

On the System of Right Relief in Criminal Expedited Judgement Procedure

Chennan Shi

Jiangsu University, Zhenjiang, China

Abstract: China added the criminal expedited judgment procedure in the amendment of the Criminal Procedure Law in 2018. The purpose of this system is to improve the efficiency of judicial resource utilization on the premise of ensuring judicial justice. However, its existence not long, there are some problems in the system construction, which makes the actual use of the procedure have a negative impact on the rights of both parties. Therefore, started from the right relief system, this article discussed the right relief system of suspect and defendants in the criminal expedited adjudication procedure on how to achieve the purposes of judicial justice and improving the efficiency of judicial resource utilization while ensuring that suspect and defendants can get relief legally.

Keywords: Criminal expedited judgment procedure; Right relief system; Repentance and withdrawal of confession; Right of appeal; Criminal record sealing system

1. Introduction

The criminal expedited judgment procedure is a new system officially included in the criminal judicial procedure after the amendment of the Criminal Procedure Law in 2018. Its purpose is to solve the problem that the number of minor criminal cases has increased significantly after the amendment of some laws, the judicial organs in some regions face uncoordinated distribution of judicial resources, and the utilization rate of judicial resources is low. Before this system was formally included in the law, China has carried out pilot work in many regions for a long time. After combining the actual situation of China, it has made adjustment with Chinese characteristics, including adhering to the principle of evidence judgment, adhering to the protection of the rights of both parties to the lawsuit, etc. However, due to the short implementation time of the system itself, there are still some institutional imperfections in the current actual situation. This paper discusses the issue of the defendant's right relief in the criminal expedited judgment procedure.

2. The Content of Right Relief for Suspect and Defendant in Criminal Expedited Judgment Procedure

First of all, since the leniency system of pleading guilty and accepting punishment and the system of quick criminal judgment were included in the same amendment, and in principle and practice, the cases that apply the procedure of quick criminal judgment are basically cases of pleading guilty and accepting punishment, then the confession and withdrawal of suspect and defendants is a problem that needs to be discussed^[1]. The second is the right of appeal of the defendant. Since the defendant is not prohibited from appealing at the system level, but the starting of the second instance procedure by appeal will make the criminal expedited judgment procedure unable to achieve the purpose of improving the judicial efficiency, which is contrary to the original intention of the system. However, to protect the fairness of the trial and the legitimate rights of the defendant, the right of appeal of the defendant cannot be canceled directly, which means need to find a balance point. Finally, it is a question discussed by the academic community whether to add the system of sealing criminal records in the criminal expedited judgment procedure. The original intention of the criminal record sealing system is to give people who commit minor crimes a chance to return to society normally. Therefore, the situation of some cases in the criminal expedited adjudication procedure is reasonable for the application of the criminal record sealing system, so expanding the scope of application of this system is also a problem that can be discussed.

Therefore, from the above summary, the relief content of the defendant in the criminal expedited judgment procedure discussed in this paper includes confession and withdrawal, the right of appeal, and the system of sealing criminal records.

3. Repentance and Withdrawal

The possibility of the defendant's confession and repentance in the criminal expedited judgment procedure is extremely low, so the number of such cases is very small, but once it occurs, it will cause fundamental damage to the operating mechanism of the expedited judgment procedure. The reason is that the confession of the defendant in the criminal expedited judgment procedure must be voluntary, and it is subjective free will, but it itself has great uncertainty [2]. At different stages, it is possible for the defendant to plead guilty and repent for his own interests. Therefore, on the one hand, the system in this regard should protect the suspect and the defendant from voluntarily pleading guilty, on the other hand, it should also prevent some suspect and the defendant from maliciously interfering with the normal progress of the criminal expedited procedure for their own interests by taking advantage of the possibility of renegeing or withdrawing.

3.1 Investigation Stage

At this stage, the suspect's confession is unstable, because according to the Guiding Opinions on Confession of Crime, Confession of Punishment and Leniency issued by the two senior and three ministries, the public security organ needs to carry out confession education at the same time in the investigation stage, but suspect shall not be forced to plead guilty. If the suspect voluntarily pleads guilty and is willing to accept the punishment of the judicial organ, the interrogators of the investigation organ shall record it in the file. However, in the absence of a lawyer on duty or a defense lawyer, the suspect is likely to choose to plead guilty for many practical reasons, which naturally does not have good stability and certainty.

Then, in order to better solve this problem, this paper believes that in the investigation stage, if the suspect chooses to repent or withdraw after pleading guilty, first of all, the number of times of repentance or withdrawal of the suspect should be limited to prevent its abuse and interfere with the normal work of the workers in the investigation stage; At the same time, the defense lawyer or the lawyer on duty should also be arranged to explain the relevant information to them on the scene, and these information and the record of withdrawal of confession should be recorded in the file as a reference for sentencing. It can not only guarantee the rights of suspect who really need to withdraw, but also serve as a warning to those suspects who abuse maliciously.

3.2 Review and Prosecution Stage

When entering the stage of examination and prosecution by the procuratorate, the confession of suspect is tended to be stable. On the one hand, if he does not plead guilty, he will not enter the criminal expedited judgment procedure; On the other hand, according to Article 31 of the Guiding Opinions on Confession of Crime, Confession of Punishment and Leniency issued by the two senior high schools and the three senior high schools, if the suspect voluntarily confesses his crime and agrees to the application of sentencing suggestions and procedures during the examination and prosecution stage, he shall sign a written statement of confession of guilt, admission of punishment and leniency in the presence of the defender or the lawyer on duty. At the same time, the suspect, the defender, or the lawyer on duty shall sign on it. All these lead to the relatively stable crime of suspect at this stage, with only a few exceptions. However, it is also necessary to consider how to deal with the exceptions at the institutional level.

This paper argues that, at the first stage, because of entering the criminal expedited adjudication procedure, it means that a written plea of guilty has been signed. If the withdrawal is to be made, the reasons for the withdrawal should be put forward in writing, and the procuratorate should decide on whether to approve the withdrawal after review [3]. This can not only provide suspect with space to withdraw, but also impose necessary restrictions. This can prevent the proceedings from being interrupted at will, affecting the normal conduct of the review and prosecution.

3.3 Trial Stage

In the trial stage, there should be more strict restrictions if you want to repent or withdraw. The reason is that theoretically, the trial stage is the final stage of the lawsuit. In the previous stages, the defendant had many opportunities to withdraw, but none of them were used. This shows that he has been thinking for a long time. If we choose to renege at the trial stage, it is equivalent to negating the basic achievements of many previous litigation subject activities.

Therefore, at this stage, if it is necessary to withdraw, it is necessary to perform substantive review on the defendant's confession and withdrawal, that is, whether there are sufficient facts and evidence to support his/her withdrawal or withdrawal. At the same time, it needs to be clear to them that if withdrawn, they may bear more adverse legal consequences. At the same time, according to Article 48 of the current Guiding Opinions on Confession of Crime and Punishment, if the defendant withdraws his confession at the trial stage, the procedure needs to be transformed into ordinary procedure or summary procedure. This article believes that this one size fits all approach will cause unnecessary waste of judicial resources. Since the defendant may have a specific strategy or speculative purpose, the conversion procedure is unnecessary and may affect the legitimate interests of the other party. Therefore, this paper believes that at this stage, the court should organize both the prosecution and the defense to debate and hear the basic facts and grounds of the defendant's confession of guilt and punishment and handle them differently according to different results. If the court believes that there is a factual basis to support its withdrawal, it should convert the procedure according to the provisions; However, if there is no basis, the trial should be continued in an expedited procedure, and this circumstance should be taken into consideration in sentencing circumstances, and the leniency of sentencing can be reduced according to specific circumstances. This can not only provide suitable procedure options for the defendants who really need to renege, but also prevent some defendants from taking advantage of the defects of the legal procedure conversion system to achieve illegal litigation purposes.

4. Right of Appeal

4.1 Legal Provisions

In Section 4, Chapter II of the Criminal Procedure Law of 2018, there are no restrictions or special provisions on the appeal of the expedited procedure in any way, which means that the defendant can normally use his right of appeal in the criminal expedited procedure. But at the same time, it also means that there is a lack of legal provisions. How to correctly use the right of appeal and how not to abuse it have also become important issues in judicial practice.

4.2 The Justification Basis of the Right of Appeal

First, China's judicial procedure system stipulates that the second instance is final, and the right of appeal is the defendant's absolute right to relief after he refuses to accept the decision of the first instance, which is a basic right. This right of appeal is based on the principle of litigation and is an important system to protect the defendant from seeking relief^[4]. It cannot be directly cancelled. The purpose of establishing the system of quick criminal judgment is to simplify the procedure and improve the judicial efficiency under the premise of ensuring the fairness of judicial procedure.

Secondly, because according to the law, the trial organization of the criminal expedited judgment procedure is the trial by a sole judge, if the defendant's right of appeal is canceled, the power of the sole judge in the trial process will be absolutely expanded. At the same time, because the supervision or restriction of the superior court is lost, the risk of abuse of power will arise, and the possibility of problems in the trial of the case will also be increased.

Third, in the revision of the Criminal Procedure Law, the scope of application of the criminal expedited judgment procedure has been raised to fixed-term imprisonment of less than three years, which makes the current cases of the criminal expedited judgment procedure are no longer limited to particularly minor criminal cases. With the enlargement of the scope of the case, it is very important to ensure the defendant's right of appeal in order to maintain the fairness of the trial process.

4.3 The Safeguard System of Defendant's Right of Appeal

First, when the defendant chooses to appeal, he shall be represented by a defense lawyer. The defendant chose to appeal in the criminal expedited judgment procedure, which shows that the defendant is dissatisfied with the judgment result, which, to some extent, shows the invalidity of legal aid or charge defense negotiation in the expedited judgment procedure. At the same time, because the appeal cases of the expedited judgment procedure often involve the denial of the previous confession of guilt and punishment, which will inevitably lead to a series of complex problems. In the face of these problems, the judicial activities of the original simple on duty lawyers have been unable to guarantee the exercise of the defendant's right to appeal, so it is necessary to require them to hire professional lawyers to

represent the defense or the legal aid agencies to assign lawyers to represent the defense. At the same time, because the number of such cases is relatively small according to statistics (14982 cases nationwide according to online data in 2019), it will not impose a very serious additional burden on legal aid institutions. After accepting the entrustment of the defendant, the defense lawyer shall examine whether the defendant's confession in the original expedited judgment procedure meets the conditions of knowing and voluntariness, and whether there are problems in the factual evidence of the case and the application of law, which will affect the trial of the case. This shows that when the defendant really needs to exercise the right of appeal, the representation and defense of the defense lawyer is an important condition to ensure the proper exercise of his rights. Therefore, the defendant's appeal should be represented by a defense lawyer, which is an important system to ensure the defendant's proper exercise of the right of appeal.

Second, the trial mode of second instance should be selected according to the situation of the case. It can be found from the survey data that in order to reduce the occupation of judicial resources as much as possible and improve the efficiency of the use of judicial resources, the second instance cases of the expedited adjudication procedure rarely choose to hear in court, and in most cases, they will choose to hear in writing. However, because the reasons for appeal are not always the same, if the written trial is selected blindly, it will inevitably lead to the second trial and cannot solve the problems in the first trial. Therefore, before choosing the second instance mode of criminal expedited judgment procedure, the defendant's reasons for appeal should be examined. If the defendant's appeal is a strategic or speculative appeal and does not provide supplementary reasons or evidence content, the court of second instance can reject the appeal through formal review, then the written trial can be completely selected for this situation. This kind of situation accounts for a large proportion, which is also one of the main reasons why the written trial is often chosen in the second instance of the current criminal expedited judgment procedure. However, when the content of the defendant's appeal involves such issues as inaccurate conviction, verification of key evidence, and verification and confirmation of important sentencing circumstances, the court of second instance must choose to hold a court session under these circumstances to ensure that these important issues go through the stage of court investigation and debate. This is because China's criminal expedited adjudication procedure emphasizes to achieve a win-win situation of justice and efficiency on the premise of adhering to judicial justice, and the court should take the realization of judicial justice as the premise when choosing the trial mode.

4.4 Feasible Methods to Prevent Abuse of the Right of Appeal

Since China's current procedural law does not contain any content on limiting the defendant's right of appeal in the expedited judgment procedure, from an international perspective, countries with similar special expedited criminal procedures have generally adopted these three ways to prevent the defendant from abusing his right of action: First, the defendant can be required to explicitly state that he/she waives his/her right of appeal in the sentencing defense. Secondly, in legislation, the defendant's right of appeal after pleading guilty is prohibited in cases of quick judgment^[5]. Third, the court of first instance conducts a formal review of the defendant's appeal. If it is found after the review that the defendant has the purpose of abusing the right of appeal, it will directly reject his appeal request and forbid him to appeal again.

Based on the methods abroad and the actual situation in China, this paper believes that in the future legal amendment, the defendant can be explained that if he/she chooses not to give up the right of appeal, he/she cannot apply the criminal expedited judgment procedure but the normal first instance procedure in these links of pleading guilty and confirming the sentencing proposal. To prevent the judicial resources waste caused by the possible appeal in the expedited judgment procedure. At the same time, if it is difficult to amend the law in the short term, the higher court of the original trial court can conduct a formal review of the defendant's appeal content to confirm whether it is necessary to accept his appeal application.

5. Criminal Record Sealing System

5.1 Rationality of System Establishment

The first is that the scope of application of the system of sealing criminal records should be appropriately expanded. At present, the scope of application of the system of sealing criminal records in China is too narrow. Only the provision in Article 286 of the Criminal Procedure Law stipulates that criminal records can be sealed for minors who are under the age of 18 at the time of committing a crime

and sentenced to fixed-term imprisonment of less than 5 years. There are too few applicable situations to make this system exist on paper. However, the application of the criminal record sealing system is to judge based on the minor or serious circumstances of the crime. At present, many cases in the criminal expedited judgment procedure belong to minor criminal cases, such as drunk driving in the crime of dangerous driving. This kind of crime has little social harm, and the standard of the prison term applicable to the expedited judgment procedure is less than three years' imprisonment. At the same time, considering that there is almost no possibility of the offender committing again after education. Based on the above information, we can consider establishing appropriate criminal record sealing system for some criminals in the criminal expedited judgment procedure.

The second is that some scholars believe that the establishment of the criminal record sealing system in the criminal expedited adjudication procedure is to learn from similar mature judicial practices abroad; It can also avoid the negative impact on the subsequent education, employment and life of these criminals, which is conducive to eliminating the possible antagonistic feelings of criminals, promoting their transformation, more conducive to their return to society, and also avoid excessive impact on their families. At the same time, China's current national policies and regulations have restrictions on people with criminal records in many aspects, even in some specific areas on their children^[6]. Considering that the nature of some cases that apply the quick judgment procedure is not serious, and the subjective malice of the criminals is also extremely low, the criminal record sealing system with certain conditions for these people can not only solve the negative social impact of crime, but also reflect the humanistic care of the modern judicial system.

5.2 Feasible Ideas for System Establishment

After consulting with relevant papers, it is found that some scholars have put forward a reasonable and feasible proposal: to establish a criminal record query system. This system refers to setting up a reasonable criminal record query period for a specified crime after the completion of its punishment. During this period, relevant government departments, colleges and employers can query criminal records through some legal ways. After this period, no criminal record can be found through the above channels. This system is the original intention and result of sealing criminal records through a relatively unified refusal to query system.

The feasibility of this system is that it has two adjustable indicators, one is the type of crime, and the other is the period of criminal record query. Through different provisions on different types of crimes, we can strictly limit the types and numbers of cases that can enter this procedure based on the relevant provisions of the criminal law, to ensure that the impact of cases that can enter this procedure on society and the public is low, so as to protect the public interests of society. When the query period is specified, more specific and humane provisions can be made according to the actual situation of the case, such as taking into account the details of the crime in the case, the offender's attitude of pleading guilty, reconciliation with the injured party or compensation for the injured party, and the social impact of the case. At the same time, it can also be considered that different institutions can have different query periods based on different considerations. This can meet the reasonable care for criminals, help them better integrate into the society, and also reflect the humanistic care of modern justice. Of course, if this system is established, it needs to be coordinated with some current systems, such as the open system of judicial documents.

This system is more feasible^[7]. Compared with the current relatively fixed provisions, the two regulatory indicators can be used for differential treatment to better form a balance between public interests and personal interests, making the system feasible for practical application.

6. Conclusions

The system of quick criminal judgment is a judicial system that has not been born for a long time in China. It is an innovation to ensure judicial justice and improve the efficiency of judicial resource utilization in combination with China's national conditions. Therefore, it is an important attempt to find a balance between judicial justice and ensuring judicial efficiency, so the right relief system of criminal expedited judgment procedure is an important attempt to reach a balance. However, there are still many imperfections in this part at present. From the perspective of the suspect and the defendant, this paper simply analyzes how to ensure the efficiency of the use of judicial resources, and at the same time, to better protect judicial justice through the right relief system, and correspondingly puts forward some suggestions, hoping to make some due contributions to the development of China's criminal prosecution

system in the future.

References

- [1] Lingyong Kong. *Reflection and Reconstruction of the Relief Mechanism of Criminal Prompt Judgment Procedure* [J]. *Journal of Anhui University (Philosophy and Social Sciences Edition)*, 2019, 43 (02): 110-118. DOI: 10.13796/j.cnki.1001-5019.2019.02.013.
- [2] Chongyi Fan, Dongqing He. *The quick judgment procedure under the transformation of the criminal procedure model* [J]. *Journal of the National Public Prosecutor's College*, 2020, 28 (03): 3-15.
- [3] Zhigang Yu. *Reflections on Building a Criminal Record Termination Query System* [J]. *Jurist*, 2011 (05): 54-63+176-177. DOI: 10.16094/j.cnki.1005-0221.2011.05-08.
- [4] Mengjiao Zhang. *Research on the Protection of the Defendant's Rights in China's Criminal Procedure of Prompt Judgment* [D]. *Gansu University of Political Science and Law*, 2021. DOI: 10.27785/d.cnki.ggszf.2021. 03-35.
- [5] Cao Ning. *Problems and Improvement in the Practice of Criminal Prompt Judgment Procedure* [D]. *Yantai University*, 2019.
- [6] Lu Wei, Fan Jun, Liao Yu, Li Jing *Investigation on the pilot of the whole process criminal case quick judgment procedure in Haidian, Beijing -- A resource allocation model based on confession and punishment* [J]. *Application of Law*, 2016 (04): 31-37.
- [7] Zhengjie Suo. *The Value of Criminal Procedure: Procedural Justice and Human Rights Protection* [J]. *China Legal Science*, 2000 (05): 145-153. DOI: 10.14111/j.cnki.zgfx.2000.05-15.