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PLEASE NOTE:

This kit is intended to provide you with information only. If you have a legal problem, you should seek legal advice from a lawyer.

Legal Aid Queensland believes that the information provided is accurate as at August 2002 and does not accept responsibility for any errors or omissions.



WHEN TO USE THIS KIT

USE THIS KIT IF:

- ◆ You are appealing to the Queensland Court of Appeal about your sentence or conviction; and
- ◆ Your sentence and/or conviction was imposed in the District or Supreme Court in Queensland.

DO NOT USE THIS KIT IF:

- ◆ You are intending to make a High Court appeal; or
- ◆ You are appealing from the Magistrates Court.

Time limits apply to appeals, please seek legal advice as soon as possible.

HOW THIS KIT WILL HELP YOU:

- ◆ Understand the process you will follow to appeal against your sentence or conviction, including what will happen in the courtroom; and
- ◆ Assist you in preparing for your appeal, including how to fill out the necessary forms.

WHERE TO GET LEGAL ADVICE

- ◆ Legal Aid Queensland - call 1300 65 11 88 (local call cost);
- ◆ Community Legal Centre - call 1300 65 11 88 to check services in your area;
- ◆ Private solicitor; or
- ◆ Queensland Law Society - call (07) 3842 5842 (solicitor referral service).

“If you are not legally represented for your appeal, you will receive a letter of confirmation from the registry advising that they have received your Notice.”



TERMS YOU SHOULD KNOW

Abandonment

After starting an appeal, if you decide not to go ahead, you will need to file a “*Notice of Abandonment*”.

Acquittal

A judgment that a person is not guilty of a criminal offence.

Appeal

A procedure where a court decision is reviewed by a higher court.

Comparable Sentences

A record of sentences imposed for the same or similar offences.

Conviction

A judgment that a person is guilty of an offence.

Court of Appeal

A court which hears appeals from lower courts, usually consisting of three Judges.

Filing

The process whereby documents are accepted by a court and often this is evidenced by the court stamping its seal on the filed document.

Judgment

The decision of a court.

Prosecutor

The person who brings a court action against another, usually only used for criminal proceedings.

Quash

To over-turn or set aside; eg to quash a conviction.

Registry

The part of the court where all documents are filed.

Sentence

The penalty for committing an offence.

“Sentence is the penalty for committing an offence.”



HOW TO START AN APPEAL

FILING A NOTICE OF APPEAL

If you want to appeal against your conviction and/or the sentence imposed in the District or Supreme Courts, you must first file a *Notice of Appeal* in the Court of Appeal. There is no filing fee.

If you are in custody, you can file the *Notice* with sentence management at the correctional centre. You should make sure that management has received your *Notice*. If you are not in custody, you file your appeal at the Court of Appeal Registry, Supreme Court Complex, George Street, Brisbane.

The *Notice of Appeal* is set out in Form 26 (a sample copy of Form 26 can be found at the back of this kit). Notices are also available from the Court of Appeal Registry. If you are in prison, the forms are available from any prison duty lawyers and the prison general manager's office. See '**How to Complete Your Notice of Appeal**' on page 6.

You can fax your *Notice of Appeal* to the Court of Appeal so that it is filed quickly and then post the original to the registry. The details for the Court of Appeal Registry can be found on page 9.

If you are not legally represented for your appeal, you will receive a letter of confirmation from the registry advising that they have received your *Notice*.

TIME LIMITS TO APPEAL

There is a strict time limit to file the *Notice of Appeal*. You must file the *Notice* within one calendar month from the date of your sentence if you are appealing against sentence, and one calendar month from your date of conviction if you are appealing against conviction. If you are in custody, the date you file the *Notice* with sentence management is taken to be the date of filing in the Court of Appeal.

One calendar month is calculated by excluding the day of your conviction or sentence, but including the last day of that calendar month. For example, if you were convicted or sentenced on June 12, you do not count that day as part of the calendar month for your appeal. You would be able to file your *Notice* up to and including July 12. (See s.671 (2) *Criminal Code Qld*).

It is important to remember that the timeframe for appealing against your conviction will start from the day you were actually convicted - not from the time you were sentenced. So if you were convicted on one day but sentenced on a later day, your timeframe for appealing will begin from the day you were convicted.

“You must file the Notice within one calendar month from the date of your sentence if you are appealing against sentence.”



Extension of time to appeal

If you file the *Notice* after one calendar month has passed, you will need to file a *Notice of Application for Extension of Time to Appeal*. The Court of Appeal will then decide whether you will be allowed to appeal, because your *Notice* was not filed in time. This notice is set out in Form 28 (a sample copy is included on page 32). You may also fax this form, but again you must send the original.

You will have to write very good reasons in your Form 28 application to justify why the Court of Appeal should hear your appeal. Be prepared to argue your actual appeal grounds at the time of the hearing of the extension application.

MY APPEAL WAS UNSUCCESSFUL - WHAT NOW?

If you have already had an appeal heard by a District Court Judge under s.222 of the *Justices Act* and you have been unsuccessful, you may be able to obtain leave to appeal to the Court of Appeal. This appeal is under s.118 of the *District Court Act*.

The *Notice for Leave to Appeal* under the *District Court Act* is set out in Form 27 (a sample copy is included on page 26).

Similarly, if you are filing the *Notice of Application for Leave to Appeal* from the judgment of a District Court Judge after one calendar month has passed, you may still be able to obtain the right to appeal. However, you must also file a *Notice of Application for Extension of Time* within which to appeal, under the *District Court Act*. This *Notice* is set out in Form 29 (a sample copy is included on page 34).

Again, you will have to write very good reasons to justify why the Court of Appeal should hear your appeal. You will need to be prepared to argue your actual appeal grounds at the extension hearing.

“ You will have to write very good reasons to justify why the Court of Appeal should hear your appeal.”



HOW TO COMPLETE YOUR NOTICE OF APPEAL

You must complete all pages of the *Notice of Appeal*. Handwriting is acceptable.

You must fill in all the required details on each page. If you are not appealing both sentence and conviction, you must delete which ever type of appeal is not applicable.

Then you should briefly outline your grounds of appeal in the *Notice*. Grounds are the reasons why your conviction and/or sentence is wrong, and should be ‘quashed’ (see ‘**Terms you should know**’ on page 3) or set aside.

You can decide to appeal on the basis of one ground of appeal, or several.

WHAT IS AN APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE?

Unless the sentence is fixed by law (ie a mandatory sentence), a person convicted by the Supreme Court or District Court can appeal, by leave of the Court, against their sentence. (See *Criminal Code (Qld) s.668D (1) (c)*).

An *Application for Leave to Appeal against Sentence* is generally made when the person sentenced has good grounds for thinking that their sentence is too severe or wrong in law, and wants it reduced or replaced with a different sentence altogether (eg a community service order instead of imprisonment). The most common ground is that the sentence is manifestly excessive (ie the sentence is so far outside the range of appropriate sentences, it can be said the Judge made a mistake in sentencing.)

The Court will consider the grounds of appeal and may compare the sentence with other sentences imposed in similar cases. If the Court is of the opinion that some other sentence, whether more or less severe, is warranted in law, it will allow the appeal. If the Court allows the appeal it must vary or set aside the original sentence and pass another sentence as appropriate. (See *Criminal Code (Qld) s668E(3)*).

GROUNDINGS FOR SENTENCE APPEALS

When appealing against sentence, many applicants use the ground “the sentence was manifestly excessive in the circumstances”. You can use this ground in your appeal against sentence if you think your sentence was too harsh.

“You must complete all pages of the Notice of Appeal.”



A sentence may be considered manifestly excessive when:

- ◆ the head sentence should be reduced;
- ◆ a parole recommendation should be made or reduced;
- ◆ you think the Judge miscalculated, for example, did not calculate your days in custody properly;
- ◆ there is an error in law, for example, the Judge thought the maximum sentence was higher than it actually was;
- ◆ you were convicted of a serious violent offence;
- ◆ the Judge should not have recorded a conviction as part of your sentence; or
- ◆ the Judge should not have attached a certain condition to your sentence.

WHAT IS AN APPEAL AGAINST CONVICTION?

An appeal against conviction is available in cases where an accused person has pleaded not guilty, has had a trial and has been found guilty by a jury. Only in rare circumstances can an accused person appeal against conviction after having pleaded guilty. An accused person ordinarily has only one right of appeal against conviction.

An appeal against conviction may involve a complaint regarding the way in which a trial was conducted; for example, the failure of the trial Judge to give an appropriate warning or direction to the jury, or if a Judge allows inadmissible material into evidence. The most common grounds of appeal against conviction from the District or Supreme Courts to the Court of Appeal are:

- ◆ the verdict is unreasonable or cannot be supported, having regard to all of the evidence;
- ◆ there is an error of law or mixed law and fact, specifying the grounds relied upon; and
- ◆ that there has been a miscarriage of justice, specifying the grounds relied upon.

The Court of Appeal looks at the grounds of appeal and has the power to make numerous orders and directions, the most common being:

- ◆ dismissing the appeal against conviction if the Court considers that no substantial miscarriage of justice has actually occurred ;
- ◆ sending the matter back to the originating court for retrial;
- ◆ quashing the conviction and directing a verdict of acquittal;
- ◆ directing that there be no retrial without directing a verdict of acquittal (rare);
- ◆ substituting a verdict of guilty of a different offence where the jury must have found an accused guilty of that other offence; or
- ◆ in exceptional circumstances, setting aside the conviction and entering a verdict of not guilty by reason of unsoundness of mind.

“An accused person ordinarily has only one right of appeal against conviction.”



FOUNDATIONS FOR CONVICTION APPEALS

With respect to appeals against conviction, you can consider using some or all of the following grounds. These grounds are a general example only and do not cover all possible issues, facts or matters that could be raised for a conviction appeal.

- ◆ error of law;
- ◆ error in ruling during trial;
- ◆ error in Judge’s summing up to jury;
- ◆ fresh evidence;
- ◆ unreasonable verdict;
- ◆ any reason why you think you did not receive a fair trial; and
- ◆ an irregularity in the conduct of the trial.

If you include grounds of appeal against conviction in general terms, you will need to be specific in your grounds as to what the error or complaint is. You will then need to elaborate in your *Submission of Argument* (a sample copy has been included on page 38).

YOUR NOTES:



ABANDONING THE APPEAL

NOTICE OF ABANDONMENT

If you decide not to proceed with your appeal, you may abandon it by filing a *Notice of Abandonment* (see sample copy on page 36).

You can formally abandon your appeal up to and including the date of the appeal but you should abandon as soon as you decide not to go ahead. Fax the *Notice of Abandonment* to the Court of Appeal as soon as possible and then post the original to the registry. If you do not lodge this *Notice of Abandonment*, your appeal will still go ahead. If you are in prison, you will be brought before the Court of Appeal even though you do not wish to go ahead with it.

Below is the address and fax number for the Court of Appeal Registry:

Court of Appeal Registry

PO Box 15167 City East QLD 4002

304 George Street

Brisbane QLD 4000

Phone: (07) 3247 4702

Fax: (07) 3247 5339



APPLYING FOR LEGAL AID

If you have not already applied for legal aid for your appeal, you should do so as soon as possible. Even if you did have legal aid for your sentence or trial, you must apply again for the appeal.

As well as a financial means test, Legal Aid Queensland also applies a merit test before aid is granted. In other words, a senior appeals barrister will assess whether you have reasonable prospects of winning your appeal. In order to satisfy the merit test, you should try to demonstrate in your application that you have reasonable prospects of success on appeal. You will be advised of the result of your application by letter. If Legal Aid Queensland considers that you do not have reasonable prospects of success, aid will be refused.

If you are refused a grant of legal aid for your appeal, you can appeal the refusal. You must write to the External Review Officer within 28 days of the refusal. Write to: *The External Review Officer, GPO Box 2449, Brisbane, QLD, 4001.*

If you are refused legal aid for your appeal, or you do not wish to be represented by Legal Aid Queensland, you can pay a private solicitor and barrister to represent you on appeal.

If you decide to pay a private solicitor and a barrister and you do not know anybody to contact, you can ring the Queensland Law Society to be advised of a solicitor who specialises in Appeals. The telephone number is (07) 3842 5842.

You can also prepare your own appeal and appear in court yourself.

“If you are refused a grant of legal aid for your appeal, you can appeal the refusal.”



WHAT HAPPENS NEXT?

HEARING DATE OF THE APPEAL

From the time you file your *Notice of Appeal*, it may take several months before you get a hearing date in the Court of Appeal. This is because it takes some time for the Court of Appeal Registry to obtain the transcript of your trial or sentence and all the exhibits and there may be many other appeals waiting to be heard.

The Registrar will allocate you a date for the appeal hearing. You will be notified in writing of the date.

If you have been sentenced to a term of imprisonment, you will not automatically receive bail before your appeal hearing. Appeal bail is granted only in exceptional circumstances. For example, if you received a short term of imprisonment and all or most of it would be served before the appeal hearing, you might be granted bail.

If you do not have bail, you may write to the Registrar of the Court of Appeal to ask for an early hearing date.

If you want to apply for bail, see a prison duty lawyer or the Prisoners' Legal Service or sentence management about bail. They may be able to supply you with the Bail by Mail kit.

APPEAL RECORD BOOK

The full transcript of the previous hearing, the Judge's summing up and sentencing remarks as well as copies of exhibits are compiled in a Record Book. The Appeal Record Book will be sent to you when it becomes available. If you are representing yourself, you do not have to pay for the Record Book.

The appeal will generally be argued on the basis of the evidence which was before the sentence or trial court. Remember, your appeal is not another opportunity for you to hold another trial or sentence hearing.

The Appeal Record Book may not contain all the items or documents which were tendered to the sentencing Judge. If you wish to refer to something that was handed up on your behalf to the sentencing Judge, for example, references, you may request that the registry include a copy in the Record Book. If you wish to rely on an exhibit, which is non-documentary, you may ask the registry to have it present in court on the day of the appeal.

“If you want to apply for bail, see a prison duty lawyer or the Prisoners’ Legal Service or sentence management about bail.”



SUBMISSIONS OF ARGUMENT

The Court of Appeal requires reasons in writing as to why your appeal should be granted. A sample of the *Submission of Argument* form can be found on page 38. Write the reasons for your appeal under the different headings contained in the *Submission of Argument* form. It is very important that you put all your reasons in writing, as the Court of Appeal Judges will read and consider your reasons before the day of appeal.

On the day of the appeal, the Judges will probably not want you to re-argue what you have already put in writing. They will simply want to ask you questions to clear up any misunderstandings or discrepancies. This is why it is so important to argue fully in writing and lodge your arguments before the day of the appeal.

You may wish to include case authorities (precedents) in your *Submission of Argument*. Generally, the Court of Appeal will only consider its own or other Appeal Court decisions. Appeal case authorities may be found in University law libraries and the Supreme Court library in Brisbane.

You will need to make six (6) copies of your *Submission of Argument* and any case precedents you are relying on. You must supply the Office of the Director of Public Prosecutions Office with a copy of your *Submission of Argument*, and five (5) copies to the Court of Appeal Registry.

The Court must receive the *Submissions of Argument* 14 days before the appeal hearing date for appeals against sentence, and within 21 days after receipt of the Appeal Record Book for appeals against convictions.

When writing your submission, refer to the materials in the Appeal Record Book. Ordinarily, the Court will not receive new material. Once you have finished your submission, send it to the Court of Appeal Registry.

Before the day of the appeal, you should receive the prosecutor's written reasons why your conviction or sentence should remain as it is. It is a good idea to read the prosecutor's submission of argument and try to think of reasons why the Court of Appeal should disagree with the Prosecutor. You may have to give these further reasons to the Court in person when you appear before them. You do not need to put in a written reply to the prosecutor's reasons.

On the day of your appeal, you can tell the Court of Appeal anything you think of that was not put in your written submission of arguments.

“It is very important that you put all your reasons in writing, as the Court of Appeal Judges will read and consider your reasons before the day of appeal.”



SUBMISSION OF ARGUMENT - APPEALING SENTENCE

1. COMPARABLE SENTENCES

The Court of Appeal is unlikely to lower your sentence unless your sentence was “manifestly excessive” when compared to similar cases. Cases are only considered “comparable” if the other person was:

- (a) charged with the same offence or offences as you;
- (b) the same sex as you;
- (c) around the same age;
- (d) had a similar criminal history; and
- (e) the facts are similar.

You may be entitled to obtain Comparable Sentences from the Prisoners’ Legal Service. Your sentence will not be lowered by the Court of Appeal if it is simply harsh or at the top of the range of sentences ordinarily imposed for that offence. It must be “manifestly excessive” before the Court will lower the sentence.

2. PARITY

Parity means that, generally speaking, where two or more people commit the same crime they should receive the same sentence.

To have parity, the case of your co-accused must be similar to your own. For example, if your co-accused had less involvement than you, or was a first offender, or you have a longer criminal history, then the Court of Appeal will not usually consider that your sentence should be on par with your co-accused.

3. ERRORS IN THE EXERCISE OF SENTENCING DISCRETION

You may be able to argue the Judge made a mistake in sentencing you, for example:

- (a) by failing to take into account an important matter in your favour eg you pleaded guilty very early in the process;
- (b) by taking into account an irrelevant fact eg you face further charges of which you say you are not guilty; or
- (c) the Judge made a wrong finding of fact eg the Judge said the offence was pre-planned when it was not.

4. TOTALITY PRINCIPLE

The totality principle states that where a person is being sentenced for different crimes committed at different times, the overall sentence should not be excessive and regard must be had to the total effect of the sentence. You need to be prepared to argue why your total sentence was too high and what it should have been, given the total criminal offences involved.

“You may be entitled to obtain Comparable Sentences from the Prisoners’ Legal Service.”



There are certain grounds you cannot raise as to why your appeal against sentence should be allowed.

(1) That you are not guilty.

You were sentenced because you were found guilty or pleaded guilty. On a sentence appeal, whether you were guilty is not discussed.

(2) That you were not as involved as the Prosecutor said - unless your barrister did challenge this at your sentence hearing.

You are not normally able to ask the Court of Appeal to consider facts that were not given to the Judge at the time of your sentence.

YOUR NOTES:



SUBMISSION OF ARGUMENT - APPEALING CONVICTION

A *Submission of Argument* is a written statement of the arguments and issues you want the Court of Appeal to consider. The outline should be no more than 10 pages.

The written outline or argument should:

- (a) identify any errors the trial Judge is said to have made;
- (b) be concise;
- (c) if including any statement about the facts, give reference to the relevant page of the record of evidence at trial in the Record Book eg - R.12, L30 or LL30-45- ie Record Book page 12, line 30 or Lines 30-45;
- (d) generally only refer to evidence actually given before the Court at trial (not at the committal);
- (e) include all points of law that you consider were wrongly decided; and
- (f) include references to all factual matters that you consider were favourable to you, which should have caused the jury to have a reasonable doubt about your guilt.

“You should check the law list in “The Courier-Mail” on the morning your matter is listed to be heard.”



ON THE DAY

TIPS FOR GOING TO COURT

Don't be late

Get to the court at about 9:30 am if it's a 10:00am start.

It might take all morning

Make sure you have allowed enough time for the court process. Don't forget to organise childcare.

Bring a friend/family member

Bring someone with you to support you through the process and to drive you home if necessary.

Dress appropriately

Make sure you look clean and neat; no shorts, tracksuits, t-shirts or thongs!

Turn off mobile phones

Don't chew gum, eat, talk loudly or use your phone in the courtroom.

Talking to the Judges

Call the Judges "Your Honour" and refer to the prosecutor as "The Prosecutor".

When English isn't your preferred language

If you need an interpreter then take along a friend or family member on the date that you are first due to appear in court.

Explain, or get the person with you to explain, your difficulties understanding English in court.

The Judges will decide if an interpreter is required and will arrange for you to come back on another day when the interpreter can be present.

IN THE COURTROOM

Once in the courtroom, you will be asked to stand at the bar table, or if you are in custody, in the dock, and explain to the Judges why your appeal should be allowed. By the day of your appeal, the Court of Appeal Judges will have read the Record Book, your written *Submission of Argument*, and that of the Prosecutor. You do not need to read your written reasons your again.

If you are not in prison, you must attend the Court of Appeal. This court room is situated on the 5th Floor of the Supreme Court Complex in George Street, Brisbane.

"If you are not in prison, you must attend the Court of Appeal."



Sometimes the Court of Appeal may sit in another court. You should check the law list in ‘The Courier Mail’ on the morning your matter is listed to be heard. Your family and friends are entitled to attend the court and sit in the back of the court room. If you are in prison, the prison will receive notice from the Court of Appeal to bring you into the court on the day of your appeal.

The Court will allow you a limited opportunity to argue your case, however, the Court will not wish to hear at length arguments you have already put in your written outline. At the hearing you should tell the Judges the following things:

- ◆ your two or three best points;
- ◆ anything new that you have thought of since you filed your outline; and
- ◆ why the Prosecutor is wrong.

During the hearing the Judges may ask you questions. Answer them by calling them “Your Honour”. If necessary, point out to the Judges any relevant part of the Record Book that you think they should look at.

JUDGMENT

The result of the appeal is called the judgment. The Court of Appeal can give its judgment on the day of your appeal, or if the Judges need more time to think about all the arguments, a judgment will be given on a later date. That is called a “reserved judgment”.

It is impossible to estimate when a decision will be given by the Judges. A judgment can be reserved for days, weeks, or even months if the appeal was complicated. If you are not in prison, you may attend Court the day that your reserved judgment will be delivered. If you are in prison, you will not be brought to Court to receive the judgment. The delivering of the judgment will be in the Law List in ‘The Courier Mail’ on the day it is being handed down (usually Tuesdays or Fridays). You will be given a copy of the judgment.

“Generally speaking, an appeal against sentence to the Court of Appeal is your last forum for appealing.”



WHAT TO DO IF YOUR APPEAL IS UNSUCCESSFUL?

IF YOU LOSE YOUR APPEAL

If you lose your appeal against sentence, you can consider appealing to the High Court. The High Court very rarely listens to appeals against sentence. Generally speaking, an appeal against sentence to the Court of Appeal is your last forum for appealing. If you lose your conviction appeal you may possibly have some prospect in the High Court if you can show you have a point of law of general importance in Australian law.

IMPORTANT POINTS TO REMEMBER

1. Write your *Notice of Appeal* (See Form 26);
2. File the *Notice*;
3. If you have filed it too late, also write your *Notice of Application for Leave to Appeal* (See Form 28);
4. Wait to receive the Appeal Record Book;
5. Write your *Submission of Arguments* based on your grounds of appeal;
6. Send your *Submission of Arguments* to the Court of Appeal Registry;
7. Receive the Crown's (prosecutor's) submission of arguments to understand their case;
8. Receive a Court date from the registry; and
9. Attend the Court on the date set for the hearing - the judgment will either be handed down that day, or it will be reserved and you will be notified of the date it will be handed down.

“If you lose your appeal against sentence, you can consider appealing to the High Court.”

