ACT DPP

Media fact sheets

Prosecution sentencing appeals explained

What are the grounds for a prosecution sentence appeal?

The grounds will depend on the circumstances of the particular case. A prosecution sentence appeal may allege an identifiable error in the sentencing process. For instance, this could include:

- an error of law
- taking into account an irrelevant consideration
- failing to take into account a relevant consideration, or
- acting on a material mistake of fact.

A prosecution may also appeal on the ground that a sentence is manifestly inadequate.

What does 'manifestly inadequate' mean?

Manifest inadequacy does not require the prosecution to identify a specific error made by the sentencing court. Instead, the appeal court considers whether the sentence is so unreasonable or plainly unjust that an error in the exercise of the sentencing discretion can be inferred.

This is a high threshold. It is not enough that the appeal court would itself have imposed a more severe sentence.

What is the purpose of a prosecution sentence appeal?

A prosecution sentence appeal is not brought simply because the prosecution considers that a more severe sentence should have been imposed.

An important purpose of prosecution sentence appeals is to establish or clarify sentencing principles for future cases. The ACT DPP therefore considers the broader significance of an identified error when deciding whether an appeal should be brought.

The ACT DPP must also be satisfied that there are reasonable prospects of a successful appeal and that bringing the appeal is in the public interest.

What happens if a prosecution sentence appeal succeeds?

If the appeal court allows a prosecution sentence appeal, this does not necessarily mean the offender will receive a different sentence.

In a prosecution sentence appeal, an appeal court retains a 'residual discretion' to decline to intervene even where the prosecution has demonstrated an error. If the appeal court exercises this discretion, the original sentence may remain in place despite the court finding error.

If the court decides to intervene, it may set aside the original sentence and impose a different sentence, subject to the powers of the court and the circumstances of the case.

Why might the appeal court decide not to intervene?

The residual discretion recognises that there may be circumstances where an appeal court may not intervene to impose a different sentence despite an error having been established.

Relevant considerations can include:

- the nature of the error
- a delay in bringing the appeal (i.e. outside of the timeframe set out in the legislation) or a delay in the appeal being heard
- whether the prosecution contributed to the error
- parity with a co-offender, and
- evidence of the offender's rehabilitation.