

INFORMATION CONCERNING IDENTIFIABLE CONDUCT ON THE PART OF THE DEFENDANT OCCURRING AFTER THE ORIGINAL SENTENCE WAS IMPOSED; AND

(3) THE FACTUAL DATA UPON WHICH THE INCREASED SENTENCE IS BASED APPEARS AS A PART OF THE RECORD.

(C) LIMITATION ON SENTENCE FOLLOWING DE NOVO APPEAL.

IF A DEFENDANT WHO APPEALS FROM A CONVICTION IN THE DISTRICT COURT IS CONVICTED AFTER A TRIAL DE NOVO ON APPEAL, THE APPELLATE COURT MAY IMPOSE ANY SENTENCE AUTHORIZED BY LAW TO BE IMPOSED AS PUNISHMENT FOR THE OFFENSE, OR IT MAY IMPOSE A SENTENCE MORE SEVERE THAN THAT IMPOSED IN THE DISTRICT COURT BUT ONLY UNDER THE CONDITIONS PRESCRIBED IN SUBSECTION (B).

REVISOR'S NOTE: Subsection (b) is modelled on Art. 5, §43, as re-enacted by Ch. 181, Acts of 1972. However, it applies the §43 restrictions on increased sentences to any re-sentencing after a remand for sentencing or new trial if a second conviction follows. While limited remands are not always permissible, Gill v. State, 265 Md. 350, and 289 A 2d. 575 (1972) a remand for purposes of proper sentencing only is permitted; Bauckman v. State, 9 Md. App. 612 (1970). Subsection (c), although using different language, retains the substance of §43, which presently applies only to sentencing following a conviction pursuant to a de novo appeal from the District Court.

North Carolina v. Pearce, 395 U.S. 711 (1969) held that upon re-sentencing credit must be given for any portion of a sentence previously served. That rule is reflected in subsection (a), and is required by the Double Jeopardy Clause of the U.S. Constitution. Pearce also held that if there is a reversal, a new trial, and a re-conviction, the second sentence could not be more severe than the first, except under certain limited circumstances. That rule is reflected in subsection (b), and the circumstances permitting an increased sentence are taken almost verbatim from Pearce. This rule is required by the Due Process Clause of the