

**FRIMPONG v. THE REPUBLIC (PRACTICE NOTE)**  
**IN THE COURT OF APPEAL, ACCRA**  
**30<sup>TH</sup> MARCH, 1973**

**CORAM: AZU CRABBE AG.C.J., JIAGGE AND KINGSLEY-NYINAH JJ.A**

*Courts | Court of Appeal | Jurisdiction | Application for leave to appeal | Applicant convicted by circuit court in summary trial | Appeal to High Court against sentence only dismissed | Application for leave to further appeal to Court of Appeal on the ground that first appeal was intended to be against conviction and not sentence | Whether Court of Appeal has jurisdiction to entertain further appeal in respect of matter not before High Court | Criminal Procedure Code, 1960 (Act 30), s.335 (2).*

**CASE SUMMARY**

Azu Crabbe Ag. C.J. delivered the ruling of the court. The applicant was tried and convicted in the Circuit Court, Accra, on two counts; in the first count he was charged with the offence of unlawful entry, contrary to section 152 of the Criminal Code, 1960 (Act 29), and in the second count he was charged with the offence of stealing, contrary to section 124 of the Code. On the first count he was sentenced to ten years' imprisonment with hard labour and on the second count to five years' imprisonment with hard labour; the sentences were ordered to run concurrently.

The applicant appealed to the High Court, Accra, against his sentence only, and on 26th April 1972 his appeal was dismissed. On 6 July, 1972, the applicant filed at the High Court registry notice of an application for leave to appeal against his conviction pursuant to rule 39 of the Supreme Court Rules, 1962 (L.I. 218).

On 5 December 1972, the applicant filed the present application praying for an early hearing of his appeal "per the points and facts set forth in the attached affidavit." The affidavit is rather verbose and a great deal of the facts stated therein are, in the opinion of this court, irrelevant to the application, except that in paragraph (11) it is stated as follows:

"That your humble appellant wishes to explain one fact to your lordship and that dismissal of my previous appeal to the High Court was due to a mistake committed by the fellow who filed all the appeal against sentence instead of judgment as directed. Tender this judgment order as exhibit A."

The applicant's petition to the High Court was not signed by him, but a right thumb-mark had been affixed to the bottom of the petition, and this purports to be that of the applicant's, because the prison school teacher at the Nsawam Prison had also signed the petition as a witness to the mark of the applicant's right thumb. At the hearing in the High Court, the applicant had every opportunity to correct the mistake which he now alleges was made by those who prepared his appeal papers, if indeed there was any mistake, but he did not avail himself of the opportunity. The record of proceedings in the High Court also shows clearly that the applicant did not challenge his conviction at the hearing of his first appeal.

On the evidence, this court is satisfied that the applicant's appeal in the High Court was intended to be an appeal against sentence only, and that the allegation of mistake in paragraph (11) of the affidavit is palpably false. The conviction of the applicant was, therefore, unaffected by the result of the appeal in the High Court, and the critical issue which arises in this application is whether this Court has jurisdiction to entertain the applicant's appeal against his conviction.

The trial of the applicant in the circuit court was summary, and under section 324 (1) of the Criminal Procedure Code, 1960 (Act 30), an appeal from a conviction would lie to the High Court: see also section 14 (1) (b) of the Courts Act, 1971 (Act 372). The jurisdiction of this court to entertain an appeal from a decision of the High Court in the exercise of its appellate jurisdiction can be found in section 335 of the Criminal Procedure Code, 1960, and subsection (2) of the section which is relevant here in these terms:

"(2) The defence may appeal to the [Court of Appeal] from such a decision [of the High Court in its appellate jurisdiction] in the following cases, that is to say-

(i) where the appeal is against a conviction and is based on any ground which involves a question of law alone;

(ii) where the appeal is against a conviction and is based on any ground which involves a question of fact alone or mixed law and fact and the defence has obtained the leave of the [Court of Appeal] to appeal or a certificate of the judge who tried the case that it is a fit case for appeal, or on any ground which appears to the [Court of Appeal] to be sufficient ground of appeal;

(iii) where the appeal is against sentence, other than a sentence fixed by law, and the defence has obtained the leave of the [Court of Appeal] to appeal."

In the opinion of this court subsection (2) of section 335 of the Criminal Procedure Code makes it plain that the Court of Appeal cannot entertain an appeal from the conviction by a circuit court in a summary trial. Such an appeal lies only to the High Court. Therefore, where a person is convicted and sentenced by a circuit court in a summary trial, an appeal against conviction or sentence, or against both conviction and sentence, lies in the first instance only to the High Court, and a further appeal lies from the decision of the High Court to the Court of Appeal. Where the would-be appellant appeals to the High Court only in respect of either the conviction or the

sentence, he cannot thereafter appeal to the Court of Appeal in respect of the matter which was not before the High Court. Unless the High Court in its appellate jurisdiction has had the opportunity to pronounce on the conviction or sentence, there will be no jurisdiction in the Court of Appeal to entertain an appeal from the conviction or sentence by a circuit court in summary proceedings.

In this present application the applicant prays for an order that an early date be fixed for the hearing of his appeal against his conviction in the circuit court on 25 November 1971. As we are satisfied that the proceedings in the circuit court were summary, and that the applicant did not challenge his conviction in the High Court, we think that the present application is misconceived, and it is accordingly dismissed.

DECISION

Application dismissed.

S.O.

**COUNSEL**

**APPLICANT IN PERSON.**

**ASAMOAH, SENIOR STATE ATTORNEY, FOR THE REPUBLIC.**