



**Manitoba
Department of Justice
Public Prosecutions**

Guideline No. 4:APP:1.5

Policy Directive

Subject: Appeal - Sentence - Governing Principles

Date: November 5, 1992

POLICY STATEMENT:

An appeal against a sentence must proceed on the basis that it is either so inordinately low on its face, or that the sentencing Judge committed a demonstrable error in principle in imposing sentence.

This will depend, of course, on all of the aggravating and mitigating factors of the case, including the offender's background. The appellant has a strong burden of demonstrating that such an error occurred, before an Appellate Court will grant leave to appeal.

It is important to detail all factors of the case, applicable authorities, and the Court's remarks on the forms submitted, in order for the reviewing Crown Attorney to initially assess the potential success of the appeal.

Some factors (not inclusive) that enter into a decision to appeal are:

1. The seriousness of the offence;
2. The previous record, or character of the offender;
3. The sentence given to a co-accused (principle of parity);
4. The sentence is illegal;
5. The sentence is inordinately low on its face, outside any previously appropriate range;
6. The position taken by the Crown at the sentencing hearing;
7. The facts admitted by defence counsel, or proved by the Crown, at the sentencing hearing;

8. The principle of totality, including other matters dealt with on the same day, and a sentence already being served;
9. Whether a plea to a lesser offence was accepted, and the reasons leading to that decision;
10. Time spent in custody awaiting sentence, and the reasons for this;
11. Whether the accused was on probation, on parole, pending on other matters when the offence occurred, or was re-involved (and convicted) while awaiting sentence.

Any information pertaining to the above must be brought to the attention of the Crown Attorney whose approval of the Appeal is being sought.

-see other APPEAL sub-topics for further guidelines.