties provided in § 5-211 of the Criminal Procedure Article.

(vi) If the State loses the appeal, the jurisdiction shall pay all the costs related to the appeal, including reasonable attorney fees incurred by the defendant as a result of the appeal.

### SUGGESTED LEGISLATIVE ACTION

As a direct result of the Court of Special Appeals' decision in the afore-described Warfield case and the State's loss of its Common Law Right of Appeal, I suggest the following legislative modification/amendment of the existing Courts and Judicial Proceedings Article, Section 12-302 (State's Right of Appeal).

Courts and Judicial Proceedings Article, 12-302(c)(2), as it currently reads:

"(2) The State may appeal from a final judgment if the State alleges that the trial judge failed to impose the sentence specifically mandated by the Code."

The Warfield decision specifically held/found, citing Court of Appeals authority, that the Maryland Rules of Procedure do not fall within the above definitions of Code as it currently exists in Courts and Judicial Proceedings 12-302(c)(2). Therefore, I suggest the following modification/amendment to existing CJP 12-302(c)(2):

"(2) The State may appeal from a final judgment if the State alleges that the trial judge failed to impose the sentence specifically mandated by the Code [OR BY THE MARYLAND RULES OF PROCEDURE].

JFB:adc  
12/06/2002

JERRY F. BARNES  
STATE'S ATTORNEY

TRACY A. GILMORE  
DEPUTY STATE'S ATTORNEY



OFFICE OF STATE'S ATTORNEY  
FOR CARROLL COUNTY

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WESTMINSTER, MARYLAND 21158-0606  
410-386-2671  
FAX: 410-876-9286 TT: 410-848-3017

CLARENCE W. BEALL  
CIRCUIT COURT CHIEF

DAVID P. DAGGETT  
DISTRICT COURT CHIEF

December 6, 2002

The Honorable Joseph M. Getty  
322 Lowe House Office Building  
Annapolis, MD 21401

Re: Warfield v. State  
Court of Special Appeals  
No. 1417, filed 11/27/02

Dear Joe:

As a follow-up to our conversation of December 2, 2002, in reference to the Warfield decision, I hope that you can relay my immediate concerns associated with this devastating decision. It is clear from the majority opinion that the Court of Special Appeals sympathized with the State in this case but was constrained by prior Court of Appeals decisions and a lack of statutory authority providing the State's right to appeal (CJP 12-302) violations of Maryland Rules of Procedure.

On November 20, 1996, I prosecuted Warfield and secured a conviction of Distribution of Cocaine before Judge Arnold and subsequently obtained a 10-year without parole sentence as a result of the Defendant's prior drug-related criminal history. Motions to modify this sentence pursuant to Maryland Rule 4-345 were filed within the 90-day required time limit and subsequently denied by Judge Arnold.

Approximately four years later, on March 9, 2001, the Defendant filed another motion to modify pursuant to Maryland Rule 4-345. The State vehemently objected to any modification because the motion was filed well outside of the 90-day parameters of Rule 4-345. However, the Circuit Court for Carroll County, Judge Michael Galloway presiding, in violation of the aforementioned Maryland Rule, proceeded to modify the Defendant's original sentence over our objections in the course of an August 13, 2002. modification hearing. Judge Galloway

transferred the Defendant, Warfield, from his current Division of Correction confinement back to the Carroll County Detention Center pending possible placement into a drug treatment program.

As a result of the afore-described modification of sentence in this case, I immediately appealed the case to the Court of Special Appeals because of the potential future detrimental impact this Circuit Court decision could have on the finality of Circuit Court sentences throughout Maryland.

Since the Court of Special Appeals reluctantly concluded that the State currently under CJP 12-302 possesses no right to appeal a "Maryland Rule of Procedure" violation (not constituting a "Coyle" violation) and that the State no longer possesses a "Common Law" right of appeal, legislative action is "desperately required" to rectify this regrettable situation. In the case at bar, Judge Beck's dissenting opinion captures the true gravity of this situation when he so appropriately and accurately stated:

"The result of the ruling here, if upheld by the Court of Appeals, could have a catastrophic effect on both the lower courts and the citizens of the State of Maryland. The Maryland Rules need no longer exist, for there would be no reason for either the courts or litigants to abide by them. The extent to which this decision could throw the lower courts into chaos is too great to even contemplate at this point."

Therefore, I believe that the new Governor-Elect should strongly consider the immediate legislative rectification of the deficient "State's Right to Appeal" as it currently exists in CJP 12-302 regarding violations of the Maryland Rules of Procedure. I have also notified the Maryland State's Attorneys' Association of this situation for that Association's review.

In the course of my 25 years of prosecutorial experience, I have never witnessed such a potentially debilitating/damaging situation in regard to sentences and ultimate finality of previously-litigated criminal cases. I hope and believe that our new Governor-Elect will, without question, take steps to rectify this tragic loophole in our statutory right to appeal capability on behalf of the citizens

The Honorable Joseph M. Getty

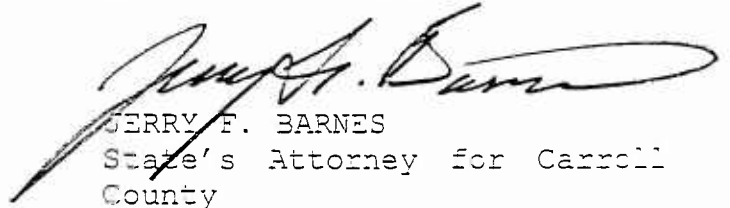
-3-

December 6, 2002

of this State and, most importantly, "victims of crime", for they deserve some reasonable degree of finality in their respective cases.

Enclosed are copies of Warfield v. State, Court of Special Appeals Case 1417, CJP 12-302, Maryland Rule 4-345, and my suggested legislative action.

Respectfully submitted,



JERRY F. BARNES  
State's Attorney for Carroll  
County

JFB:adc  
Enclosures

cc: Carroll County Delegation  
Senator Larry Haines, Delegation Chairman  
Delegate Nancy Stocksdales  
Delegate Carmen Amedori  
Delegate Donald Elliott  
Delegate-Elect Susan Krebs  
Honorable Len Collins, State's Attorney for Charles County  
Ara Crowe, State's Attorneys' Coordinator

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1417

September Term, 2001

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STATE OF MARYLAND

v.

CALVIN LAMONT WARFIELD

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Davis,  
Salmon,  
Beck, Sr , Raymond E. (specially  
assigned),

JJ.

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Dissenting Opinion by Beck, J.

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Filed: November 27, 2002

TESTIMONY IN SUPPORT OF

HOUSE BILL 333

I respectfully disagree with the majority in their interpretation of existing case law with regard to the State's common law right to appeal a violation of the Maryland Rules.

I will agree that the Maryland Rules are not at this time part of the Maryland Code, as a result of *Cardinell v. State*, 335 Md. 381, 398 (1994), and *Chertkov v. State*, 335 Md. 161, 168-169 (1994). I also agree that as a result of those rulings, C.J. § 13-302 cannot be a basis for the State to appeal a rule violation. However, I disagree with the majority's interpretation of *State v. Green*, 367 Md. 61 (2001), stating that the Court of Appeals ruled that the common law right to appeal a Rule violation was extinguished by the enactment of C.J. § 13-302.

In *Green*, the Court merely stated that the enactment of C.J. § 13-302 extinguished the State's common law right to appeal. The action at issue was a Code violation. Whether or not the common law right to appeal a Rule violation still existed was never addressed. They expressly refused to rule as to whether violation of a Maryland Rule could be appealed under C.J. § 13-302, but as could be seen from the Wilner concurring opinion, clearly the issue was whether or not the Code includes the Rules. Because a Rule violation was not addressed by the Court of Appeals, this Court was free to find that because the Maryland Rules are not part of the Code it follows that the common law

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HOUSE JUDICIARY COMMITTEE  
VOTE TALLYH.B. 333DATE 3-14-03

S.B. \_\_\_\_\_

H.J.R. \_\_\_\_\_

S.J.R. \_\_\_\_\_

MOTION ☒ Favorable☒ Amended

\_\_\_\_\_ Re-refer to \_\_\_\_\_

\_\_\_\_\_ Unfavorable

\_\_\_\_\_ Hold

\_\_\_\_\_ Other \_\_\_\_\_

	YEAS	NAYS	ABSTAIN	ABSENT
VALLARJO, J. F. (Chairman)				
BROWN, A. G. (Vice Chairman)	<input checked="" type="checkbox"/>			
ZIRKIN, R. A.	<input checked="" type="checkbox"/>			
KELLY, K.	<input checked="" type="checkbox"/>			
SHANK, C. B.	<input checked="" type="checkbox"/>			
LEE, S. C.	<input checked="" type="checkbox"/>			
SIMMONS, L. R. S.	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
CARTER, J. P.				<input checked="" type="checkbox"/>
GUTIERREZ, A. S.	<input checked="" type="checkbox"/>			
DWYER, D.	<input checked="" type="checkbox"/>			
DUMAIS, K. M.	<input checked="" type="checkbox"/>			
AMEDORI, C.	<input checked="" type="checkbox"/>			
PETZOLD, C. S.	<input checked="" type="checkbox"/>			
HENNESSY, W. L.	<input checked="" type="checkbox"/>			
MCCOMAS, S. K.	<input checked="" type="checkbox"/>			
QUINTER, N. F.	<input checked="" type="checkbox"/>			
McMILLAN, H. H.	<input checked="" type="checkbox"/>			
SOPHOCLEUS, T.	<input checked="" type="checkbox"/>			
KELLEY, D. A.	<input checked="" type="checkbox"/>			
ANDERSON, C. S.		<input checked="" type="checkbox"/>		
O'DONNELL, A. J.	<input checked="" type="checkbox"/>			
MENES, P. H.	<input checked="" type="checkbox"/>			
TOTAL	19	1		1

COMMITTEE REPORTER

Keari Smith