

UK Legal News Analysis

Bail Reform Proposals - An Appealing Development?

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Abstract

Following David Cameron's announcement that the prosecution will have a right of appeal against Crown Court judges' grants of bail, barrister and recorder Dennis Watson QC, of Lincoln House Chambers, says the change should increase public confidence in the criminal justice system. Robert Matthews reports

Analysis

In *R v Vass*, the defendant pleaded guilty to murdering his girlfriend while released on bail after being charged with raping her. The victim's parents campaigned for a change in the law on the granting of bail. The Prime Minister has now announced that an amendment will be made to the Legal Aid, Sentencing and Punishment of Offenders Bill to allow the prosecution to appeal to the High Court against grants of bail by Crown Court judges. Currently, the prosecution can only challenge magistrates' decisions to grant bail.

Desirable Development?

Dennis Watson QC, who was prosecution counsel in the *Vass* case - but not at the time of the bail application - welcomes the development although, as he points out, it is not known precisely what is planned. "Changes which increase public confidence in the criminal justice system are a good thing. For many years there was a right for a defendant to appeal to the High Court against a Crown Court judge's decision to refuse bail but this was abolished some 20 years ago. I doubt there will be a blanket right for the prosecution to appeal against decisions to grant bail by the Crown Court in all cases; it will probably be reserved for serious offences but we will have to await the detailed proposals," he explains.

"If a Crown Court judge grants bail in a serious case it will usually be for very good reasons. Even so, it is sometimes difficult for victims and the public to understand why someone charged with a very serious offence is on bail. By allowing a right of appeal to a High Court judge in such cases it should mean that where that judge confirms the grant of bail there will be greater confidence that the grant of bail is justified and a remand in custody is not justified. And if bail is revoked then the concerns will have been met."

Watson continues: "I doubt there will be an avalanche of appeals by the prosecution. Time will tell as to whether any of these appeals are successful - and how many - and also whether in the case of unsuccessful appeals more people feel that the grant of bail is correct.

"I cannot think of any major drawbacks at the moment. Obviously there are costs implications if there is an additional court hearing but these will be pretty small for each side in the scheme of things; and High Court

judges will also have extra cases in their list from time to time. So far as I know there is no intention to reintroduce the defendant's right to appeal to the High Court, but there may be calls for the defence to have this right as well to maintain equality of arms and opportunity."

Points for Practitioners

Watson considers the consequences for practitioners: "Those defending will have to advise their clients that even if a Crown Court judge grants them bail, it is subject to a prosecution right of appeal. Whilst the grounds for the prosecution's objections to bail might not have been made out at the Crown Court, it is always possible that a new piece of evidence, such as a witness statement alleging witness intimidation, will emerge in the time between Crown Court and High Court applications and this may change the outcome."

Future Legal Landscape

In conclusion, he sees the PM's announcement as a part of recent developments in the criminal justice system. "Over the past 20-25 years there has been a rebalancing of the system. A defendant now has to serve a defence statement setting out his defence in advance of trial. A defendant's silence in interview or at court can be held against him. Intimidated and vulnerable witnesses have measures available which try to protect them. Witnesses are given more consideration than they were. Also, the prosecution can now request the Attorney General to refer sentences to the Court of Appeal as unduly lenient. These are just a few of the changes. The proposed change in the area of bail applications fits in with this trend of trying to increase public confidence in the criminal justice system."

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