

PRACTICE DIRECTION – 9.6

MAGISTRACY APPEALS IN THE COURT OF FIRST INSTANCE

Magistracy Appeals – basic appeal bundle – application for additional transcript – procedure

PART I – ENTITLEMENT TO FULL TRANSCRIPT

1. The present practice is to streamline the procedure to bring it in line with the preparation of appeal bundles for criminal appeals from the Court of First Instance and the District Court.
2. An Appellant is not entitled as of right to a set of full transcript of the proceedings by virtue of section 116(1) of the Magistrates Ordinance, Cap. 227.
3. Applications for any transcript in addition to the basic appeal bundle referred to in Part II for the purpose of appeal shall be made to the Registrar, High Court (Magistracy Appeals), who is vested with the power to determine the contents of the appeal bundle.

PART II – BASIC APPEAL BUNDLE

4. Upon receipt of the Notice of Appeal by the magistrates' clerk, the Appeals Clerk of the magistrates' court shall prepare a basic appeal bundle for the hearing of the appeal.
5. The contents of the basic appeal bundle shall be determined in accordance with the nature of appeal and shall consist of documents as specified below:-

(A) In an appeal against Conviction :

1. Notice of Appeal
2. Charge Sheet/ Summons to Defendant/ Consent to Prosecution (if any)
3. Summary of Facts as Prosecution Opening
4. Agreed/Admitted Facts
5. Cautioned Statements admitted in evidence
6. Written Prosecution/Defence Closing submissions
7. Certificate of Conviction or Order
8. Statement of Findings (with Reasons for verdict)
9. Record of Previous Convictions (if any)
10. List of Exhibits and Documentary Exhibits
11. Transcript of Proceedings (which shall include the plea, oral closing submissions, verdict, reasons for verdict/order)

(B) In an appeal against Sentence :

1. Notice of Appeal
2. Charge Sheet/ Summons to Defendant/ Consent to Prosecution (if any)
3. Agreed/ Admitted Facts
4. Cautioned Statements admitted in evidence
5. Written Prosecution/ Defence Closing submissions
6. Certificate of Conviction or Order
7. Statement of Findings (with Reasons for sentence)
8. Reports for sentence
9. Record of Previous Convictions
10. List of Exhibits and Documentary Exhibits
11. Transcript of Proceedings (which shall include the plea, oral closing submissions, mitigation and sentence, reasons for sentence)

(C) In an appeal against Conviction and Sentence :
Combination of (A) and (B)

(D) Full transcript of review hearings will also be treated as part of the reasons for conviction/sentence and will be provided in the basic appeal bundle.

PART III - APPLICATION FOR ADDITIONAL TRANSCRIPT

6. A party to the appeal or his legal advisers may apply in writing to the Registrar, High Court (Magistracy Appeals) marked for the attention of the Clerk of Court, stating precisely the portion of the transcript required and the full name of the witnesses together with particulars in support of the application.
7. A party to the proceedings may approach the magistrates' court for a transcript or audio tape of the hearing at his own expenses pursuant to section 35A of the Magistrates' Ordinance, Chapter 227. Transcript so supplied will not be automatically incorporated into the appeal bundle.
8. A party may apply to the Registrar, High Court (Magistracy Appeals) in writing with detailed reasons for the transcript or parts thereof supplied under paragraph 7 to be included in the appeal bundle.
9. The prescribed fees and administrative charge paid under an application made pursuant to section 35A of Magistrates' Ordinance, Chapter 227 is not refundable in any event.
10. The above provisions does not affect the power of a Judge of the Court of First Instance to order further papers including the transcript or any part thereof for the hearing of appeal.
11. This Practice Direction shall take effect on 1st September 2000.

Dated this 12th day of July 2000.

Andrew Li
Chief Justice