



1985

Casenotes: Criminal Procedure — Appellate Review of Sentencing — Sentencing Guidelines — Sentencing Judge's Mistaken Application of Sentencing Guidelines Did Not Require Appellate Court to Vacate Sentence When Sentence Was within Statutory Limits and Was the Result of the Judge's Good Faith Exercise of Discretion. *Teasley v. State*, 298 Md. 364, 470 A.2d 337 (1984)

Mary Elizabeth Wildemann
University of Baltimore School of Law

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/ubl>

 Part of the [Criminal Procedure Commons](#)

Recommended Citation

Wildemann, Mary Elizabeth (1985) "Casenotes: Criminal Procedure — Appellate Review of Sentencing — Sentencing Guidelines — Sentencing Judge's Mistaken Application of Sentencing Guidelines Did Not Require Appellate Court to Vacate Sentence When Sentence Was within Statutory Limits and Was the Result of the Judge's Good Faith Exercise of Discretion. *Teasley v. State*, 298 Md. 364, 470 A.2d 337 (1984)," *University of Baltimore Law Review*: Vol. 14: Iss. 3, Article 9.
Available at: <http://scholarworks.law.ubalt.edu/ubl/vol14/iss3/9>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Review by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

CRIMINAL PROCEDURE — APPELLATE REVIEW OF SENTENCING — SENTENCING GUIDELINES — SENTENCING JUDGE'S MISTAKEN APPLICATION OF SENTENCING GUIDELINES DID NOT REQUIRE APPELLATE COURT TO VACATE SENTENCE WHEN SENTENCE WAS WITHIN STATUTORY LIMITS AND WAS THE RESULT OF THE JUDGE'S GOOD FAITH EXERCISE OF DISCRETION. *Teasley v. State*, 298 Md. 364, 470 A.2d 337 (1984).

Teasley was convicted in the circuit court of robbery and use of a handgun in the commission of a felony, and was sentenced to consecutive ten year terms of imprisonment.¹ After exhausting the remedies for sentence review provided in the Maryland Code and in the Maryland Rules of Procedure,² Teasley appealed his sentence to the court of special appeals. He claimed that the trial judge had misapplied the sentencing matrix system of the Maryland Sentencing Guidelines Manual by sentencing him to consecutive terms rather than concurrent terms.³ The court of special appeals, noting that the judge's use of the sentencing guidelines was voluntary, held that the sentence was beyond appellate review because it was within statutory limits and was not motivated by ill will, prejudice, or other improper considerations.⁴ The Court of Appeals of Maryland agreed, holding that as long as the sentence was lawfully imposed within statutory limits and was the result of the judge's good faith exercise of discretion, failure to apply the guidelines did not warrant vacating the sentence.⁵ The court refused to extend the scope of appellate review of a criminal sentence in Maryland to include an appeal based on the judge's mistaken application of the sentencing guidelines.⁶

Traditionally, the trial judge enjoyed wide discretion in the sentencing process.⁷ The legal system's major concern was with the determination of guilt; once guilt was established, state legislatures provided guidance only in terms of the statutory minimum and maximum sentences for a particular offense.⁸ There were no standards or objective criteria against which the sentencing judge could gauge his sentence de-

1. *Teasley v. State*, 298 Md. 364, 368, 470 A.2d 337, 339 (1984).

2. MD. ANN. CODE art. 27, §§ 645JA - 645JG (1982 Repl. Vol. & Supp. 1984) (providing for review of any sentence of more than two years imprisonment by a panel of three or more trial judges empowered to order a different sentence than the one imposed by the sentencing judge); MD. R.P. 4-344 (outlining the procedure for applying for sentence review pursuant to article 27, §§ 645JA - 645JG of the Maryland Code); MD. R.P. 4-345 (allowing a court to correct any illegal sentence at any time, and permitting a defendant to file a motion with the sentencing judge to modify, reduce, or vacate the sentence).

3. *Teasley v. State*, 54 Md. App. 454, 455, 458 A.2d 93, 94 (1983), *aff'd*, 298 Md. 364, 470 A.2d 337 (1984).

4. *Id.*

5. *Teasley v. State*, 298 Md. 364, 370-71, 470 A.2d 337, 340 (1984).

6. *Id.* at 370, 470 A.2d at 340.

7. M. FRANKEL, CRIMINAL SENTENCE 5 (1972); TWENTIETH CENTURY FUND TASK FORCE ON CRIMINAL SENTENCING, FAIR AND CERTAIN PUNISHMENT 11 (1976) [hereinafter cited as FAIR AND CERTAIN PUNISHMENT].

8. Blumstein, *Research on Sentencing*, 7 JUST. SYS. J. 307, 307 (1982); von Hirsch,

termination.⁹ In addition, no courts provided any effective appellate review of sentences.¹⁰ Unlike most determinations made by a trial judge, a sentence could not be appealed as long as it was within the statutory range for the offense, unless imposition of the sentence constituted an abuse of judicial discretion.¹¹ Abuse of discretion was so narrowly defined that reviewing courts tended to limit their function to correcting only the most serious abuses.¹² The lack of sentencing standards and absence of appellate review often led to discrepant sentences that were "inequitably disparate, dangerously lenient, or oppressively harsh."¹³

Dissatisfaction with the trial court's uncontrolled sentencing discretion was one of the factors that led to the sentence reform movement of the 1970's.¹⁴ The goal of sentence reform was to reduce disparity in sentencing by replacing unstructured judicial discretion with rules of law to guide the sentencing process and by providing appellate review of the sentencing procedure.¹⁵ New models for sentencing arose quickly.¹⁶ The basic concept of the reform movement was that sentences should be definite and equitable and should impose punishment that corresponds to the

Recent Trends in American Criminal Sentencing Theory, 42 MD. L. REV. 6, 8-9 (1983).

9. FAIR AND CERTAIN PUNISHMENT, *supra* note 7, at 11.
10. M. FRANKEL, *supra* note 7, at 75-76.
11. Stern, *Government Appeals of Sentences: A Constitutional Response to Arbitrary and Unreasonable Sentences*, 18 AM. CRIM. L. REV. 51 (1980).
12. Labbe, *Appellate Review of Sentences: Penology on the Judicial Doorstep*, 68 J. CRIM. L. & CRIMINOLOGY 122, 128 (1977); *see, e.g.*, United States v. Wilson, 450 F.2d 495 (4th Cir. 1971) (case remanded because trial judge failed to consider applicability of Federal Youth Corrections Act, 18 U.S.C. §§ 5005-5026 (1982)); United States v. Weston, 448 F.2d 626 (9th Cir. 1971) (sentence vacated because trial judge relied on false information in sentencing the defendant); United States v. Wiley, 278 F.2d 500 (7th Cir. 1960) (sentence vacated because district court arbitrarily had imposed a more serious sentence on a minor defendant than it had imposed upon the co-defendants).
13. Ozanne, *Bringing the Rule of Law to Criminal Sentencing: Judicial Review, Sentencing Guidelines and a Policy of Just Desserts*, 13 LOY. U. CHI. L.J. 721, 734 (1982).
14. M. FRANKEL, *supra* note 7, at 69; Kennedy, *Criminal Sentencing: A Game of Chance*, 60 JUDICATURE 208, 208-13 (1976); Richey, *Appellate Review of Sentencing: Recommendation for a Hybrid Approach*, 7 HOFSTRA L. REV. 71 (1978); *von Hirsch, supra* note 8, at 31.
15. Tonry, *Criminal Law: The Missing Element in Sentencing Reform*, 35 VAND. L. REV. 607, 616 (1982); *see, e.g.*, MINN. STAT. ANN. § 244.11 (West Supp. 1984); 42 PA. CONS. STAT. ANN. § 9781 (Purdon 1982 & Supp. 1984); WASH. REV. CODE § 9.94A.210 (West Supp. 1984). For a discussion regarding states that have developed sentencing guidelines, *see von Hirsch, Commensurability and Crime Prevention: Evaluating Formal Sentencing Structures and their Rationale*, 74 J. CRIM. L. & CRIMINOLOGY 209 (1983).
16. *See, e.g.*, CAL. PENAL CODE § 1170 (West Supp. 1984) (punishment must be proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances); MINN. STAT. ANN. §§ 244.09-.11 (West Supp. 1984) (establishing a commission to specify sentencing guidelines and provide for appellate review of sentencing); 42 PA. CONS. STAT. ANN. § 2154 (Purdon 1981) (creating a commission to establish sentencing guidelines).

seriousness of the criminal act.¹⁷ Rehabilitation no longer was espoused as the primary justification for sentences.¹⁸ Efforts to establish sentence guidelines varied from state to state, but each effort had two basic aims: to make sentencing policy more explicit and more rational.¹⁹

Many jurisdictions sought to control judicial discretion by providing for more extensive appellate review of sentences.²⁰ In 1968, the American Bar Association advocated the adoption of appellate review of sentences on their merits.²¹ The states that followed the ABA's advice and statutorily authorized sentence review generally adopted one of two approaches: review by a panel of trial court judges whose authority is limited to consideration of the sentence itself, or review by an appeals court.²² Several states that have adopted sentencing guidelines have also included a provision in the guidelines for appellate review of sentences.²³

-
17. J. MILLER, M. ROBERTS & C. CARTER, *SENTENCING REFORMS: A REVIEW AND ANNOTATED BIBLIOGRAPHY* 25 (1981).
 18. Alschuler, *Sentencing Reform and Prosecutorial Power: A Critique of Recent Proposals for "Fixed" and "Presumptive" Sentencing*, 126 U. PA. L. REV. 550, 552 (1978). In 1982 the American Bar Association issued a report on sentencing that recommended that sentencing schemes attempt to reach a middle ground between mandatory sentencing by the legislature and uncontrolled discretion in the courts. *STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE: SENTENCING ALTERNATIVES AND PROCEDURES* § 18-2.1 (1982). The report recommended the establishment of a "guideline drafting agency" to develop criteria for alternatives to sentencing and for statutory ranges for offenses. *Id.* In this scheme, the sentencing judge would be required to impose a sentence within the range unless aggravating or mitigating factors justified a greater or lesser term of imprisonment. *Id.* § 18-3.1.
 19. Forst and Wellford, *Punishment and Sentencing: Developing Sentencing Guidelines Empirically from Principles of Punishment*, 33 RUTGERS L. REV. 799, 800 (1981).
 20. See, e.g., W. RICH, L. SUTTON, T. CLEAR, M. SAKS, *SENTENCING BY MATHEMATICS: AN EVALUATION OF THE EARLY ATTEMPTS TO DEVELOP AND IMPLEMENT SENTENCING GUIDELINES* 5-6 (1982) [hereinafter cited as W. RICH]. Twenty-seven states now have statutes authorizing sentence review, and four allow review by appellate court decision. In five states sentence appeals are not usually permitted; rare reversals occur, however, because sentences are found to have been motivated by passion or prejudice. Zalman, *Appellate Review of Sentences and the Antinomy of Law Reform*, 1983 DET. C.L. REV. 1513, 1515-16.
 21. *STANDARDS RELATING TO APPELLATE REVIEW OF SENTENCES* §§ 1.1-3.4 (1968). This report states that the major goals to be served by appellate review of sentencing are: (1) to provide the criminal justice system with a means by which grossly excessive sentences can be corrected; (2) to provide for articulation of reasons for sentences to improve each sentence and to develop a rational sentencing policy; (3) to induce respect for the law by ensuring a sensible, reasoned sentence; and (4) to focus the appellate court on the sentencing issue and to avoid an unnecessary retrial where only the sentence is defective. *Id.* § 1.2.
 22. A. CAMPBELL, *LAW OF SENTENCING* § 127 (1978). In states that do not provide for statutory sentence review, some courts construe their authority to review sentences from their general appellate power "to affirm, modify, vacate . . . or reverse any judgment . . . [and] direct the entry of such appropriate judgment . . . as may be just under the circumstances." *Id.* § 128.
 23. See, e.g., MINN. STAT. ANN. § 244.11 (West Supp. 1984) (creating a presumptive sentence; appellate courts review *inter alia* the reasons for the trial court's departure from the guidelines); 42 PA. CONS. STAT. ANN. § 9781 (Purdon 1982 & Supp. 1984) (appellate courts empowered to vacate a sentence upon a finding that the sentencing

In 1979 the Maryland judiciary, recognizing the need to establish uniformity in the sentencing process, formed a committee of judges to develop sentencing guidelines.²⁴ The committee used an historical approach,²⁵ developing the guidelines from sentences actually imposed in the circuit courts. The major goals of the sentencing guidelines were: (1) to increase equity in sentencing; (2) to articulate an explicit sentencing policy that is regularly reviewed and updated; (3) to provide information for judges; and (4) to promote increased visibility and understanding of the sentencing process.²⁶ The guidelines would reduce sentencing disparity by informing the sentencing judge of sentences previously imposed with respect to similar defendants who committed similar crimes in similar circumstances.²⁷ As long as a judge sentences within the guidelines' range, a charge of irrational disparity cannot be supported because the sentence comports with the experience of the judge's peers.²⁸

Since July 1, 1983, judges in the circuit courts of Maryland have been using guidelines in all cases originating in circuit courts and involving crimes against persons, crimes against property, and crimes involving controlled dangerous substances.²⁹ Maryland's guidelines process is compatible with systems in several states that have followed the historical norms approach in developing guidelines.³⁰ Maryland's system, like nearly all forms of guidelines currently in use, is intended to be advisory

judge purported to sentence within the guidelines, but applied the guidelines erroneously); WASH. REV. CODE § 9.94A.210 (West Supp. 1984) (only sentences inconsistent with the guidelines appealable).

24. MARYLAND SENTENCING GUIDELINES MANUAL (rev. Oct. 1982) [hereinafter cited as MARYLAND GUIDELINES]. The Guidelines were first implemented voluntarily in 1981 in the circuit courts in Baltimore City, Harford, Montgomery, and Prince George's counties. The Guidelines were modified in 1982 and implemented on a statewide basis by the Maryland Judicial Conference on July 1, 1983.
25. See generally Forst and Wellford, *supra* note 19, at 818-32 (discussing the several basic approaches used to formulate sentencing policy). Sentencing guidelines based on historical norms have been used in several court systems including those of Denver, Chicago, Philadelphia, Newark, and Phoenix, as well as in the states of Minnesota and New Jersey. Forst and Wellford, *supra* note 19, at 818-19. For an evaluation of the guidelines systems used in Chicago, Philadelphia, Newark, and Phoenix, see W. RICH, *supra* note 20.
26. MARYLAND GUIDELINES, *supra* note 24, at ii.
27. SENTENCING GUIDELINES BOARD STAFF OF THE ADMINISTRATIVE OFFICE OF THE COURTS, MARYLAND'S JUDICIAL SENTENCING GUIDELINES 2 (September 4, 1984) (available in the University of Baltimore Law Review Office) [hereinafter cited as GUIDELINES REPORT].
28. *Id.* To determine the guideline sentence for a specific crime, the judge must first ascertain the offender and offense score from a fixed set of criteria assigned various numerical weights based on importance. The judge completes the guidelines worksheet and consults the sentence matrix, which presents sentences in a grid with different rows and columns corresponding to increasing seriousness of the offense and of the offender's prior record. The matrix indicates the range of sentences recommended for each combination of offender and offense scores. *Id.*
29. GUIDELINES REPORT, *supra* note 27, at 4-5.
30. See *supra* note 25 and accompanying text.

rather than mandatory.³¹ The guidelines complement the sentencing process rather than replace judicial discretion.³² Judges may sentence outside the guidelines' range, but they are requested to state in writing their reasons for any departure.³³

Maryland's sentencing guidelines format differs, however, from several of the other states' systems in its failure to provide for appellate review of the guidelines process. Appellate review in Maryland does not extend to the judge's use of the sentencing guidelines.³⁴ Maryland provides for sentence review by a panel of trial judges authorized to impose a different sentence from the one imposed by the sentencing judge.³⁵ Maryland, however, only recognizes three grounds for appellate review of sentences: (1) the sentence may not constitute cruel and unusual punishment or violate any other constitutional requirement;³⁶ (2) the sentencing judge may not be motivated by ill will, prejudice, or other impermissible considerations;³⁷ and (3) the sentence must be within statutory limits.³⁸

-
31. *Teasley v. State*, 298 Md. 364, 367, 470 A.2d 338, 340 (1984) (citing MARYLAND GUIDELINES, *supra* note 24, at ii); *Durbin v. State*, 56 Md. App. 442, 447, 468 A.2d 145, 148 (1983); see also L. WILKINS, J. KRESS, D. GOTTFREDSON, J. CALPIN, & A. GELMAN, SENTENCING GUIDELINES: STRUCTURING JUDICIAL DISCRETION vii (1978).
 32. *Teasley v. State*, 298 Md. 364, 367, 370, 470 A.2d 337, 338, 340 (1984); *Durbin v. State*, 56 Md. App. 442, 447, 468 A.2d 145, 148 (1983); MARYLAND GUIDELINES, *supra* note 24, at ii.
 33. *Teasley v. State*, 298 Md. 364, 367, 470 A.2d 337, 338 (1984); *Durbin v. State*, 56 Md. App. 442, 447, 468 A.2d 145, 148 (1983); see GUIDELINES REPORT, *supra* note 27, at 2; see also MD. ANN. CODE art. 27, § 643C (Supp. 1984) (providing that "[n]othing in this article may be construed to prohibit the use of judicial guidelines in setting sentences," except that (1) the guidelines may not prescribe a sentence "exceeding the maximum sentence provided by law," and (2) the guidelines may not recommend a sentence that violates any "mandatory minimum sentence prescribed by law").
 34. *Teasley v. State*, 298 Md. 364, 370, 470 A.2d 338, 340 (1984).
 35. MD. ANN. CODE art. 27, §§ 645JA - 645JG (1982 Repl. Vol. & Supp. 1984); MD. R.P. 4-344. MD. R.P. 4-345 also permits a defendant to file a motion with the sentencing judge to modify, reduce, or strike the sentence.
 36. Cases authorize appellate review of sentences when objections to sentencing procedures are made on due process grounds. See *Costello v. State*, 237 Md. 464, 206 A.2d 812 (1965); *Driver v. State*, 201 Md. 25, 92 A.2d 570 (1952). An important due process requirement is that offenders must be given the opportunity to refute adverse information. *Id.* at 31-32, 92 A.2d at 573-74.
 37. For examples of impermissible considerations, see *Gardner v. Florida*, 430 U.S. 349, 358 (1977) (due process applies to sentencing procedure); *United States v. Tucker*, 404 U.S. 443, 447-49 (1972) (sentence based in part on previous conviction in violation of right to counsel is invalid); *Johnson v. State*, 274 Md. 536, 538-40, 336 A.2d 113, 116-18 (1975) (remarks of sentencing judge that he punished defendant more severely because defendant did not plead guilty were impermissible); *Purnell v. State*, 241 Md. 582, 584, 217 A.2d 298, 299-300 (1966) (trial judge, in determining sentence, must not consider mere accusations that defendant committed crimes other than the crime for which he is being sentenced); *Walker v. State*, 186 Md. 440, 443, 47 A.2d 47, 48 (1946) (it is improper for trial judges to base sentence on charges of crimes for which defendant had been acquitted).
 38. *Logan v. State*, 289 Md. 460, 425 A.2d 632 (1981); *Clark v. State*, 284 Md. 260, 396

In *Teasley*, the Court of Appeals of Maryland refused to vacate the sentence, rejecting the appellant's argument that the trial judge's misapplication of Maryland's sentencing guidelines constituted an improper exercise of discretion.³⁹ The court was not convinced that the judge had erred in sentencing *Teasley* to consecutive terms rather than concurrent terms as required by the guidelines.⁴⁰ The *Teasley* court stated that the judge's explicit refusal to follow the ABA rationale recommending concurrent sentences was indicative of her probable rejection of the similar Maryland guidelines.⁴¹ The court also recognized that the judge had expressly articulated the reason for departure from the concurrent sentence recommendation: *Teasley's* criminal record required a sentence that reflected the need to protect the public.⁴²

The court reiterated Maryland's position on appellate review of sentencing as extremely limited.⁴³ The only restraints on a judge's power to sentence in Maryland are that the sentence not constitute cruel and unusual punishment or otherwise violate constitutional requirements; that the judge not be motivated by ill-will, prejudice, or other improper considerations; and that the sentence fall within statutory limits.⁴⁴ The court, finding that none of these grounds was present in *Teasley*, reasoned that consecutive sentences are not *per se* cruel and unusual punishment.⁴⁵ The court also found it not improper for a Maryland trial judge to decline to apply the guidelines or to apply them improperly, because the guidelines complement rather than replace the judge's sentencing discretion.⁴⁶ The court also indicated that the sentence was lawfully within statutory limits and was a good faith exercise of judicial discretion.⁴⁷

Teasley presents an anomalous development in Maryland law. Maryland's sentencing guidelines have been implemented on a statewide basis since 1983,⁴⁸ and *Teasley* is the first Maryland case at the appellate

A.2d 243 (1979). These cases illustrate the breadth of the trial judge's discretion when the sentence does not exceed statutory limits. In *Logan*, the court of appeals upheld the sentence, refusing to limit the judge's discretion even when the judge used an unconstitutionally procured confession. *Logan*, 289 Md. at 486, 425 A.2d at 645. Similarly, in *Clark* the court of appeals refused to vacate a sentence that the defendant claimed was improperly motivated because the trial judge had commented at sentencing that the defendant resembled a notorious criminal. *Clark*, 284 Md. at 275, 396 A.2d at 251.

39. *Teasley v. State*, 298 Md. 364, 369-70, 470 A.2d 337, 339-40 (1984).

40. *Id.* at 370, 470 A.2d at 340.

41. *Id.*

42. *Id.* at 368, 470 A.2d at 339.

43. *Id.* at 370, 470 A.2d at 340.

44. *Id.* See *supra* notes 36-38 and accompanying text.

45. *Id.* at 370-71, 470 A.2d at 340.

46. *Id.*

47. *Id.* at 371, 470 A.2d at 340. The court noted that *Teasley* was entitled to review of his sentence by a panel of trial judges under MD. ANN. CODE art. 27, §§ 645JA-645JG and under Md. R.P. 773 (1977), and by the sentencing judge under Md. R.P. 774 (1977). (These rules are currently Md. R.P. 4-344 and 4-345).

48. *Teasley v. State*, 298 Md. at 367, 470 A.2d at 338-39; MARYLAND GUIDELINES, *supra* note 24, at ii.

level to consider the role of the guidelines in the sentencing process. One of the goals of Maryland's sentencing guidelines is to increase equity in sentencing by reducing unwarranted variation, while retaining judicial discretion to individualize sentences.⁴⁹ Because the *Teasley* court found the guidelines advisory, to the point that judges may improperly apply or entirely decline to apply the guidelines, this goal of equity and increased consistency may be difficult to attain. *Teasley* may not itself implicate this problem because the trial judge had valid reasons for Teasley's sentence, and the sentence was equitable under the circumstances.⁵⁰ The potential exists, however, for the goals of the guidelines to be ignored because, as *Teasley* holds, a mistaken application of or a failure to apply the guidelines will not be reviewed by the appellate courts.⁵¹ The *Teasley* court steadfastly asserted the limited appellate review authority over the sentencing process by refusing to extend appellate review to these situations.⁵²

Implementation of sentencing guidelines and appellate review of the sentencing process serve as a restraint upon judicial discretion and are natural components of a sentencing guidelines system.⁵³ Guidelines can substantially lessen, if not eliminate, the traditional impediments to substantive sentence review by providing operating rules for sentencing decisions and by relieving appellate courts of the difficulty of establishing specific rules for a sentencing policy.⁵⁴ Sentence variation without valid grounds and sentencing standards without a public policy basis can be minimized while still retaining some degree of judicial discretion. Appellate courts can perform three significant functions under a sentencing guidelines system: (1) they can review a sentence within the guidelines' range to determine if the guidelines were applied erroneously; (2) they can review a sentence outside the guidelines' range to determine if the reasons for departure are valid; and (3) the courts can review the guidelines themselves to evaluate whether the guidelines comply with public policy.⁵⁵ Maryland law does provide for judicial review of a sentence by either the sentencing judge or a panel of trial judges.⁵⁶ Review by the appellate courts, however, has the advantage of refining sentencing policy through the development of a body of precedent upon which the sentencing judge can rely.⁵⁷

The sentencing guidelines system is still in its infancy in Maryland.

49. MARYLAND GUIDELINES, *supra* note 24, at ii. See *supra* note 26 and accompanying text.

50. *Teasley v. State*, 298 Md. at 370, 470 A.2d at 340.

51. *Id.* at 370-71, 470 A.2d at 340.

52. *Id.*

53. Ozanne, *supra* note 13, at 741; Zalman, *supra* note 20, at 1522.

54. Ozanne, *supra* note 13, at 741.

55. *Id.* at 741-44.

56. MD. ANN. CODE art. 27, §§ 645JA - 645JG (1982 Repl. Vol. & Supp. 1984); MD. R.P. 4-344 to -345.

57. Labbe, *supra* note 12, at 133.

The system is maturing steadily, however, with judges submitting guidelines' worksheets at an annual rate of 10,000 to 12,000.⁵⁸ As the guidelines process develops, it may be a wise strategy for the Maryland courts or legislature to extend appellate review of sentencing to the judicial application of or departure from the sentencing guidelines, as other courts and legislatures have done.⁵⁹ This extension of appellate review authority, however, will not be granted soon. As *Teasley* demonstrates, the court of appeals is unwilling to recognize the improper application of the sentencing guidelines as a basis for an appeal. Unless the case fits within one of the three traditional grounds for appellate review of a sentence in Maryland,⁶⁰ the trial judge's sentencing determination will not be disturbed.

Mary Elizabeth Wildemann

58. GUIDELINES REPORT, *supra* note 27, at 5.

59. See *supra* text accompanying note 23. Pennsylvania authorizes the type of appellate review of the sentencing guidelines that was at issue in *Teasley*. See 42 PA. CONS. STAT. ANN. § 9781 (Purdon 1982 & Supp. 1984). See also *State v. Garcia*, 302 N.W.2d 643, 644-45 (Minn. 1981) (appellate court has power to review a sentence to determine if it is consistent with the guidelines and if any departure from the guidelines is justified); *State v. Roth*, 95 N.J. 334, 351, 471 A.2d 370, 387 (1984) (appellate court is empowered to review a sentence to determine whether the sentencing guidelines were followed); *Commonwealth v. Stafford*, 313 Pa. Super. 231, 234, 459 A.2d 824, 826 (1983) (appellate court's review of a challenged sentence begins with an evaluation of the degree to which the sentencing judge followed the sentencing guidelines). The Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, §§ 991-98, 98 Stat. 1976, 2017-18 (1984) mandates establishment of sentencing guidelines to eliminate disparity in sentencing. The Act requires federal judges to explain in writing any departure from the guidelines and provides for appellate review of a sentence that departs from the guidelines. Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, § 3742, 98 Stat. 1976, 2011-13 (1984).

60. See *supra* text accompanying notes 36-38.