

CCT 01/95

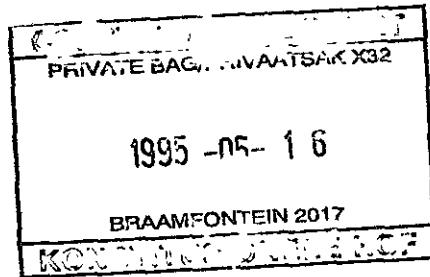
**IN DIE KONSTITUSIONELE HOF VAN
SUID-AFRIKA**

In die saak van:

PEET RENS

Applikant

teen



DIE STAAT

Respondent

RESPONDENT SE AANVULLENDE BETOOGHOOFDE

Met verwysing na die versoek van hierdie Agbare Hof word die volgende beskikbare gegewens verstrekk:

1. Die aantal strafverhore en aansoeke om verlof om te appelleer.

a. Aantal strafverhore afgehandel:

Kaapse Povinsiale Afdeling:

1993	-	146
1994	-	108

[2/...]

Transvaalse Provinsiale Afdeling:

1994 - 265

Noord-Kaapse Afdeling:

1994 - 101

Natalse Provinsiale Afdeling en Plaaslike Afdeling: Durban en

Kus:

1994 - 287

Oos-Kaapse Afdeling:

1994 - 113

Vrystaatse Provinsiale Afdeling:

1993 - 102

1994 - 86

b. Aantal aansoeke om verlof om te appelleer.

Kaapse Provinsiale Afdeling:

	<u>1993</u>	<u>1994</u>
Aansoeke	: 44	31
Toegestaan	: 16	4
Geweier	: 26	27
Uitslag onbekend	: 2	-

Transvaalse Provinsiale Afdeling:

1994 - 19 aansoeke
5 toegestaan
14 geweier

Noord-Kaapse Afdeling:

1994 - 11 aansoeke
4 toegestaan
7 geweier

Natalse Provinsiale Afdeling en Plaaslike Afdeling: Durban en

Kus:

1994 - 12 aansoeke
5 toegestaan
6 geweier
1 uitspraak voorbehou [4/...]

Oos-Kaapse Afdeling:

1994 - 10 aansoeke
3 toegestaan
7 geweier

Ten tye van die skryf hiervan was die inligting vanaf Bloemfontein en Johannesburg nog uitstaande.

2. Regtersappelle in strafsake (ingevolge Art 315(3) Wet 51/1977).

Kaapse Provinsiale Afdeling

1992	1993	1994
21	9	5

Transvaalse Provinsiale Afdeling:

1994 - 16

Witwatersrandse Plaaslike Afdeling:

1994 - 17

Noord-Kaapse Afdeling:

1994 - 5

Natalse Provinsiale Afdeling en Plaaslike Afdeling: Durban en Kus

1994 - 13

Oos-Kaapse Afdeling:

1994 - 8

Vrystaatse Provinsiale Afdeling:

1993 - 3

1994 - 3

3. In al die Afdelings is die praktyk ten opsigte van regsverteenwoordiging in volbankappelle dieselfde, naamlik dat die advokaat wat namens die beskuldigde tydens die verhoor verskyn het, ook namens hom in die appèl verskyn. Indien hy nie beskikbaar is nie, word 'n ander advokaat in sy plek aangestel.
4. Appelle ingevolge Art 309(4)(a) Wet 51/1977 (tronkappelle).

Kaapse Provinsiale Afdeling:

Aantal sake ontvang vir oorweging:

1992	-	415
1993	-	545
1994	-	512

Aantal afgewys:

1992	-	421
1993	-	469
1994	-	457

Aantal sertifikate toegestaan:

1992	-	26
1993	-	58
1994	-	42

Aantal uitstaande

1992	-	58
1993	-	76
1994	-	89

Aantal uitstaande aan die einde van die vorige jaar

1992	-	90
1993	-	58
1994	-	76

[7/...]

Ten opsigte van die volgende Afdelings is slegs die aantal "tronkappelle" wat afgehandel is beskikbaar:

Witwatersrandse Plaaslike Afdeling:

1994 - 83

Natalse Provinsiale Afdeling en Plaaslike Afdeling: Durban en Kus

1994 - 76

Vrystaatse Provinsiale Afdeling:

1994 - 30

Oos-Kaapse Afdeling

1994 - 70

5. Vergelykbare voorskrifte in ander lande:

Die Engelse Reg:

Art 1 van die Criminal Appeal Act 1968 bepaal as volg:

"Right of appeal against conviction on indictment

[8/...]

1. - (1) Subject to subsection (3) below, a person convicted of an offence on indictment may appeal to the Court of Appeal against his conviction.

(2) The appeal may be -

- (a) on any ground which involves a question of law alone; and
- (b) with the leave of the Court of Appeal, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal;

but if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

(3) Where a person is convicted before the Crown Court of a scheduled offence it shall not be open to him to appeal to the Court of Appeal against the conviction on the ground that the decision of the court which committed him for trial as to the value involved was mistaken."

Dit blyk dus dat indien die appèl onder andere ten opsigte van 'n feitevraag of 'n feite- en regspraak is daar met die verloop van die Hof van Appèl appelleer mag word. Indien die verhoorregter 'n sertifikaat toestaan dat die saak

geskik is vir appèl op 'n feitevraag of 'n feite- en regs-vraag, is verlof van die Hof van Appèl nie nodig nie. Slegs ten opsigte van 'n regs-vraag is daar 'n outomatiese reg van appèl.

Ten opsigte van vonnis bepaal Art 11 onder andere as volg:

Supplementary provisions as to appeal
against sentence

11. - (1) Subject to subsection (1A) below,
an appeal against sentence, whether under
section 9 or under section 10 of this Act,
lies only with the leave of the Court of
Appeal.

(1A) If the judge who passed the sentence
grants a certificate that the case is fit
for appeal under section 9 or 10 of this
Act, an appeal lies under this section
without the leave of the Court of Appeal."

Sien Archbold; Criminal Pleading, Evidence
and Practice 1995 Volume 1 on bl 1091 en
verder

Kanadese Reg:

Ingevolge die Kanadese Kriminele Kode mag 'n persoon teen sy skuldigbevinding appelleer na die Hof van Appèl van die betrokke provinsie. 'n Absolute reg van appèl bestaan ten opsigte van suiwer regs-vrae. Ten opsigte van suiwer feitekwessies of feite- en regskwessies is 'n appèl slegs moontlik met die verlof van die Hof van Appèl of 'n regter van dié hof, of indien die verhoorregter deur middel van 'n sertifikaat aandui dat die saak geskik is vir appèl.

New Zealand:

383. *Right of appeal against conviction or sentence* - (1) Any person convicted on indictment may appeal to the Court of Appeal -

- (a) Against his conviction on any ground of appeal which involves a question of law alone; and
- (b) With the leave of the Court of Appeal or upon the certificate of the Judge who tried him, or before whom he appeared for sentence, that it is a fit case for appeal, against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Court of Appeal to be a sufficient ground of appeal; and
- (c) With the leave of the Court of Appeal, against the sentence passed on his conviction, unless the sentence is one fixed by law.

Australië

Die meeste van die Australiese State het appèlprosedures aanvaar wat gebaseer is op die New Suid Wallis wetgewing.

In die N.S.W. Wet word die appèlregte as volg uiteengesit:

"5 (1) A person convicted on indictment may appeal under this Act to the Court -

(a) against his conviction on any ground which involves questions of law alone;

(b) with the leave of the Court, or upon a certificate of the Judge of the court of trial that it is a fit case for appeal against his conviction on any ground of appeal which involves the question of fact alone, or question of mixed law and facts, or on any other ground which appears to the court to be a sufficient ground of appeal; and

(c) with the leave of the Court against the sentence passed on his conviction."

In Skotland is die appèlprosedures in ooreenstemming met bogenoemde bepalings.

5.1 Dit is dus duidelik dat in geeneen van bogenoemde strafprosesstelsels 'n Appellant 'n ongekwalifiseerde reg van appèl het nie. Dié reg bestaan slegs ten opsigte van regsrae.

5.2 Verlof om te appelleer sal ook nie ligtelik toegestaan word nie. Die Applikant moet aantoon dat daar spesiale redes bestaan waarom verlof toegestaan moet word of dat dit onregverdig sal wees om verlof te weier (Sien R A Caldwell; Criminal Law in New Zealand, 6de Uitgawe op bl 371).

5.3 Sien ook Archbold (*supra*) op bl 1108 waar die volgende gesê word:

"In paragraph 4 of Practice Direction (Crown Court: Bail Pending Appeal) (1983) 1 W.L.R. 1292, it is said that a Judge should not grant a certificate in regard to conviction on a ground where he considers the chance of a successful appeal as not substantial."

en op bl 1175 (para 7 - 140):

"In *R v Day*, *The Times*, October 3, 1991, the Court of Appeal said that before granting a certificate a trial Judge had to be satisfied that there was a particular cogent ground of appeal which should be identified in the certificate. In *R v Williams*, *The Times*, October 28, 1991, C.A., it was said that a certificate should not be issued 'unless very exceptional circumstances were present.'"

GEDATEER te KAAPSTAD op hede die 15de MEI 1995.

C A Cilliers
C A CILLIERS
ADVOKAAT NAMENS DIE RESPONDENT
KANTOOR VAN DIE PROKUREUR-GENERAAL
KAAPSTAD

AAN : **DIE GRIFFIER**
Konstitusionele Hof
Privaatsak X32
BRAAMFONTEIN
2017

EN AAN : **ADV D CHARTERS**
Advokaat namens Appellant
Burgergebou
KAAPSTAD

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