

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2008

Order Promulgating Amendment to the Vermont Rules of Criminal Procedure

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 43(c) of the Vermont Rules of Criminal Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 43. PRESENCE OF THE DEFENDANT

(a) **Presence Required.** The defendant shall be present at the arraignment, at any subsequent time at which a plea is offered, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

(c) **Presence Not Required.** A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes.

(2) In prosecutions for misdemeanors, the defendant, with the consent of the court, may waive appearance under Rule 5 in writing and the court, with the written consent of the defendant and the state's attorney, may permit arraignment, pleas of guilty, nolo contendere or not guilty, trial, and imposition of sentence in the defendant's absence. Before a plea of not guilty may be filed and accepted by the court, the state's attorney and the defendant shall agree upon bail and conditions of release, which shall be signed by the defendant and his or her attorney, and filed with the court simultaneously with the plea of not guilty.

(3) The defendant's presence is not required at a conference or argument upon a question of law and is not required at any other proceeding except as provided in subdivision (a) of this rule or otherwise ordered by the court.

Reporter's Notes—2008 Amendment

Rule 43(c) is amended pursuant to the request of the Court in *State v. Brown*, No. 2003-384, 2005VT 104, at ¶ 15 (8/26/05), that the

Committee address the potential inconsistency between the provision of Rule 43(c)(3) that “defendant’s presence is not required at a conference or argument on a question of law” and the language in the District Court’s computer-generated notice form, used for all hearings, that requires defendant’s personal presence. In *Brown*, the Supreme Court had overturned a District Court decision forfeiting defendant’s bail for non-appearance at a status conference held under Rule 12(e) to determine how to proceed in light of defendant’s incarceration on federal charges. Under the amended rule, the defendant’s presence is required only at those proceedings specified in subdivision (a). The defendant need not be present at a conference or argument on a question of law and need not be present at other proceedings except as provided in subdivision (a) unless the court otherwise orders.

2. That this rule, as amended, is prescribed and promulgated to become effective on _____, 2008. The Reporter's Notes are advisory.

5. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this _____ day of _____, 2008.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice