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## 2002 Survey of Rhode Island Law: Cases: Criminal Procedure

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**Criminal Procedure.** *State v. Quaweay*, 799 A.2d 1016 (R.I. 2002). The motion to reduce a sentence that is imposed following the reinstatement of a suspended sentence must be made within 120 days of the original sentencing date rather than 120 days from the date of the sentence's reinstatement.

#### FACTS AND TRAVEL

On March 21, 1996, Jonathan P. Quaweay pled *nolo contendere* to a charge of possessing a stolen vehicle.<sup>1</sup> For this crime he was sentenced to an eight-year term, seven-and-a-half of which were suspended with probation.<sup>2</sup> Quaweay did not appeal, and the judgment became final on April 1, 1996.<sup>3</sup> After serving six months Mr. Quaweay was released on probation.<sup>4</sup> On November 18, 1997, the state moved to have Mr. Quaweay held in violation of probation based on the assault of his girlfriend and the assault of another individual with the intent to commit murder.<sup>5</sup> On January 23, 1998, the hearing justice found that the defendant had violated his probation and as a result reinstated the suspended seven-and-a-half year sentence of March 21, 1996.<sup>6</sup> In April 1998, Mr. Quaweay filed a *pro se* motion for reduction of the sentence, which was denied.<sup>7</sup> Through his attorney, he appealed the denial of a reduced sentence to the Rhode Island Supreme Court.<sup>8</sup>

#### ANALYSIS AND HOLDING

The Rhode Island Supreme Court affirmed the judgment of the lower court in denying sentence reduction, but did so on different grounds.<sup>9</sup> The court noted that rule 35 of the Superior Court Rules of Criminal Procedure requires a motion to reduce sentence be filed "within one hundred twenty (120) days after the sentence is imposed . . ." <sup>10</sup> The court went on to hold the sentence was "imposed" on April 1, 1996, when the *nolo* plea ripened into a final

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1. *State v. Quaweay*, 799 A.2d 1016, 1017 (R.I. 2002).

2. *Id.*

3. *Id.* at 1018.

4. *Id.* at 1017.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.* at 1018.

10. *Id.* (quoting R.I. SUPER. CT. R. CRIM. P. 35).

judgment and not on the day of the reimposition of the suspended sentence on January 23, 1998.<sup>11</sup> Using this calculus, the court held that Mr. Quaweay's motion for sentence reduction needed to be filed on or before July 30, 1996.<sup>12</sup> Mr. Quaweay's motion was filed in April 1998, and because of this, the court held it to be time-barred.<sup>13</sup>

#### CONCLUSION

The Rhode Island Supreme Court held that Mr. Quaweay's motion for a reduced sentence was time-barred by rule 35 of the Superior Court Rules of Criminal Procedure's 120-day provision. In the case of a reinstated suspended sentence the 120-day clock runs from the date the original judgment becomes final, not from the date the suspension is vacated.

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11. *Id.*

12. *Id.*

13. *Id.*