How you can appeal if you were convicted in a Crown Court.

If a person is found guilty in the Crown Court and believes the conviction to be wrong, the route of appeal would be to apply for permission to appeal to the Court of Appeal (Criminal Division).

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How to Appeal

The Application for Permission to Appeal (to be completed on a 'Form NG') together with Grounds of Appeal must be sent to the Crown Court where you were convicted. This must be done within 28 days of the conviction or it is necessary to apply for leave to apply out of time. This will mean you will need to explain to the Court why you have left it until after the 28 days to appeal – there may be a good reason and if so, the Court should grant permission to appeal out of time.

It is a myth that anybody who has been convicted has an automatic right to appeal. Actually, the right is to apply for permission (leave) to appeal. This will only be granted if you have arguable grounds of appeal to show the conviction is unsafe.

If you are granted leave then the Court of Appeal will hear the appeal. They will decide if the conviction is safe or unsafe. If it is unsafe the conviction will be set aside. A decision will then be made as to whether there will be a re-trial.

The application for leave is a written application which is made to a single judge.

On what Grounds can I appeal?

Another myth is that it is possible to appeal simply because the convicted person believes the jury got it wrong and they should not been convicted. This is not a ground of appeal.

Rather, it is necessary to show that the trial process was flawed and that any error was sufficiently serious that the verdict of guilty should not stand because it is unsafe.

This may be because of judicial error, for example a misdirection on the law to the jury or some other error by the judge, for example allowing evidence to be placed before the jury which they ought not to have seen. If an error has been sufficiently serious that it may have wrongly influenced the jury, then this would form a ground of appeal.

The judge may have shown bias during their summing up of the case, or during the hearing of evidence.

Further, there may be new evidence. If new evidence is available, which was not available at the time of trial, which is capable of belief, and which, had it been before the jury may have had a material impact on their deliberations, then this may also form a ground of appeal.

It is usual that the trial advocate will advise the convicted person, immediately after the trial, as to whether they have any grounds of appeal and if so, the advocate will draft the Grounds of Appeal which will be submitted to the Court.

But what if the solicitor or barrister who represented the convicted person at trial has themselves made mistakes? They may not realise this or may be reticent to admit it. Often it is not until a new lawyer has reviewed the case that such errors come to light. This may be outside the 28 day time limit and therefore it would be necessary for the new lawyer to apply for permission to appeal out of time and to explain that it was not until they took over that errors by the previous lawyers came to light.

On what Grounds can I appeal?

The sentence will start immediately and is not paused or suspended while an appeal is made. Therefore appellants may often be in prison. It is possible to apply for bail at the time of applying for permission to appeal, however this is rarely granted.

Once the application for permission to appeal on the grounds of appeal are received by the Court of Appeal (having been sent by the Crown Court), then the Single Judge will consider the appeal. It will be there decision as to whether there are arguable grounds that the conviction is unsafe and if there is sufficient merit in the appeal, then they will direct that it should go to the Full Court of Appeal (before 3 Appeal Court judges). It is usual for the Single Judge to make their decision based on their reading of the paperwork submitted to them, rather than any oral application.

The appellant and their solicitor will receive written confirmation of the decision.
This decision will indicate whether there is considered to be merit in all the grounds which have been submitted, or just some - or indeed none.

If permission is not given, then that is not necessarily the end of the road. 14 days are allowed for a notice to be made by the Appellant to renew the application. If permission is granted to renew, the renewed application would be heard before the Full Court of Appeal.

The Single Judge may direct that a ‘Loss of Time Order’ may be made if it the judge considers the appeal to be wholly without merit. Where an Appellant chooses to renew their application, and the Single Judge has directed that a lot of time order should be made if the renewed application is made and the application fails before the Full Court, then the Full Court of Appeal in direct that any time served in custody up until that point (or such period of time as it sees fit) should not count as served. This effectively increases the length of the sentence. If the Single Judge makes such a direction when refusing permission to appeal, the Appellant should think very carefully before proceeding.

The Single Judge will also consider any application to appeal out of time. They will want to know the reasons and should only allow an appeal out of time if it would be unjust to do otherwise.

In effect therefore, the Single Judge acts as a very effective filtering process. Indeed the solicitor and barrister with conduct of the case also have an overriding duty to the Court and the administration of justice. That means that they cannot put forward grounds of appeal that are not properly arguable.

If a new lawyer takes over the case, then they will need to read the case and consider if anything has gone wrong or there has been any failure. The only way to understand how or why the previous lawyers made particular decisions is to ask them. To do this consent must be given for the previous lawyers to answer questions. This means the Appellant must 'waive privilege'. This means that the previous lawyers are not bound by confidentiality and can answer questions put to them. When questions are answered it often becomes clear that the previous lawyers made judgement calls us to however evidence should be deployed or sometimes not used at all. It would rarely be strong ground of appeal to say that the previous lawyers made the wrong judgement call, as any final decision rests with their client.

If permission to appeal is granted, the Prosecution (the Respondent) will be asked to respond. Sometimes it is appropriate for the Appellant's legal representative to answer the Respondent's arguments. This is all done in writing.

Arguments are usually set out in brief documents outlining the case of each party - these are known as skeleton arguments.

The Court Registrar will assist in preparing the case for the final hearing. Once everything is ready, the final hearing will be listed.

The hearing will take place before the Full Court of Appeal. The Court will hear arguments from the Appellant and the Respondent and will carefully consider any evidence. The judges will have read all the evidence, Grounds of appeal and skeleton arguments, together with any applicable law, prior to the hearing.

What can the Court do?

The Court has various powers:

1. If a decision is made that the conviction is unsafe, the conviction will be quashed.
2. The court may choose to substitute a lesser offence if it considers appropriate; for example sexual assault instead of rape or actual bodily harm instead of grievous bodily harm
3. The Court can order a retrial and will do so if it is in the interests of justice
4. The Court may reject the appeal and the conviction would stand

If a retrial is ordered and the Appellant is in custody, the legal representative can make an application for bail pending the retrial.

If you have any questions, please contact us:

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