



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART X

APPEALS FROM SUMMARY PROCEEDINGS

Disposal of appeals

188 Setting aside conviction or sentence: prosecutor's consent or application

- (1) Without prejudice to section 175(3) or (4) of this Act, where—
 - (a) an appeal has been taken under section 175(2) of this Act or by suspension or otherwise and the prosecutor is not prepared to maintain the judgment appealed against he may, by a relevant minute, consent to the conviction or sentence or, as the case may be, conviction and sentence (“sentence” being construed in this section as including disposal or order) being set aside either in whole or in part; or
 - (b) no such appeal has been taken but the prosecutor is, at any time, not prepared to maintain the judgment on which a conviction is founded or the sentence imposed following such conviction he may, by a relevant minute, apply for the conviction or sentence or, as the case may be, conviction and sentence to be set aside.
- (2) For the purposes of subsection (1) above, a “relevant minute” is a minute, signed by the prosecutor—
 - (a) setting forth the grounds on which he is of the opinion that the judgment cannot be maintained; and
 - (b) written on the complaint or lodged with the clerk of court.
- (3) A copy of any minute under subsection (1) above shall be sent by the prosecutor to the convicted person or his solicitor and the clerk of court shall—
 - (a) thereupon ascertain and note on the record, whether that person or solicitor desires to be heard by the High Court before the appeal, or as the case may be application, is disposed of; and

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- (b) thereafter transmit the complaint and relative proceedings to the Clerk of Justiciary.
- (4) The Clerk of Justiciary, on receipt of a complaint and relative proceedings transmitted under subsection (3) above, shall lay them before any judge of the High Court either in court or in chambers who, after hearing parties if they desire to be heard, may—
- (a) set aside the conviction or the sentence, or both, either in whole or in part and—
 - (i) award such expenses to the convicted person, both in the High Court and in the inferior court, as the judge may think fit;
 - (ii) where the conviction is set aside in part, pass another (but not more severe) sentence in substitution for the sentence imposed in respect of that conviction; and
 - (iii) where the sentence is set aside, pass another (but not more severe) sentence; or
 - (b) refuse to set aside the conviction or sentence or, as the case may be, conviction and sentence, in which case the complaint and proceedings shall be returned to the clerk of the inferior court.
- (5) Where an appeal has been taken and the complaint and proceedings in respect of that appeal returned under subsection (4)(b) above, the appellant shall be entitled to proceed with the appeal as if it had been marked on the date of their being received by the clerk of the inferior court on such return.
- (6) Where an appeal has been taken and a copy minute in respect of that appeal sent under subsection (3) above, the preparation of the draft stated case shall be delayed pending the decision of the High Court.
- (7) The period from an application being made under subsection (1)(b) above until its disposal under subsection (4) above (including the day of application and the day of disposal) shall, in relation to the conviction to which the application relates, be disregarded in any computation of time specified in any provision of this Part of this Act.