

**8 GCA CRIMINAL PROCEDURE
CH. 130 APPEALS**

**CHAPTER 130
APPEALS**

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§ 130.10. Appeals Allowed in All Cases Except Violations.

An appeal may be taken in any criminal action in which the offense charged is not a violation.

NOTE: Section 130 provides certain basic provisions relating to appeals which have been conformed generally to their federal or California counterparts. These provisions can be supplemented by court rule or subsequent statutory enactments. See § 1.07 and former Rule 60 (appeals to be governed by appellate court rules). See generally ABA, Project on Standards for Criminal Justice Criminal Appeals (Approved draft 1970).

§ 130.15. Appeals Allowed by Defendant.

An appeal may be taken by the defendant:

(a) From a final judgment of conviction. The commitment of a defendant by reason of mental illness, disease or defect shall be deemed to be a final judgment of conviction within the meaning of this Section.

(b) From an order denying a motion for a new trial.

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(c) From any order made after judgment, affecting the substantial rights of the defendant.

(d) Pursuant to § 40.80.

(e) From a judgment of conviction upon a plea of guilty or nolo contendere, where the defendant has filed with the trial court a written statement, executed under oath of penalty of perjury showing reasonable constitutional, jurisdictional or other grounds going to the legality of any proceedings held in this case under § 65.15(c) of this Code and the trial court has executed and filed a certificate of probable cause for such appeal with the District Court.

SOURCE: Added by P.L. 15-94:3, effective 01/17/80.

COURT DECISIONS: SUPERIOR COURT, 1978. Superior Court of Guam lacks jurisdiction over a case during the pendency of an appeal. *People v. Botelho*, Sup. Ct. Cr. #98F-78. (Decision and Order, 12/18/78; Abbate, P.J.). *People v. Aquiningoc*, Sup. Ct. Cr. #20F-77. (Decision and Order, 01/15/79; Abbate, P.J.)

C.A.9, 1972. The denial of a motion to dismiss an indictment is not a final order which could be appealed and, therefore, the appeal was dismissed. [Case decided under former Penal Code of Guam.] [See 28 U.S.C. § 1291.] *People v. Lefever*, 454 F.2d 270 (1972)

NOTE: Subsection (e) of § 130.15, permitting a defendant to appeal a judgment of conviction [a final judgment] based upon a plea of guilty or nolo contendere was added as a compromise by the Legislature when the Legislature removed the right of a defendant to have reviewed before trial the various questions raised by § 65.15 of this Title. It was felt that this Section was needed to permit a defendant to appeal a plea of guilty or "nolo" which was based upon the refusal of the court to grant a prior motion of the defendant to suppress evidence against him. This Section was not intended to give the defendant a right of appeal if he had not raised the objection where proper pursuant to § 65.15. On the other hand, Subsection (e) expresses the Law Revision Commission's belief that a defendant should have a right to have a suppression decision rendered against him reviewed by an appellate court. However, to expedite the criminal process, such review is to take place only upon conviction.

Subsection (e) does not affect appeals from a final judgment of conviction, which may be upon any grounds proper to the case.

§ 130.20. Appeals Allowed by Government.

(a) An appeal may be taken by the government from any of the following:

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(1) An order granting a new trial.

(2) An order arresting judgment.

(3) An order made after judgment, affecting the substantial rights of the government.

(4) An order modifying the verdict on finding by reducing the degree of the offense or the punishment imposed.

(5) An order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

(6) An order granting a motion to suppress evidence. This appeal may be taken prior to trial if the appeal is timely filed pursuant to § 130.40 of the Criminal Procedure Code and before the trial has commenced. Upon the timely filing of an appeal pursuant to this Subsection, the Superior Court shall stay all proceedings until the Appellate Court has acted pursuant to § 130.60 of the Criminal Procedure Code.

(b) When an appeal is taken pursuant to Paragraph (5) of Subsection (a), the prosecuting attorney shall be prohibited from refileing the action which was appealed.

SOURCE: Enacted 1977; Subsection (a)(6) added by P.L. 15-147, effective 12/31/80.

COURT DECISIONS: SUPER. CT. 1982 Section 130.20(a) limits appeals by the Government to appeals of motions to suppress evidence, and not to other forms of action which would exclude evidence from the trial. This Section is stricter than the equivalent federal rule. *People v. Mafnas*, Cr. #97F-80.

NOTE: The right of the government to appeal from an order granting a new trial (§ 130.20(a)(1)) reverses the decision of the Appellate Division of the District Court (*People v. Solivio*, No. _____, (1976)). That case held that a "new trial" referred only to a court trial. Now § 110.10, CPC, defines the issue as referring to both court and jury trials.

Subsection (a)(6) was added in response to the District Court Appellate Division's decision in *People v. Quitugua* [D.C. Crim. App. #79-00069A and #79-00075A]. That case held that the Legislature of Guam has no power to direct the review of a case to the trial division of the District Court and invalidated § 65.17 as enacted by P.L. 15-94 and, further, reinstated the former § 65.17 which allowed the very interlocutory appeals by defendants that the Legislature was trying to abolish. While this Section

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grants a full appeal, the Attorney General in recommending its adoption, believed that appeals by the Government would be made only in exceptional cases and, in any event, would not be made to frustrate the ends of justice. The real frustration of justice had been with the many appeals filed by defendants, and P.L. 15-147, §§ 11 and 12 eliminated the right of defendants to such appeals, thereby eliminating the problems of delay which had occurred.

The Ninth Circuit Court of Appeals, in *People v. District Court* 80-7352, probably reversed *Quitugua*. Had the James decision been rendered prior to the adoption of P.L. 15-147, the amendment to this Section would probably have been unnecessary. Nevertheless, this Section now governs all matters of appeal by the government of motions to suppress evidence. See *People v. District Court [James, Real Party]* C.A.9 1981 #80- 7352, 641 F.2d 616. Decided April 9, 1981.

§ 130.25. Appeal by Government: No Stay of Judgment Favorable to Defendant.

An appeal taken by the government in no case stays or affects the operation of a judgment in favor of the defendant, until judgment is reversed.

NOTE: Section 130.25 is identical to former § 1242. See also Cal. Pen. Code § 1242 (same).

§ 130.30. Stay of Sentence When Defendant Appeals.

(a) A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pursuant to § 40.85. If not stayed the court may recommend to the Director of Corrections that the defendant be retained at a place of confinement within the Territory for the period reasonably necessary to permit the defendant to assist in the preparation of any appeal.

(b) If an appeal is taken, a sentence to pay a fine may be stayed by the court upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or part of the fine in the registry of the court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets.

(c) An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation shall commence. If the order is stayed the court shall fix the terms of the stay.

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NOTE: Section 130.30 continues the substance of former Rule 38. Contrast former §§ 1243 to 1245 (execution of judgment stayed but defendant held in custody). See also Fed. R. Crim. P. 38 (substantively the same as § 130.30). See generally 8A Moore, Federal Practices ¶¶38.01-38.02 (1974).

§ 130.35. Appeal: How Taken: Form.

(a) An appeal from the Superior Court shall be taken by filing a notice of appeal with the clerk of the Superior Court within the time allowed by § 130.40. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal.

(b) If two or more persons are entitled to appeal from a judgment or order of the superior court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) The notice of appeal shall specify the party or parties taking the appeal and shall designate the judgment, order or part thereof appealed from.

(d) The clerk of the superior court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at his last known address; the clerk shall also mail a copy of the notice of appeal and of the docket entries to the clerk of the appellate court. When an appeal is taken by a defendant, the clerk shall also serve a copy of the notice of appeal upon him, either by personal service or by mail addressed to him. The clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the clerk to serve notice shall not affect the validity of the appeal. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

NOTE: Section 130.35 is substantively the same as Rule 3 of the Federal Rules of Appellate Procedure. See generally 9 Moore, Federal Practice ¶¶203.01-203.35(1973). *i.e.*, those rules which apply on taking an appeal

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from the federal district court to the circuit court of appeals. This Section and § 130.40 which follows supersede former § 1239. See also former §§ 1248 and 1249 (compare second sentence of Subsection (a) of § 130.35.).

§ 130.40. Notice of Appeal: Times for Filing and Service.

The notice of appeal by a defendant shall be filed in the superior court within 10 days after the entry of the judgment or order appealed from. A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a timely motion in arrest of judgment or for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within 10 days after entry of the judgment. The notice of appeal by the government shall be filed in the superior court within 30 days after the entry of the judgment or order appealed from. A judgment or order is entered within the meaning of this Section when it is entered in the criminal docket. Upon a showing of excusable neglect the superior court may, before or after the time has expired, with or without motion and notice extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Section.

§ 130.45. Record on Appeal: Contents.

The record on appeal shall consist of the original papers in the trial court including any transcript of the testimony and shall be transmitted by the clerk of the trial court to the clerk of the appellate court within the time prescribed by appellate court rule.

§ 130.50. *De Minimis* Rule: *Plain Error* Rule.

(a) Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

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NOTE: Section 130.50 is identical to former Rule 52. See also Fed. R. Crim. P. 52 (same); former §§ 258 and 1404; Cal. Pen. Code §§ 1258, 1404 (substantively the same). See generally 8A Moore, Federal Practice ¶¶ 52.01-52.03 (1974); B. Witkin, California Criminal Procedure *Appeal* §§ 681-687; Reversible Error §§ 739-769 (1963, Supp. 1973).

§ 130.55. Exceptions Unnecessary: Objections Required; Exceptions.

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

NOTE: Section 130.55 is identical to former Rule 51. See also Fed. R. Crim. P. 51 (same); former § 1259; Cal. Pen. Code § 1259 (substantively the same). See generally 8A Moore, Federal Practice ¶¶ 51.01-51.02 (1974).

§ 130.60. Actions Permitted of Appellate Court.

The appellate court may reverse, affirm or modify a judgment or order appealed from, or reduce the degree of the offense or the punishment imposed, and may set aside, affirm or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if proper, order a new trial and may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances.

COURT DECISIONS: D.C.GUAM:APP.DIV. 1983 While no specific standards of review are set forth to guide the District Court Appellate Division, reference to the common law provides specific guidance. *People v. Manibusan*, D.C. Cr. #81-0053A.

NOTE: Section 130.60 is based upon former § 1260, Penal Code, but a provision is added which authorizes a remand to the trial court for further proceedings. It authorizes, also, the modification of sentences. While this Section appeared in the former Penal Code, it was added by the Editor on the assumption that its omission was a printer's error. The section is substantively the same as Cal. Penal Code § 1260, as amended in 1970.

§ 130.65. Defendant: When to be Discharged Upon Reversal.

If a judgment against the defendant is reversed without ordering a new trial, the appellate court shall, if he is in custody,

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direct him to be discharged therefrom; or if on bail, that his bail be exonerated; or if money was deposited instead of bail, that it be refunded to the defendant or to the person found by the court to have deposited the money on behalf of the defendant. If a judgment against the defendant is reversed without ordering a new trial and defendant has theretofore paid a fine in the case, reversal shall also be deemed an order that the fine be returned to defendant.

NOTE: Section 130.65 is the same in substance as former § 1262. Contrast Cal. Pen. Code § 1262 (reversal deemed an order for new trial unless court otherwise directs).

§ 130.70. Affirmance: Original Judgment Enforced.

If a judgment against the defendant is affirmed, the original judgment shall be enforced.

NOTE: Section 130.70 is substantively the same as former § 1263, as well as California Penal Code § 1263.

§ 130.75. Judgment on Appeal: How Entered and Remitted.

When the judgment of the appellate court is given, it must be entered on the record, and a certified copy of the entry, with a copy of the opinion of the court attached thereto, forthwith remitted to the clerk of the court from which the appeal was taken.

§ 130.80. Appellate Court Jurisdiction Ceases Upon Remittance of Judgment to Lower Court.

After the certificate of the judgment has been remitted to the court below, the appellate court has no further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect shall be made by the court to which the certificate is remitted.
