CHAPTER 3

Appeals From Magistrates in Criminal Cases

**SECTION 18‑3‑10.** Appeals to Court of Common Pleas.

 Every person convicted before a magistrate of any offense whatever and sentenced may appeal from the sentence to the Court of Common Pleas for the county.

HISTORY: 1962 Code Section 7‑101; 1952 Code Section 7‑101; 1942 Code Section 1024; 1932 Code Section 1024; Cr. P. ‘22 Section 144; Cr. C. ‘12 Section 93; Cr. C. ‘02 Section 66; G. S. 2646; R. S. 66; 1870 (14) 403; 1937 (40) 80; 1994 Act No. 520, Section 4, eff September 23, 1994.

CROSS REFERENCES

Appeals from municipal courts to courts of common pleas, see Section 14‑25‑95.

Certiorari to magistrate or municipal court, see Section 18‑1‑150.

Jurisdiction of Courts of Common Pleas for the county to hear appeals from magistrates in criminal cases, see Section 14‑9‑120.

Power of circuit judges to hear appeals from magistrates’ courts and municipal courts, see Section 14‑5‑340.

Library References

Criminal Law 260.4.

Westlaw Topic No. 110.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 13, Appellate Jurisdiction of Circuit Courts.

S.C. Jur. Automobiles and Other Motor Vehicles Section 129, Use of Safety Belts; Exceptions‑Penalties; Enforcement.

LAW REVIEW AND JOURNAL COMMENTARIES

The Scope of Judicial Review: A Continuing Dialogue. 31 S.C. L. Rev. 171.

NOTES OF DECISIONS

In general 1

Appeals by defendant 2

Appeals by State 3

1. In general

Appeal lies only after a final judgment or sentence. An appeal from an interlocutory order in a criminal case is premature, as an appeal lies only from the final judgment or sentence. State v Hughes (1900) 56 SC 540, 35 SE 214. State v Hill (1906) 74 SC 415, 54 SE 614. State v Timmons (1904) 68 SC 258, 47 SE 140. State v Mason (1899) 54 SC 240, 32 SE 357. State v Burbage (1898) 51 SC 284, 28 SE 937. State v Byars (1908) 79 SC 174, 60 SE 448.

Section 22‑3‑545 makes no provision for direct appeals to the Supreme Court of South Carolina; accordingly, Section 18‑3‑10, which states that anyone convicted before a magistrate “of any offense whatever” may appeal to the court of general sessions, would apply, and cases transferred pursuant to Section 22‑3‑545 must be appealed to the court of general sessions. State v. Rushton (S.C. 1993) 322 S.C. 188, 470 S.E.2d 847.

A prompt and speedy trial of criminal cases on appeal is intended and required. City of Sumter v. Owens (S.C. 1936) 181 S.C. 540, 188 S.E. 192.

Cited in City of Greenville v. Latimer (S.C. 1908) 80 S.C. 92, 61 S.E. 224.

Stated in Town of Batesburg v. Mitchell (S.C. 1900) 58 S.C. 564, 37 S.E. 36.

Quoted in City Council of Greenville v. Eichelberger (S.C. 1895) 44 S.C. 351, 22 S.E. 345.

2. Appeals by defendant

A motorist, convicted of driving under the influence, preserved the issue of the admissibility of the results of his horizontal gaze nystagmus test where he objected to the introduction of such evidence at his trial in the magistrates court. State v. Sullivan (S.C. 1993) 310 S.C. 311, 426 S.E.2d 766.

The circuit court had no jurisdiction to grant a motion for new trial where respondent had failed to move for a new trial before the magistrate who had convicted him and had failed to appeal to the court of general sessions. State v. Dickert (S.C. 1973) 260 S.C. 490, 197 S.E.2d 89.

There was no authority on the part of the circuit judge to stay the magistrate’s order suspending respondent’s driver’s license. State v. Dickert (S.C. 1973) 260 S.C. 490, 197 S.E.2d 89.

3. Appeals by State

Thus, the State cannot appeal from a judgment of acquittal. State v Ivey (1906) 73 SC 282, 53 SE 428. State v Gathers (1881) 15 SC 370. State v Rogers (1941) 198 SC 273, 17 SE2d 563.

Appeal may be taken from an order granting the quashing of an indictment. State v Young (1889) 30 SC 399, 9 SE 355. State v Bouknight (1899) 55 SC 353, 33 SE 451. State v Rogers (1941) 198 SC 273, 17 SE2d 563.

An appeal may be taken from a judgment reversing a conviction on the ground that the statute or ordinance was invalid. State v Long (1903) 66 SC 398, 44 SE 960. State v Johnson (1907) 76 SC 39, 56 SE 544.

The State has no right of appeal from a directed verdict of not guilty State v. McWaters (S.C. 1965) 246 S.C. 534, 144 S.E.2d 718.

When in a criminal trial, or examination, the result amounts to a final determination of the case, the State cannot appeal. State v. Ludlam (S.C. 1938) 189 S.C. 69, 200 S.E. 361.

If there is a trial and the defendant is acquitted, or if the proceeding is an examination on a criminal charge and the examining officer dismisses the warrant, the State has no right of appeal especially if the dismissal is on the ground that the evidence does not sustain the charge. State v. Ludlam (S.C. 1938) 189 S.C. 69, 200 S.E. 361.

The State has no right of appeal from an order of the magistrate granting a new trial in a criminal prosecution where the jurisdiction of the magistrate as to ordering the new trial was not in question, and where the order was predicated upon the magistrate’s judgment as to the weight and sufficiency of the evidence. State v Lynn (1922) 120 SC 258, 113 SE 74. State v. Benton (S.C. 1910) 85 S.C. 107, 67 S.E. 143.

**SECTION 18‑3‑20.** How appeals shall be taken and prosecuted.

 All appeals from magistrates’ courts in criminal causes shall be taken and prosecuted as prescribed in this chapter.

HISTORY: 1962 Code Section 7‑102; 1952 Code Section 7‑102; 1942 Code Section 1024; 1932 Code Section 1024; Cr. P. ‘22 Section 114; Cr. C. ‘12 Section 93; Cr. C. ‘02 Section 66; G. S. 2646; R. S. 66; 1870 (14) 403; 1937 (40) 80.

Library References

Criminal Law 260.4.

Westlaw Topic No. 110.

NOTES OF DECISIONS

In general 1

1. In general

Section 22‑3‑545 makes no provision for direct appeals to the Supreme Court of South Carolina; accordingly, Section 18‑3‑10, which states that anyone convicted before a magistrate “of any offense whatever” may appeal to the court of general sessions, would apply, and cases transferred pursuant to Section 22‑3‑545 must be appealed to the court of general sessions. State v. Rushton (S.C. 1993) 322 S.C. 188, 470 S.E.2d 847.

Circuit court has only appellate jurisdiction over judgment from magistrate’s court; where circuit court judge hears case not on appeal after proper filing of notice, but on motion for new trial, he does not have jurisdiction. State v. Adler (S.C. 1982) 278 S.C. 66, 292 S.E.2d 185. Criminal Law 260.4

Cited in State v. Dickert (S.C. 1973) 260 S.C. 490, 197 S.E.2d 89.

Quoted in City Council of Greenville v. Eichelberger (S.C. 1895) 44 S.C. 351, 22 S.E. 345.

**SECTION 18‑3‑30.** Time for appeal and statement of grounds; payment of fine does not waive right of appeal.

 (A) The appellant, within ten days after sentence, shall file notice of appeal with the clerk of circuit court and shall serve notice of appeal upon the magistrate who tried the case and upon the designated agent for the prosecuting agency or attorney who prosecuted the charge, stating the grounds upon which the appeal is founded.

 (B) A person convicted in magistrates court who pays a fine assessed by the court does not waive his right of appeal and, upon proper notice, may appeal his conviction within the time allotted in this section.

HISTORY: 1962 Code Section 7‑103; 1952 Code Section 7‑103; 1942 Code Section 1025; 1932 Code Section 1025; Cr. P. ‘22 Section 115; Cr. C. ‘12 Section 94; Cr. C. ‘02 Section 67; 1880 (17) 493; 1968 (55) 2309; 1973 (58) 359; 2010 Act No. 269, Section 1, eff June 24, 2010.

Library References

Criminal Law 260.3 to 260.5.

Westlaw Topic No. 110.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 76, Historical Notes: Exceptions and Additional Sustaining Grounds; in Favorem Vitae Review of Death Penalty Cases.

S.C. Jur. Appeal and Error App I, South Carolina Appellate Court Rules Parts I and II Only General Provisions of and Practice and Procedure in Appellate Courts.

S.C. Jur. South Carolina Rules of Civil Procedure Section 74.0, Rule 74. Procedure on Appeal to the Circuit Court.

Attorney General’s Opinions

A municipal or magistrate court must allow a party to an appeal, as a member of the public, the right to inspect or copy tape recordings of any proceedings which are not otherwise subject to some applicable restriction. Copies should be made at a reasonable expense to the requesting party based on the actual costs of producing such copies. S.C. Op.Atty.Gen. (Feb. 28, 2012) 2012 WL 756271.

Discussion of the effect of 1999 Act No. 78, Section 3, effective June 11, 1999 Sections 18‑3‑30 and 14‑25‑95. S.C. Op.Atty.Gen. (May 21, 2001) 2001 WL 790249.

NOTES OF DECISIONS

In general 1

Under former law 2

1. In general

Rule of Civil Procedure requiring service of notice of appeal within 30 days of judgment did not apply to appeal of criminal conviction in magistrate court. State v. Brown (S.C.App. 2001) 344 S.C. 302, 543 S.E.2d 568. Criminal Law 1081(4.1)

The circuit court properly exercised jurisdiction over a motorist’s appeal from his conviction in the magistrate court and the denial of his motion for a new trial, even though the appeal was not filed within 10 days of the jury verdict as required by Section 18‑3‑30, since Section 22‑3‑1000 specifically provides that the right of appeal from judgment exists for 25 days after the refusal of a motion for a new trial, and specific law prevails over general law. State v. Sullivan (S.C. 1993) 310 S.C. 311, 426 S.E.2d 766.

Where respondent was notified by summons to appear before a magistrate on DWI charge, but defaulted, there was no obligation on the part of the magistrate to seek the respondent and notify him of his conviction. State v. Adkison (S.C. 1975) 264 S.C. 180, 213 S.E.2d 591. Criminal Law 951(1)

Where respondent was notified by summons to appear before a magistrate on a DWI charge, but defaulted, the time for moving for a new trial commenced to run on the day of conviction. State v. Adkison (S.C. 1975) 264 S.C. 180, 213 S.E.2d 591. Criminal Law 951(1)

Denial of motion to reopen DWI case was correct whether magistrate referred to statute relating to appeals or to statute relating to motions for new trial, since in neither event was motion timely filed following driver’s failure to appear. State v. Adkison (S.C. 1975) 264 S.C. 180, 213 S.E.2d 591.

2. Under former law

Cited in Batesburg v Mitchell (1900) 58 SC 564, 37 SE 36. Greenville v Latimer (1908) 80 SC 92, 61 SE 224. State v Richardson (1914) 98 SC 147, 82 SE 353.

Applied in State v. Adams (S.C. 1964) 244 S.C. 323, 137 S.E.2d 100.

When the five days expire on Sunday, that day will not be counted under the rule that, where an act is required to be done within a certain number of days exceeding a week, Sunday is included, but, if the number of days if less than seven, Sunday is not counted. State v. Gandy (S.C. 1911) 87 S.C. 523, 70 S.E. 163.

The circuit judge cannot relieve one convicted before a magistrate, who has failed to serve on the magistrate the notice and grounds of appeal within the five days prescribed by this section. Gibbes v. Beckett (S.C. 1910) 84 S.C. 534, 66 S.E. 1000. Criminal Law 260.5

A defendant who has paid the fine imposed, though under protest, instead of giving bail, cannot appeal, as the payment of the fine must be regarded as putting an end to the case. Town of Batesburg v. Mitchell (S.C. 1900) 58 S.C. 564, 37 S.E. 36.

**SECTION 18‑3‑40.** Papers shall be filed with clerk of court.

 Within ten days after service the magistrate shall file the notice in the office of the clerk of court, together with the record, a statement of all the proceedings in the case, and the testimony taken at the trial as provided in Section 22‑3‑790.

HISTORY: 1962 Code Section 7‑104; 1952 Code Section 7‑104; 1942 Code Section 1026; 1932 Code Section 1026; Cr. P. ‘22 Section 116; Cr. C. ‘12 Section 95; Cr. C. ‘02 Section 68; G. S. 2648; R. S. 68; 1880 (17) 493; 1987 Act No. 49 Section 1, eff April 27, 1987.

Library References

Criminal Law 260.4 to 260.5.

Westlaw Topic No. 110.

Attorney General’s Opinions

A municipal or magistrate court must allow a party to an appeal, as a member of the public, the right to inspect or copy tape recordings of any proceedings which are not otherwise subject to some applicable restriction. Copies should be made at a reasonable expense to the requesting party based on the actual costs of producing such copies. S.C. Op.Atty.Gen. (Feb. 28, 2012) 2012 WL 756271.

In the absence of a statute or court decision requiring same, the State is not obligated to pay for the appearance fee of a court reporter and/or the transcript costs for an indigent defendant appearing at a preliminary hearing. 1978 Op Atty Gen, No 78‑203, p. 230 (December 06, 1978) 1978 WL 22671.

The effect of the United States Supreme Court decision in Mayor v City of Chicago, 40 USLW 4055 (US Dec. 13, 1971), which makes it mandatory upon the states to furnish an indigent defendant a free trial transcript in nonfelony cases, would be to insure that the testimony taken down is made available at no cost to an indigent defendant desiring to appeal his convictions. 1971‑72 Op Atty Gen, No 3316, p. 137 (May 22, 1972) 1972 WL 21436.

NOTES OF DECISIONS

In general 1

Prosecution of appeal 2

Testimony usable on appeal 3

1. In general

Cited in Batesburg v Mitchell (1900) 58 SC 564, 37 SE 36. State v Richardson (1914) 98 SC 147, 82 SE 353.

Applied in State v. Eaves (S.C. 1973) 260 S.C. 523, 197 S.E.2d 282.

It is of no consequence whether the language of this section [Code 1962 Section 7‑104] is considered mandatory or directory as the remedy is the same State v. Adams (S.C. 1964) 244 S.C. 323, 137 S.E.2d 100.

2. Prosecution of appeal

Even though taped recordings of testimony were furnished, the Circuit Court erred in hearing an appeal from a conviction following a jury trial in the magistrate’s court, where the magistrate failed to file a record a as required by Section 18‑3‑40. State v. Barbee (S.C. 1984) 280 S.C. 328, 313 S.E.2d 297.

It is the duty of the moving party in an appeal from magistrate’s court to prosecute it with due diligence and have it promptly disposed of. State v. Adams (S.C. 1964) 244 S.C. 323, 137 S.E.2d 100.

Defendant was charged with knowledge of the time limit imposed on the magistrate for filing the record under this section [Code 1962 Section 7‑104] and of the sixty‑day supersedeas provided by Code 1962 Section 46‑189 and having failed to take any step toward effecting a prompt disposition of his appeal he was not entitled to have his conviction set aside and the charges against him dismissed. State v. Adams (S.C. 1964) 244 S.C. 323, 137 S.E.2d 100.

When it became apparent to defendant that the magistrate had failed to perform the ministerial duty of transmitting the record of the trial court to the appellate court, it became incumbent upon defendant to proceed by way of mandamus to enforce performance of the magistrate’s duty. State v. Adams (S.C. 1964) 244 S.C. 323, 137 S.E.2d 100.

3. Testimony usable on appeal

When defendant’s attorney knew that the testimony was not being taken down in writing and signed by the witnesses, and made no objection, he waived the right to have it so taken. Lake City v. Gilliland (S.C. 1915) 101 S.C. 152, 85 S.E. 312. Criminal Law 255

Defendant’s attorney, although he notified the recorder that he would require the testimony of the witnesses to be reduced to writing, nevertheless waived the right to insist upon the requirement that it be signed immediately by the witnesses when he knew during the trial that the failure to comply with said requirement was an oversight on the part of the court. City of Sumter v. Hogan (S.C. 1914) 96 S.C. 302, 80 S.E. 497.

The taking of testimony in writing is a duty devolving upon the magistrate or mayor without any demand on the part of the defendant. City of Greenville v. Latimer (S.C. 1908) 80 S.C. 92, 61 S.E. 224.

A defendant may doubtless by conduct waive his right to have the testimony taken in writing or estop himself from raising objection on that ground, but the mere failure to demand that the testimony be taken as required by law is not a waiver. City of Greenville v. Latimer (S.C. 1908) 80 S.C. 92, 61 S.E. 224.

The proper practice, under this section [Code 1962 Section 7‑104], is to take the testimony in writing, and have it signed by the witnesses, but failure so to do may not cause the judgment to be set aside. State v. Conkle (S.C. 1902) 64 S.C. 371, 42 S.E. 173. Criminal Law 255

This section [Code 1962 Section 7‑104] plainly implies that the only testimony upon which an appeal from a trial justice can be heard is that which was taken in writing at the trial, and signed by the witnesses. State v. Freeman (S.C. 1895) 43 S.C. 105, 20 S.E. 974.

Trial justice cannot supplement testimony of witness as taken down, after it is signed by the witness, by appending a statement as to the testimony. State v. Freeman (S.C. 1895) 43 S.C. 105, 20 S.E. 974. Criminal Law 258

**SECTION 18‑3‑50.** How bail shall be given.

 Upon service of the notice the magistrate shall, on demand of the defendant, admit him to bail in such reasonable sum, and with good sureties, as the magistrate may require, with conditions:

 (1) to appear at the court appealed to and at any subsequent term to which the case may be continued, if not previously surrendered, and so from term to term until the final decree, sentence or order of the court thereon;

 (2) to abide such final sentence, order or decree and not depart without leave; and

 (3) in the meantime to keep the peace and be of good behavior.

HISTORY: 1962 Code Section 7‑105; 1952 Code Section 7‑105; 1942 Code Section 1027; 1932 Code Section 1027; Cr. P. ‘22 Section 117; Cr. C. ‘12 Section 96; Cr. C. ‘02 Section 69; G. S. 2649; R. S. 69; 1880 (17) 493.

CROSS REFERENCES

Confinement of defendant pending appeal until bail is given, see Section 18‑1‑80.

When bail is allowed, see Section 18‑1‑90.

Library References

Bail 44(2).

Criminal Law 260.6.

Westlaw Topic Nos. 49, 110.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 7 to 8, 48 to 49, 52 to 53, 56.

United States Supreme Court Annotations

Release on bail as rendering criminal case moot so as to preclude review by habeas corpus. 1 L Ed 2d 1876.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Town of Batesburg v. Mitchell (S.C. 1900) 58 S.C. 564, 37 S.E. 36.

**SECTION 18‑3‑60.** Clerk shall enter case on motion calendar of court of common pleas.

 The clerk of court, upon receipt of the case, shall place it upon the motion calendar of the court of common pleas.

HISTORY: 1962 Code Section 7‑106; 1952 Code Section 7‑106; 1942 Code Section 1028; 1932 Code Section 1028; Cr. P. ‘22 Section 118; Cr. C. ‘12 Section 97; Cr. C. ‘02 Section 70; G. S. 2650; R. S. 70; 1880 (17) 493; 1994 Act No. 520, Section 5, eff September 23, 1994.

Library References

Criminal Law 260.4.

Westlaw Topic No. 110.

**SECTION 18‑3‑70.** No examination of witnesses; action of court.

 The appeal must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court. And the court may either confirm the sentence appealed from, reverse or modify it, or grant a new trial, as to the court may seem meet and conformable to law.

HISTORY: 1962 Code Section 7‑107; 1952 Code Section 7‑107; 1942 Code Section 1029; 1932 Code Section 1029; Cr. P. ‘22 Section 119; Cr. C. ‘12 Section 98; Cr. C. ‘02 Section 71; G. S. 2651; R. S. 71; 1880 (17) 493; 1994 Act No. 520, Section 6, eff September 23, 1994.

Library References

Criminal Law 260.7, 260.12.

Westlaw Topic No. 110.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Batesburg v Mitchell (1900) 58 SC 564, 37 SE 36. Sams v Hoover (1890) 33 SC 401, 12 SE 8 (1890). State v Prince (1974) 262 SC 89, 202 SE2d 645.

The appeal should be heard on the papers, and not de novo. State v Brown (1881) 14 SC 380. State v Spray (1906) 74 SC 443, 54 SE 600. Greenville v Latimer (1908) 80 SC 92, 61 SE 224.

In criminal appeals from a magistrate court, the circuit court does not conduct a de novo review but instead reviews for preserved error raised to it by appropriate exception. State v. Taylor (S.C.App. 2014) 411 S.C. 294, 768 S.E.2d 71. Criminal Law 260.4; Criminal Law 260.13

In criminal appeals from a magistrate court, the circuit court is bound by the magistrate court’s findings of fact if any evidence in the record reasonably supports them. State v. Taylor (S.C.App. 2014) 411 S.C. 294, 768 S.E.2d 71. Criminal Law 260.11(3.1)

In criminal appeals from magistrate court, the circuit court does not conduct a de novo review, but instead reviews for preserved error raised to it by appropriate exception, and on appeal from the circuit court, the Court of Appeals will review the decision of the circuit court for errors of law only. State v. Gordon (S.C.App. 2014) 408 S.C. 536, 759 S.E.2d 755, certiorari granted, affirmed in part, amended in part, vacated in part 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Criminal Law 260.4; Criminal Law 260.13; Criminal Law 1134.27

In a criminal appeal from the magistrate’s court, the circuit court does not review the matter de novo; rather, the court reviews the case for preserved errors raised by appropriate exception. State v. Hoyle (S.C.App. 2012) 397 S.C. 622, 725 S.E.2d 720, rehearing denied. Criminal Law 260.4; Criminal Law 260.13

County court hearing appeal from municipal court may not sua sponte consider a question not raised by an appropriate exception. City of Columbia v. Felder (S.C. 1979) 274 S.C. 12, 260 S.E.2d 453. Criminal Law 260.4

On appeal from judgment of magistrate imposing sentence of imprisonment for 30‑day period, the circuit court could impose a fine of one hundred dollars or imprisonment for 30‑day period under this section [Code 1962 Section 7‑107] empowering the court to “modify” the sentence appealed from. State v. Funderburk (S.C. 1925) 130 S.C. 352, 126 S.E. 140.

For example, affidavits submitted by accused when his appeal was heard in the circuit court, contradicting the magistrate’s report of the testimony, constituted no part of the proceedings upon which the appeal was to be heard, and the court properly refused to consider them. State v. Richardson (S.C. 1914) 98 S.C. 147, 82 S.E. 353.

The circuit court may amend its order and remand the case for a new trial, after marking order sustaining the appeal and dismissing the case. State v. Fullmore (S.C. 1896) 47 S.C. 34, 24 S.E. 1026.

The circuit may reduce the fine imposed by a judgment of the mayor’s court of a city for violation of a city ordinance, when there is nothing in the case showing that the modification, did not seem “meet and comformable to law.” City Council of Greenville v. Eichelberger (S.C. 1895) 44 S.C. 351, 22 S.E. 345.