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House Bill 4719 (Substitute H-1 as reported without amendment)**Sponsor: Representative Frank M. Fitzgerald****House Committee: Judiciary****Senate Committee: Judiciary****Date Completed: 3-1-88****RATIONALE**

According to some, two Michigan Supreme Court decisions regarding the respective rights of prosecutors and criminal defendants to appeal combine to put the people of the State, whom the prosecutor represents, at a disadvantage. Although a criminal defendant has a constitutional right to appeal, the Court ruled in 1984 that appeals by the prosecutor are allowed only in limited instances set forth in the Code of Criminal Procedure (People v Cooke, 419 Mich 420). In 1983, the Court held that an appellate court must, upon a defendant's request in an appeal of right or by leave granted, review a trial court's exercise of discretion in sentencing, but may grant relief to the defendant only if the sentencing court abused its discretion to the extent that it shocks the conscience of the appellate court (People v Coles, 417 Mich 523). (See BACKGROUND for a more detailed discussion of those cases.)

Prosecutors and others note that Cooke placed new limits on the ability of prosecutors to appeal, while Coles expanded defendants' right to appeal sentencing decisions. They claim that in order to ensure a more impartial and even-handed administration of justice, prosecutors should be allowed to appeal more sentencing decisions and other matters.

CONTENT

The bill would amend the Code of Criminal Procedure to grant prosecutors the right to appeal either of the following as long as the constitutional protection against double jeopardy would not bar further proceedings against the defendant:

- A final judgment or final order of the Circuit Court or Recorder's Court, except a judgment or order of either court on appeal from any other court.
- A final judgment or order of a court or tribunal from which appeal of right has been established by law.

In addition, a prosecutor could take an appeal by leave, as long as the double jeopardy protection would not be violated, from any of the following:

- A judgment or order of the Circuit Court or Recorder's Court that was not a final judgment appealable of right.
- A final judgment entered by the Circuit Court or Recorder's Court on appeal from any other court.
- Any other judgment or order appealable by law or rule.
- A judgment or order when an appeal of right could have taken but was not timely filed.

These provisions would replace current language that limits prosecutorial appeals to appeals from decisions dismissing

an information, indictment, or other charging instrument, or preventing a judgment of conviction or directing a judgment of acquittal, based on the invalidity or construction of a statute upon which the instrument was founded; and appeals from a decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy, or from another court order concerning the admission of evidence or other proceedings that occurred before a defendant was put in jeopardy.

The bill would take effect March 30, 1988, and would apply to crimes committed on or after that date.

MCL 770.12

BACKGROUNDPeople v Cooke

This case involved an appeal by the people from an order acquitting the defendant on the basis of insufficiency of evidence after the jury had returned a guilty verdict. The Supreme Court made it clear that the Constitution secures to a criminal defendant a right of appeal (Article 1, Section 20), but the people may appeal only to the extent provided by statute. The applicable statutory provisions are found in Section 308 of the Revised Judicature Act (RJA), which provides that the Court of Appeals has jurisdiction of appeals from all final judgments of a circuit court, and Section 12, Chapter 10 of the Code of Criminal Procedure (CCP), which provides that the people may appeal only from a decision based on the invalidity or construction of a statute or a decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy.

Historically, the Court pointed out, the Legislature first provided for access by the people to the appellate process in 1917 by providing that a "writ of error" could be taken to the Supreme Court from certain orders based upon the invalidity or construction of a statute, and that language was incorporated into the CCP in 1927 and amended in 1941 to provide for somewhat broader rights of appeal. The 1963 Constitution established the Court of Appeals and states that the "jurisdiction of the court of appeals shall be provided by law". Pursuant to the Constitution, the Legislature enacted Section 308 of the RJA. In a 1973 decision holding that the people could appeal to the Court of Appeals from an order of the trial court granting a defendant a new trial, the Supreme Court found that Section 308 had superceded the limiting provisions of Section 12 of the CCP (People v Blanchura, 390 Mich 326).

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In 1977, however, the Legislature revised and re-enacted Section 12. As a result, the Court in Cooke based its decision on the "Legislature's intent that appeals by the people be governed by the specific provisions of Section 12 of the Code of Criminal Procedure rather than by Section 308 of the Revised Judicature Act".

People v Coles

This decision consolidated three cases in which the defendant appealed his sentence. The Court noted that the source of the Michigan rule regarding appellate review of sentencing apparently dates back to an 1879 case whose result, according to the Coles Court, was that appellate review was not precluded but if an appellate court reviewed a sentence and found it to fall within the statutory limits, the court could not provide any relief to the defendant with respect to altering the punishment imposed (Cummins v People, 42 Mich 142). Examining other sentencing appeals, the Court in Coles found that relief had been granted when a sentence was determined to be cruel and unusual punishment, did not include appropriate credit for time served, violated public policy, was not based on the offense of which the defendant was convicted, was imposed as punishment for exercising the right to trial or because the trial court assumed that the defendant was guilty of a crime of which he or she had not been convicted, exceeded the limits of the indeterminate sentencing law, reflected undue emphasis on revenge, etc.

The Court found that Section 308 of the Code of Criminal Procedure confers jurisdiction upon the Court of Appeals to entertain appeals from, among other things, all final judgments from the circuit court. The Court then found that "a sentence following a conviction is as much a part of the final judgment of the trial court as is the conviction itself", and that constitutional and statutory authority "vest[s] appellate courts with the jurisdiction to review all sentencing issues". The Court concluded that "the existing scope of appellate review of sentences should be expanded" and held that "an appellate court shall, upon a defendant's request in an appeal by right or in an appeal by leave granted, review a trial court's exercise of discretion in sentencing, but may afford relief to the defendant only if the appellate court finds that the trial court, in imposing the sentence, abused its discretion to the extent that it shocks the conscience of the appellate court".

FISCAL IMPACT

The bill would have an indeterminate impact on State and local units of government. Possible additional court expenses and representation costs for indigent defendants cannot be estimated.

ARGUMENTS

Supporting Argument

The bill essentially would ensure that the people of the State had the same right to appeal that a defendant has, within the limits of constitutional prohibitions against double jeopardy. The ability of a prosecutor to appeal could be particularly important with regard to sentencing decisions, such as the probation imposed for the beating death of Vincent Chin, that shock the public conscience. Because the bill would allow appeals by right of final judgments and final court orders, and the court held in Coles that sentences are final judgments, the bill would enable prosecutors to seek appellate review of inappropriately mild sentences, as well as other judicial errors.

At the same time, the bill would safeguard criminal defendants' constitutional protection against double jeopardy; that is, a prosecutorial appeal could not be brought after the jury was sworn in, in a jury trial; after proofs were taken, in a bench trial; or after sentencing, if a guilty plea were entered.

Opposing Argument

Justice does not demand that the people have the same procedural considerations as the defendant. The government has available to it resources and power that dwarf those of ordinary individuals. Consequently, our system of justice has certain features that may be advantageous to defendants but help to assure fairness, including the presumption of innocence and the double jeopardy protection against prosecutorial appeal of acquittals. Not only would the bill give prosecutors undue advantages, but it could carry enormous costs in the form of increased court and attorney expenses, more clogged appellate dockets, and worsened prison overcrowding.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.