

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 549

S.P. 206

In Senate, February 14, 1995

An Act to Give the State a Right to Appeal from the Denial of a Rule 35 Motion.

Reported by Senator MILLS of Somerset for the Criminal Law Advisory Commission pursuant to Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 20.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Be it enacted by the People of the State of Maine as follows:

2
3 **Sec. 1. 15 MRSA §2115-A, sub-§2-B** is enacted to read:

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5 **2-B. Appeal from the denial of a Rule 35 motion.** If a
6 motion for correction or reduction of a sentence brought by the
7 attorney for the State under Rule 35 of the Maine Rules of
8 Criminal Procedure is denied in whole or in part, an appeal may
9 be taken by the State from the adverse order of the trial court
10 to the Law Court.

11 **Sec. 2. 15 MRSA §2115-A, sub-§4**, as amended by PL 1987, c.
12 234, §2, is further amended to read:

13 **4. Time.** An appeal taken pursuant to subsection 1, 2 ~~ex,~~
14 ~~2-A shall~~ or 2-B must be taken within 20 days after the entry of
15 the order or such further time as may be granted by the court
16 pursuant to a rule of court, and an appeal taken pursuant to
17 subsection 1 ~~shall~~ must also be taken before the defendant has
18 been placed in jeopardy. An appeal taken pursuant to this
19 subsection ~~shall~~ must be diligently prosecuted.

20 **Sec. 3. 15 MRSA §2115-A, sub-§5**, as amended by PL 1987, c.
21 234, §3, is further amended to read:

22 **5. Approval of Attorney General.** In any appeal taken
23 pursuant to subsection 1, 2 ~~ex,~~ 2-A or 2-B, the written approval
24 of the Attorney General ~~shall-be~~ is required; provided that if
25 the attorney for the State filing the notice of appeal states in
26 the notice that the Attorney General has orally stated that the
27 approval will be granted, the written approval may be filed at a
28 later date.

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35 **STATEMENT OF FACT**

36 Under current state criminal procedure, the State is
37 accorded the right to bring, on its own, a motion to correct an
38 illegal sentence or a sentence imposed in an illegal manner, or
39 to seek reduction of a sentence on the ground that the original
40 sentence was influenced by a mistake of fact that existed at the
41 time of the sentencing.

42
43 No statutory authority exists under current state law to
44 allow the State to appeal in the event its motion for correction
45 or reduction of a sentence is denied. This bill creates that
46 needed statutory authority.