

Orders of the Royal Court

VI

1989



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 11th day of July, 1989 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present:— Brian Ernest Herbert Joy, Harry Wilson Bisson, Herbert Nicolle Machon, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley and Kenneth John Rowe, Esquires, Jurats.

No. 6 Order, 1989

ENTITLED

The Magistrate's Court (Criminal Appeals) Rules, 1989

THE ROYAL COURT, in exercise of the powers conferred upon it by section 9 of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988(a), section 64 of the Reform (Guernsey) Law, 1948(b), and of all other powers enabling it in that behalf, hereby orders—

(a) Ordres en Conseil No. XI of 1988.

(b) Ordres en Conseil Vol. XIII, p. 288.

Notice of
appeal.

1. (1) A person wishing to appeal in any criminal case under the provisions of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988, shall give notice of appeal by means of the form entitled "Notice of Appeal from Magistrate's Court" contained in Form 1 of the Schedule to these Rules.

(2) Notice of appeal shall be given to Her Majesty's Greffier who shall forthwith cause a copy to be given to Her Majesty's Procureur and to any other party to the appeal, or in the case where the appeal is brought by the prosecution, notice of such appeal shall be given by Her Majesty's Procureur to Her Majesty's Greffier, to the accused and to any other party to the appeal.

(3) Notice of appeal shall be given within 14 days after the day on which the decision appealed against is given, shall state whether the appeal is against conviction, or sentence, or both, and shall state the general grounds of such appeal.

(4) For the purposes of the preceding paragraph the day on which a decision of the Magistrate's Court is given shall, where the Court has adjourned the trial after conviction, be the day on which the court sentences or otherwise deals with the offender.

(5) The time for giving notice of appeal may be extended, either before or after it expires, by the Royal Court on an application being made in accordance with subsection (6) below.

(6) An application for an extension of time shall be made to the Royal Court.

Proceedings
upon notice
of appeal.

2. (1) On receiving notice of appeal Her Majesty's Greffier shall as soon as reasonably practicable obtain 15 copies of the transcript of the proceedings,

or such relevant part thereof as the Bailiff may direct, 2 of which shall be certified as correct by the Court reporter and shall thereupon deliver the 2 certified copies to Her Majesty's Procureur together with 2 certified copies of the Act of the Magistrate's Court concerning that case, and shall deliver a certified copy of the Act and 13 copies of the transcript to the Bailiff's Secretary.

(2) In the case of an appeal against sentence the transcript of the proceedings shall only be of that part which is relevant to the question of sentence as directed by the Bailiff, unless either party requests the inclusion of further details.

(3) Upon receipt of the transcript the Bailiff shall fix a date for the hearing of the Appeal and give notice thereof to Her Majesty's Procureur who shall then summons the other party to the appeal to appear before the Royal Court on the date and at the time appointed for the hearing of the appeal.

(4) There shall be annexed to the summons served under paragraph (3) certified copies of the transcript and the Act of the Magistrate's Court.

(5) Upon the hearing of the appeal. Her Majesty's Procureur shall be represented by counsel.

3. (1) An appellant may abandon an appeal by giving notice in writing to Her Majesty's Greffier not later than two clear days before the date fixed for the hearing of the appeal. Abandonment of appeal.

(2) Where notice of abandonment of an appeal has been given in pursuance of paragraph (1) Her Majesty's Greffier shall forthwith so inform Her Majesty's Procureur, the Bailiff's Secretary and Her Majesty's Sheriff and, if the appellant is in custody, the Governor of the Prison.

(3) Upon notice of abandonment of an appeal being given by the appellant under paragraph (1) the appeal shall be deemed to have been dismissed by the court.

Provision as
to Notices
etc.

4. (1) Subject to the provisions of this Rule, every notice or other document which is required or authorised by the Law or these Rules to be given by an appellant (other than Her Majesty's Procurer)—

(a) shall be signed by the appellant or his advocate;

(b) shall be given—

(i) in the case where the appellant is in custody and is not legally represented, by delivering it to the Governor of the Prison who shall forthwith deliver the same to Her Majesty's Greffier;

(ii) in the case where the appellant is in custody and is legally represented, by his advocate by delivering the same to Her Majesty's Greffier;

(iii) in the case where the appellant is not in custody, by delivering the same to Her Majesty's Greffier;

(2) Subject to the provisions of this Rule, any notice or other document required by these Rules to be given to an appellant shall—

(a) in the case where the appellant is in custody and is not legally represented, be given by delivering it to the Governor of the Prison who shall forthwith deliver the same to the appellant;

- (b) in the case where the appellant is in custody and is legally represented, be given by delivering to his advocate;
- (c) in the case where the appellant is not in custody, be served upon the appellant or his address for service.

(3) Where an appellant is unable to write he may affix his mark to any notice or other document which he is required to sign under the provisions of paragraph (1) in the presence of a witness who shall attest the same and thereupon such notice or document shall be deemed to be duly signed by the appellant.

(4) Any notice required by these Rules to be given to the appellant may be given to the natural or legal guardian of such person.

(5) In the case of a body corporate, where by the Law or these Rules any notice or other document is required to be given and signed by the appellant, it shall be sufficient compliance therewith if such notice or other document is given and signed by a Director, the Secretary or other officer of such body corporate duly authorised in that behalf.

5. The appellant (other than Her Majesty's Procureur) shall when serving the notice of appeal furnish to Her Majesty's Greffier and to every person on whom notice of appeal has been served, an address within the Island of Guernsey which he elects as his address for the service on him of any notice or other document under these Rules and if the appellant fails to comply with this requirement then, until such time as he does comply, his address for service be the office of Her Majesty's Sergeant in Guernsey. Address for service.

Proceedings
in the Royal
Court.

6. (1) If it appears to the Royal Court that—
- (a) some material error exists in the transcript of the proceedings before the Magistrate's Court and the parties are not in agreement as to the matter; or
 - (b) there being no transcript of such proceedings available, it is desirable that one or more of the witnesses who gave evidence should be heard by the Royal Court; or
 - (c) further material evidence not available to one or other of the parties at the time of the Magistrate's Court proceedings is now available and that the interests of justice require that the said material evidence be heard;

the Royal Court may direct that witnesses shall be heard in relation to any such error or for the amplification of the notes of the Magistrate's Court or in respect of such further material evidence and may adjourn the proceedings to enable any of such witnesses to be served with a summons to attend.

(4) The Royal Court may order the production of any document, exhibit or other thing which may appear to be necessary for the determination of the case.

(5) If at any stage of the proceedings before the Royal Court, that Court is of opinion that the appeal is frivolous or vexatious, it may forthwith dismiss the appeal.

Application
of Rules to
further
Appeals.

7. The provisions of the Court of Appeal (Criminal Division) (Guernsey) Rules, 1964(c) apply in relation to appeals under section 7 of the Law as they apply

(c) Orders of the Royal Court etc. Vol. 1, p. 254.

in relation to appeals under Part III of the Court of Appeal (Guernsey) Law 1961^(d), subject to the modifications specified in Schedule II to these Rules.

8. (1) Expressions used in these Rules have the same meanings as in the Law. Interpretation.

(2) The Interpretation (Guernsey) Law, 1948^(e) shall apply to the interpretation of these Rules as it applies to the interpretation of an enactment.

9. These Rules may be cited as the Magistrate's Court (Criminal Appeal) Rules, 1989. Citation.

10. These Rules shall come into force on the 4th day of September, 1989. Commencement.

^(d) Ordres en Conseil Vol. XVIII, p. 315.
^(e) Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE I

Forms to be used in connection with appeals

Form 1

NOTICE OF APPEAL FROM MAGISTRATE'S
COURT

(Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988, section 1; Magistrate's Court (Criminal Appeals) Rules, 1989, rule 1.)

To: Her Majesty's Greffier, Royal Court, Guernsey.

[NOTE

If you wish to appeal against your *conviction* complete *section 1*.

If you wish to appeal against your *sentence* (whether or not you are also appealing against your conviction) complete *section 2*.

If you wish to apply for *bail* complete *section 3*.

If you wish to apply for *legal aid* complete *section 4*.]

Section 1—APPEAL AGAINST CONVICTION

I, _____ (name and address, hereby
give notice that it is my intention to appeal to the
Royal Court against a conviction/convictions of me
on _____ (date) by the Magistrate's
Court for (set out offence(s) in brief)

The grounds of my appeal are:—

(set out grounds in full)

[AND A. (INCLUDE WHERE SECTION 2(1)(d) APPLIES)

The Magistrate's Court, notwithstanding the penalty/or penalties involved certified on (date) that a question of law/or mixed law and fact was involved, namely: (give details).

B. INCLUDE WHERE SECTION 2(2) APPLIES)

The leave of the Royal Court is sought to appeal against the conviction(s) notwithstanding the guilty plea(s) of the appellants in the following exceptional circumstances, namely: (give details).]

Dated Signed APPELLANT/ADVOCATE

Section 2—APPEAL AGAINST SENTENCE

I, (name and address), hereby give notice that it is my intention to appeal to the Royal Court against a sentence/sentences imposed on me on (date) by the Magistrate's Court for (set out offence(s) in brief unless already listed in section 1 above); in respect of which I was sentenced as follows: (set out sentences appealed against)

The grounds of my appeal are:— (set out grounds in full)

Dated Signed APPELLANT/ADVOCATE

**Section 4—APPLICATION FOR LEGAL AID
(MAGISTRATE'S COURT)**

In accordance with section 4(2) of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988, I apply for legal aid in connection with my appeal.

1. My occupation in the 12 months before my conviction was:
2. The salary (wages) received in the 12 months before my conviction was:
3. I have the following savings: (bank, friendly society, shares, etc.)
4. I declare that I have insufficient means to pay for an Advocate because: (explain reasons)
5. The Advocate now acting for me is: (name)

Signed

Dated

Form 2

APPLICATION FOR BAIL (ROYAL COURT)

Having been detained in the States Prison and given Notice of Appeal above and having applied to the Magistrate's Court for bail on (date) and been refused I desire to apply to the Royal Court for bail.

I can provide the following surety: (amount and details):

The undermentioned persons are willing to become sureties for my presence at the hearing and determination of the appeal:

Full name of Surety Date of Birth

Occupation

Address

Amount Offered £

Full name of Surety Date of Birth

Occupation

Address

Amount Offered £

The grounds of my application are: (specify in reasonable detail)

Dated

Signed
APPELLANT/ADVOCATE

Form 3**APPLICATION FOR LEGAL AID (ROYAL COURT)**

In accordance with section 4(3) of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988, I apply to the Ordinary Court for legal aid in connection with my appeal.

1. My application for legal aid to the Magistrate's Court was refused on (date)
2. My occupation in the 12 months before my conviction was:
3. The salary/wages/income received in the 12 months before my conviction was:
4. I have the following savings: (bank, friendly society, shares, etc.)
5. I declare that I have insufficient means to pay for an Advocate because: (explain reasons)
6. The Advocate now acting for me is: (name)

Signed

Dated

Form 4

Rule 3

NOTICE OF ABANDONMENT OF APPEAL(1)
(ROYAL COURT)

To Her Majesty's Greffier, Royal Court, Guernsey.
Name of appellant

Offence(s) of which convicted by the Magistrate's
Court

Sentence(s)

Address(3)

I, the above-named appellant, having been convicted and sentenced as above stated and having duly given to Her Majesty's Greffier notice that I desired to appeal to the Royal Court, do now hereby give notice that I do not intend further to prosecute my appeal but that I hereby abandon all proceedings in regard thereto as from the date hereof.

Dated the day of , 19 .

(Signed)(4)

Appellant

This notice was signed by the above-named appellant on the date above stated in my presence

Signature of witness

Address of witness

Occupation of witness

-
- (1) By Rule 3(3) of the Magistrate's Court (Criminal Appeals) Rules, 1989, upon this notice being given the appeal shall be deemed to have been dismissed by the Royal Court.
 - (2) e.g. Theft, Forgery, etc.
 - (3) If the appellant is in custody, write "States Prison".
 - (4) This notice must be signed in the presence of a witness.

Form 5

Rule 1

RECOGNISANCE OF APPELLANT (ROYAL COURT)

I, _____ (name and address at which appellant proposes to reside pending appeal) acknowledge that I owe to our Sovereign Lady the Queen the sum of £ _____, payment thereof to be enforced against me in accordance with such order as may be made by the Royal Court under the provisions of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988, if I fail to comply with any of the conditions endorsed hereon.

CONDITIONS

1. To appear in person before the Royal Court, unless the Court otherwise orders, at each and every hearing of his appeal and at the final determination thereof.
2. To abide by the judgment of the Royal Court.
3. Not to depart out of the Bailiwick of Guernsey except with the leave of the Court or the Bailiff.

I undersand that if I fail to comply with any of these conditions my recognisance will be void and I shall be liable to arrest and to forfeit the whole amount indicated above.

(Signature of appellant)

Taken before me the _____ day of _____ 19 _____

H.M. GREFFIER/DEPUTY GREFFIER
By Order of the Court.

[RECOGNISANCE OF SURETY/SURETIES

I, _____ (name and address), as surety acknowledge that I owe to our Sovereign Lady the Queen the sum of £ _____, payment thereof to be enforced against me in accordance with such order as may be made by the Royal Court under the provisions of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988 if

(full name of appellant) fails to comply with any of the conditions endorsed hereon.

CONDITIONS

1. To appear in person before the Royal Court, unless the Court otherwise orders, at each and every hearing of his appeal and at the final determination thereof.
2. To abide by the judgment of the Royal Court.
3. Not to depart out of the Bailiwick of Guernsey except with the leave of the Court or the Bailiff.

I understand that if the person for whom I am standing surety fails to comply with any of these conditions I will be liable to forfeit the whole amount of my surety indicated above.

(Signature of surety)

Taken before me the _____ day of _____ 19____

H.M. GREFFIER/DEPUTY GREFFIER
By Order of the Court.].

SCHEDULE II

Rule 5

Modifications to the Court of Appeal (Criminal Division) (Guernsey) Rules, 1964 in their application to appeals from the Magistrate's Court.

1. In Rule 2 (Notices in connection with appeals) for "Form 1" substitute "Form 1A".
2. In Rule 5 (Abandonment of appeals) for "Form 3" substitute "Form 3A".
3. In Rule 6 (Certificate of judge presiding at the trial)
 - (a) in paragraphs (1) and (2) for "judge who presided at the trial" substitute "Bailiff";
 - (b) in paragraphs (1) and (2) for "paragraph (b) of section 24 of the law" substitute "section 7(2)(b) of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988";
 - (c) in paragraphs (1) and (2) for "Form 4" substitute "Form 4A".
4. Rule 7 (Notes and report of judge presiding at the trial) is omitted.
5. In Rule 8 (Orders made at trial etc.)—
 - (a) in paragraph (1) for "the trial" substitute "the hearing of an appeal from the Magistrate's Court";
 - (b) in paragraphs (4), (5), (6), (7), (8), and (9) for "conviction" substitute "determination of an appeal from the Magistrate's Court";

(c) insert a new paragraph as follows:—

“ (12) Where the Royal Court has dealt with an appeal from the Magistrate’s Court any order within the meaning of this Rule shall be deemed to have been made upon the determination of the appeal.”

6. In Rule 9 (Appeals where fine only is inflicted) paragraphs (3) and (5) are omitted.
7. In the Schedule Forms 5, 6, 7 and 8 are omitted. Forms 1, 3 and 4 are deleted and the following substituted—

“ Form 1A
Rule 2 No.

THE COURT OF APPEAL (GUERNSEY) LAW,
1961
THE MAGISTRATE'S COURT (CRIMINAL
APPEALS) (GUERNSEY) LAW, 1988
COURT OF APPEAL (CRIMINAL DIVISION)

NOTICE OF APPEAL OR OF APPLICATION
FOR LEAVE TO APPEAL

To the Registrar of the Court of Appeal

Name of Appellant

Offence(s) of which convicted
by the Magistrate's Court and
in respect of which appeal
dismissed by Royal Court (1)

Sentence(s) (2)

Dates of (I) Conviction(s) by Magistrate's Court
(II) Appeal determined by Royal Court

Address (3)

I, the above-named appellant, hereby give you
notice that I desire to appeal to the Court of Appeal
against my (4) on the grounds set forth on page 2
of this notice.

Signed
APPELLANT/ADVOCATE

Dated the day of 19 ..

(1) e.g. Theft, forgery, etc.
(2) Details of sentences imposed.
(3) If the appellant is in custody, write "States Prison".
(4) "Sentence" or (if appropriate) "Conviction and Sentence".

Questions(5)

Answers

1. Have you been granted a certificate by the Bailiff that the case is a fit case for appeal?
2. Do you desire the Court of Appeal to assign you legal aid?
If your answer to this question is "Yes" then answer the following questions—
 - (a) My occupation in the 12 months before my conviction was:
 - (b) The salary/wages/income received in the 12 months before my conviction was:
 - (c) I have the following savings (bank, friendly society, shares etc.)
 - (d) I declare that I have insufficient means to pay for an Advocate because: (explain reasons).
3. Is any advocate now acting for you?
If so, give his name.
4. Do you desire to be present when the Court considers your appeal?(6)

(5) The appellant must answer each of these questions.

(6) An appellant is not entitled to be present on the hearing of an application for leave to appeal nor where appeal is on some ground involving a question of law alone.

5. Do you desire to apply for leave to call any witness on your appeal? If your answer to this question is "Yes", you must also fill in Form 16 and give it to the Registrar with this notice.

(7) These must be filled in before the notice is given to the Registrar. The appellant must here set out the grounds or reason he alleges why his conviction should be quashed or his sentence varied.

Form 3A

Rule 5

No.

THE COURT OF APPEAL (GUERNSEY) LAW,

1961

THE MAGISTRATE'S COURT (CRIMINAL

APPEALS) (GUERNSEY) LAW, 1988

COURT OF APPEAL (CRIMINAL DIVISION)

NOTICE OF ABANDONMENT OF APPEAL(1)

To the Registrar of the Court of Appeal

Name of appellant

Offence(s) of which convicted by the Magistrate's Court and in respect of which appeal was dismissed by the Royal Court(2)

Sentence(s)

Address(3)

I, the above-named appellant, having been convicted and sentenced as above stated and having duly given to the Registrar of the Court of Appeal notice that I desired to appeal to the said Court, do now hereby give notice that I do not intend further to prosecute my appeal but that I hereby abandon all proceedings in regard thereto as from the date hereof.

(1) By Rule 5 of the Court of Appeal (Criminal Division), (Guernsey) Rules, 1964, upon this notice being given the appeal shall be deemed to have been dismissed by the Court of Appeal.

(2) e.g. Theft, Forgery, etc.

(3) If the appellant is in custody, write "States Prison".

Dated the day of , 19 .
(Signed)(4)

Appellant

This notice was signed by the above-named appellant
on the date above stated in my presence

Signature of witness

Address of witness

Occupation of witness

(4) This notice must be signed in the presence of a witness.

I DO HEREBY CERTIFY that the case is a fit case for an appeal by the said to the Court of Appeal under section 7(2)(b) of the said law, upon the following grounds:—(4)

Signed

BAILIFF

Dated the day of 19

K. H. TOUGH,
Her Majesty's Greffier.

(4) Here specify in general terms the grounds on which the certificate is granted.

**Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey.**

PRICE £1.30