

REPUBLIC OF SOUTH AFRICA

CRIMINAL PROCEDURE AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No 23848 of 18 September 2002) (The English text is the official text of the Bill)

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 57—2002]

REPUBLIEK VAN SUID-AFRIKA

STRAFPROSESWYSIGINGS- WETSONTWERP

(Soos ingedien by die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No 23848 van 18 September 2002 gepubliseer) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)

(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

[W 57—2002]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Criminal Procedure Act, 1977, so as to further regulate appeals against decisions of lower courts; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 309 of Act 51 of 1977, as amended by section 17 of Act 105 of 1982, section 8 of Act 107 of 1990, section 51 of Act 129 of 1993, section 13 of Act 75 of 1995, section 2 of Act 33 of 1997, section 2 of Act 76 of 1997 and section 38 of Act 105 of 1997 5

1. Section 309 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), is amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) Any person convicted of any offence by any lower court (including a person discharged after conviction) may [**subject to section 309B,**] apply for leave to appeal against such conviction and against any resultant sentence or order [to the provincial or local division having jurisdiction] contemplated in section 309B or 309C.” 10

Substitution of sections 309B and 309C of Act 51 of 1977 15

2. The following sections are substituted for sections 309B and 309C of the principal Act, respectively:

“Application for leave to appeal

309B. (1) An accused who wishes to appeal against any decision or order of a lower court must, within 14 days or within such extended period as may be allowed on application and on good cause shown, apply to that court for leave to appeal against the decision or order. 20

(2) (a) The application must be heard by the magistrate whose decision or order is the subject of the prospective appeal: Provided that—

(i) if that magistrate is unavailable, the application may be heard, on receipt from the clerk of the court of a copy of the record of the proceedings before the trial magistrate, by any other magistrate of the court concerned, to whom it is assigned for hearing; and 25

(ii) where the accused was tried in a regional court and was legally represented at the trial, a copy of the judgment shall suffice for the purpose of the application.

(b) Notice must be given to the Director of Public Prosecutions concerned and the accused of the date fixed for the hearing of the application.

(3) Every application for leave to appeal must set forth clearly and specifically the grounds upon which the accused desires to appeal: Provided that if the accused applies verbally for such leave immediately after the passing of the decision or order, he or she must state such grounds and they must be taken down in writing and form part of the record.

(4) When in any application for leave to appeal under subsection (1) it is shown by affidavit that—

(a) further evidence which would presumably be accepted as true, is available;

(b) if accepted the evidence could reasonably lead to a different decision or order; and

(c) save in exceptional cases, there is a reasonably acceptable explanation for the failure to produce the evidence before the close of the trial, the court hearing the application may receive that evidence and further evidence rendered necessary thereby, including evidence in rebuttal called by the prosecutor and evidence called by the court.

(5) Any evidence received in pursuance of an application for leave to appeal under subsection (1), must for the purposes of an appeal be deemed to be evidence taken or admitted at the trial.

(6) (a) If an application for leave to appeal under subsection (1) is granted, the clerk of the court must, in accordance with the rules of the court, transmit copies of the record and of all relevant documents to the registrar of the court of appeal.

(b) If an application for leave to appeal under subsection (1) is refused, the magistrate must record his or her reasons for such refusal.

Petition procedure

309C. (1) If an application for leave to appeal under section 309B(1) or for an extension of the period referred to in that subsection or for the extension of the period within which an appeal must be noted in terms of section 309(2) (hereinafter referred to as an application for condonation), or an application to call further evidence as contemplated in section 309B(4), is refused, the accused may, within 21 days of such refusal or within such extended period as may on good cause be allowed, by petition addressed to the Judge President of the High Court having jurisdiction, submit an application for leave to appeal or for condonation or for leave to call further evidence, or all such applications, as the case may be.

(2) An accused who submits a petition as contemplated in subsection (1) must at the same time give notice thereof to the clerk of the magistrate's court where the application was refused.

(3) When receiving notice of a petition as contemplated in subsection (2), the clerk of the court must without delay submit to the registrar of the court of appeal copies of—

(a) the application concerned;

(b) the record of the proceedings in the magistrate's court: Provided that where the accused was tried in a regional court and was legally represented at the trial, a copy of the judgment shall, subject to subsection (5)(a), suffice for the purposes of the petition; and

(c) the magistrate's reasons for refusal of the application.

(4) (a) A petition contemplated in this section must be considered in chambers by two judges designated by the Judge President.

(b) If the judges referred to in paragraph (a) differ in opinion, the petition must also be considered by the Judge President or by any other judge designated by the Judge President.

(5) The judges considering the petition may—

- (a) call for any further information from the magistrate who heard the application for condonation or the application for leave to appeal or the application for leave to call for further evidence, or from the magistrate who presided at the trial to which any such application relates; 5
- (b) order that the application or applications in question or any of them be argued before them at a time and place appointed by them; 10
- (c) whether they have acted under paragraph (a) or (b) or not—
- (i) in the case of an application for condonation, grant or refuse the application and, if the application is granted, direct that an application for leave to appeal must be made, within the period fixed by them, to the court referred to in section 309B(1) or, if they deem it expedient, that an application for leave to appeal must be submitted under subsection (1) within the period fixed by them as if it had been refused by the court referred to in section 309B(1); 15
- (ii) in the case of an application for leave to appeal or an application for leave to call for further evidence, grant or refuse the application or, if they are of the opinion that the application for leave to call for further evidence should have been granted, they may, before deciding upon the application for leave to appeal, or, in the case where the court referred to in section 309B(1) has granted the application for leave to appeal but has refused leave to call for further evidence, set aside the refusal of the said court to grant leave to call for further evidence and remit the matter in order that further evidence may be received in accordance with the provisions of section 309B(4); and 20
- (d) refer the matter to the court of appeal for consideration, whether upon argument or otherwise, and that court may thereupon deal with the matter in any manner referred to in paragraph (c). 25
- (6) Notice must be given to the Director of Public Prosecutions concerned and the accused of the date fixed for the hearing of an application under this section, and of any place appointed under subsection (5) for any hearing.”. 30 35

Short title and commencement

3. This Act is called the Criminal Procedure Amendment Act, 2002, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 40

MEMORANDUM ON THE OBJECTS OF THE CRIMINAL PROCEDURE AMENDMENT BILL, 2002

1. PURPOSE OF BILL

The purpose of the Bill is to reinstate the "leave to appeal" and "petition" procedures in the Criminal Procedure Act, 1977 (Act No. 51 of 1977) ("the Act"), so as to further regulate appeals against decisions of the lower courts.

2. OBJECTS OF BILL

2.1 The provisions of the Bill are to a large extent a repetition of the provisions of sections 309B and 309C of the Act as they were before the declaration of invalidity by the Constitutional Court in the case of *S v Steyn* 2001(1) SA 1146 (CC).

2.2 **Clause 1** of the Bill aims at amending section 309(1)(a) of the Act so as to provide that any person convicted of any offence in a lower court who wishes to appeal against the conviction or sentence must apply for leave to appeal against any conviction, sentence or order as contemplated in section 309B or 309C of the Act.

2.3 **Clause 2** of the Bill substitutes sections 309B and 309C of the Act in order to retain the application for leave to appeal (in the magistrate's court as provided for in section 309B) and petition procedures (in the High Court regulated in terms of section 309C) in the Act.

2.4 As far as the leave to appeal procedure (section 309B) is concerned, the proposed new subsection (2)(a) provides that a transcribed case-record must be submitted in respect of an application for leave to appeal, where the application is heard by a magistrate other than the magistrate who tried the case. A further proviso is inserted in subsection (2)(a) in terms of which it will be sufficient if copies of only the judgments are submitted in those cases where legally represented persons were convicted and sentenced in the regional courts. The proposed new subsection (6)(a) provides that if an application for leave to appeal is granted then copies of the record and of all relevant documents must be transmitted to the registrar of the court of appeal. The magistrate who refuses an application for leave to appeal must record his or her reasons for such refusal in terms of the proposed new subsection (6)(b).

2.5 With regard to the petition procedure contained in section 309C of the Act, the proposed new subsection (3)(b) provides that transcribed case-records must be submitted in respect of all petitions to the High Courts for leave to appeal. This subsection also contains a proviso in terms of which a copy of the judgment only suffices where a legally represented accused was tried in the regional court.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Judges President, Chief Magistrates, Regional Court Presidents, National Director of Public Prosecutions and the legal profession were consulted.

4. IMPLICATIONS FOR PROVINCES

None

5. FINANCIAL IMPLICATIONS FOR STATE

The proposed amendments will contribute towards a more efficient management of the resources available to the Department.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.