

- (b) Where the person concerned does not renounce an award under paragraph (a) within the period of sixty days, no person against whom the award was made shall be liable at the suit of the person concerned to any other civil proceedings in respect of the injury for which the award was made.

301. Compensation to innocent purchaser of property unlawfully obtained

Where a person is convicted of theft or of any other offence whereby he has unlawfully obtained any property, and it appears to the court on the evidence that such person sold such property or part thereof to another person who had no knowledge that the property was stolen or unlawfully obtained; the court may, on the application of such purchaser and on restitution of such property to the owner thereof, order that, out of any money of such convicted person taken from him on his arrest, a sum not exceeding the amount paid by the purchaser be returned to him.

CHAPTER 30

REVIEWS AND APPEALS IN CASES OF CRIMINAL PROCEEDINGS IN LOWER COURTS

302. Sentences subject to review in the ordinary course

(1)

(a) Any sentence imposed by a magistrate's court -

- (i) which, in the case of imprisonment (including detention in a reform school as defined in section 1 of the Children's Act, 1960 (Act 33 of 1960), exceeds a period of three months, if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for a period of seven years, or which exceeds a period of six months, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer;
- (ii) which, in the case of a fine, exceeds the amount of two hundred and fifty rand, if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for a period of seven years, or which exceeds the amount of five hundred rand, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer;
- (iii) which consists of a whipping, other than a whipping imposed under section 294,

shall be subject in the ordinary course to review by a judge of the provincial or local division having jurisdiction.

- (b) The provisions of paragraph (a) shall be suspended in respect of an accused who has appealed against a conviction or sentence and has not abandoned the appeal, and shall cease to apply with reference to such an accused when judgment is given.

(Section 302(1) amended by section 11 of Act 105 of 1982)

- (2) For the purposes of subsection (1) -

- (a) each sentence on a separate charge shall be regarded as a separate sentence, and the fact that the aggregate of sentences imposed on an accused in respect of more than one charge in the same proceedings exceeds the periods or amounts referred to in that subsection, shall not render those sentences subject to review in the ordinary course;
- (b) that part of a sentence which is suspended or a sentence of which the whole is suspended, shall not be taken into account: Provided that where such a sentence or such a part of a sentence is put into operation, the provisions of subsection (1) shall come into operation in respect of the sentence in question.

- (3) The provisions of subsection (1) shall only apply -

- (a) with reference to a sentence which is imposed in respect of an accused who was not assisted by a legal adviser;
- (b) where a fine is imposed, if a sentence of imprisonment is imposed in terms of section 287 as a punishment alternative to such fine, and such fine is not paid or if time is not given for the payment thereof before the person convicted is received into a prison: Provided that if the person convicted is at any time received into a prison by reason of his failure to pay the fine or any part thereof, the provisions of subsection (1) shall come into operation in respect of the sentence in question.

303. Transmission of record

The clerk of the court in question shall within one week after the determination of a case referred to in paragraph (a) of section 302(1) forward to the registrar of the provincial or local division having jurisdiction the record of the proceedings in the case or a copy thereof certified by such clerk, together with such remarks as the presiding judicial officer may wish to append thereto, and with any written statement or argument which the person convicted may within three days after imposition of the sentence furnish to the clerk of the court, and such registrar shall, as soon as possible, lay the same in chambers before a judge of that division for his consideration.

(Section 303 amended by section 12 of Act 105 of 1982)

304. Procedure on review

- (1) If, upon considering the proceedings referred to in section 303 and any further information or evidence which may, by direction of the judge, be supplied or taken by the magistrate's court in question, it appears to the judge that the proceedings are in accordance with justice, he shall endorse his certificate to that effect upon the record thereof, and the registrar concerned shall then return the record to the magistrate's court in question.

- (2)
 - (a) If, upon considering the said proceedings, it appears to the judge that the proceedings are not in accordance with justice or that doubt exists whether the proceedings are in accordance with justice, he shall obtain from the judicial officer who presided at the trial a statement setting forth his reasons for convicting the accused and for the sentence imposed, and shall thereupon lay the record of the proceedings and the said statement before the court of the provincial or local division having jurisdiction for consideration by that court as a court of appeal: Provided that where the judge concerned is of the opinion that the conviction or sentence imposed is clearly not in accordance with justice and that the person convicted may be prejudiced if the record of the proceedings is not forthwith placed before the provincial or local division having jurisdiction, the judge may lay the record of the proceedings before that court without obtaining the statement of the judicial officer who presided at the trial.
 - (b) Such court may at any sitting thereof hear any evidence and for that purpose summon any person to appear and to give evidence or to produce any document or other article.
 - (c) Such court, whether or not it has heard evidence, may, subject to the provisions of section 312 -
 - (i) confirm, alter or quash the conviction, and in the event of the conviction being quashed where the accused was convicted on one of two or more alternative charges, convict the accused on the other alternative charge or on one or other of the alternative charges;
 - (ii) confirm, reduce, alter or set aside the sentence or any order of the magistrate's court;
 - (iii) set aside or correct the proceedings of the magistrate's court;
 - (iv) generally give such judgment or impose such sentence or make such order as the magistrate's court ought to have given, imposed or made on any matter which was before it at the trial of the case in question; or
 - (v) remit the case to the magistrate's court with instructions to deal with any matter in such manner as the provincial division may think fit; and
 - (vi) make any such order in regard to the suspension of the execution of any sentence against the person convicted or the admission of such person to bail, or, generally, in

regard to any matter or thing connected with such person or the proceedings in regard to such person as to the court seems likely to promote the ends of justice.

- (3) If the court desires to have a question of law or of fact arising in any case argued, it may direct such question to be argued by the attorney-general and by such counsel as the court may appoint.
- (4) If in any criminal case in which a magistrate's court has imposed a sentence which is not subject to review in the ordinary course in terms of section 302 or in which a regional court has imposed any sentence, it is brought to the notice of the provincial or local division having jurisdiction or any judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such court or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before such court or judge in terms of section 303 or this section.

(Section 304 amended by section 13 of Act 105 of 1982)

305. Right of appearance on review in certain cases subject to certificate of a judge

Notwithstanding anything to the contrary in any law contained, no person who has been convicted by a lower court of an offence and is undergoing imprisonment for that or any other offence, shall be entitled to prosecute in person any proceedings for the review of the proceedings relating to such conviction unless a judge of the provincial or local division having jurisdiction has certified that there are reasonable grounds for review.

(Section 305 amended by section 14 of Act 105 of 1982)

306. Accused may set down case for argument

- (1) A magistrate's court imposing a sentence which under section 302 is subject to review, shall forthwith inform the person convicted that the record of the proceedings will be transmitted within one week, and such person may then inspect and make a copy of such record before transmission or whilst in the possession of the provincial or local division, and may set down the case for argument before the provincial or local division having jurisdiction in like manner as if the record had been returned or transmitted to such provincial or local division in compliance with any order made by it for the purpose of bringing in review the proceedings of a magistrate's court.

(Section 306(1) amended by section 15 of Act 105 of 1982)

- (2) Whenever a case is so set down, whether the offence in question was prosecuted at the instance of the State or at the instance of a private prosecutor, a written notice shall be served, by or on behalf of the person convicted, upon the attorney-general at his office not less than seven days before the day appointed for the argument, setting forth the name and number of the case, the court before which it was tried, the date for which the case has been set down for argument and the grounds or reasons upon which the judgment is sought to be reversed or altered: