

The Development of the Defendant's Right to Appeal Support Theory in the Case of Confession of Crime and Punishment

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Abstract: The leniency system for confession and punishment is an important manifestation of the implementation of the criminal policy of combining leniency with severity in China's criminal litigation system. In practice, there has been a situation of defendant's "technical appeal". However, the appeal rate for cases of pleading guilty to punishment has always been at a low level, and even appeals based on "excessive sentencing" may be reasonable. And in terms of the dialectical relationship between "efficiency" and "fairness", the current insufficient protection of the rights and interests of the defendant, and the insufficient motivation to restrict or prohibit the right to appeal, violate the principle of proportionality. China should adhere to the current theory of supporting the right to appeal, safeguard the legitimate rights and interests of the defendant, improve efficiency without damaging fairness, and coordinate the natural relationship between the right to appeal and the right to protest.

Keywords: Confession of guilt and punishment, technical appeal, right of appeal

1. Introduction

The Chinese Criminal Procedure Law clearly stipulates the system of no cause appeal, which does not undergo any review of the appellant's appeal request and provides comprehensive protection. Regarding the issue of criminal appeal rights, the current research direction in the academic community is focused on the abuse of the defendant's right to appeal in cases of confession and punishment. The relationship between "fairness" and "efficiency", as the two major values pursued in implementing the criminal litigation system, is often intensified when applying the leniency system for confession and punishment, as well as the appeal procedure. In this context, there is considerable controversy in the academic community regarding the limitation or prohibition of the right to appeal. This article attempts to balance the relationship between "fairness" and "efficiency" from a materialist and dialectical perspective by expanding the theory of supporting the right to appeal, and to differentiate different theories, attempting to propose the necessary relationship between the right to appeal and the right to protest.

2. Theoretical Research on the Right to Appeal in Cases of Confession of Crime and Punishment

There are certain particularities in the right to appeal in cases of confession of crime and punishment. On the premise that the defendant has already signed the confession and punishment statement, if they seek legal remedies: from the perspective of the principle of good faith in litigation, the defendant's refusal to agree with the content of the statement previously signed in person will undermine the results of the confession and punishment; From the perspective of the principle of litigation economy, the defendant's appeal will ultimately lead to an increase in litigation time and costs, resulting in an unjustified loss of judicial resources. A series of legal issues and disputes arising from this urgently need to be resolved. Currently, there are generally three theories regarding the right to appeal in cases of confession and punishment, which adopt attitudes of "cancellation", "restriction", and "support".

The theory of complete cancellation of the right of appeal refers to breaking through the current legal provisions on the level of trial, and completely canceling the right of appeal for defendants who meet specific circumstances, implementing a first instance final trial system. This situation mainly applies to cases of expedited proceedings. Scholars who hold the above viewpoint believe that the application of the expedited judgment procedure needs to meet the following three conditions: cases that may be

sentenced to three years of imprisonment or less, clear facts and sufficient evidence, and the defendant pleading guilty and agreeing to the application of the expedited judgment procedure. This type of case belongs to misdemeanor cases, and it is unfair to grant the defendant the right to retract at will when they receive significant sentencing benefits due to their confession of guilt and consent to the application of the expedited sentencing procedure. Moreover, the expedited judgment procedure is not subject to the restrictions on the delivery time of ordinary procedures in the Criminal Procedure Law, which omits many aspects of the court. Undoubtedly, the main purpose is to improve litigation efficiency, and the functions of error correction, relief, and balance of legal application in the appellate trial lack existing value.^[1]

The theory of limiting the right to appeal is a highly popular theory in the academic community. This theory holds that only appeals with legitimate reasons can be accepted, and the law should explicitly stipulate that appeals cannot be filed in certain circumstances or can be filed in specific circumstances. Scholars who hold this view first believe that the lenient system of confession and punishment carries the risk of insufficient protection of the rights and interests of the defendant, thus affirming the necessity of the right to appeal; At the same time, it is believed that granting the defendant the right to unconditionally retract after enjoying both procedural and substantive privileges would not reflect the value of "Confession of Crime and Punishment" and would also waste judicial resources. Regarding the scope of the limitation on the right to appeal, some scholars believe that in terms of sentencing issues, the appeal request can only be supported if the judge fails to fully inform the defendant when requesting a change in sentencing suggestions during the original trial process, or if new facts or evidence are discovered after the first instance judgment.^[2] Some scholars believe that only appeals made without verification with the defendant before the judgment is pronounced, or on the grounds of procedural illegality or forced confession and punishment, can be supported.^[3] In addition, scholars mostly propose the need to establish an appeal review mechanism, which filters the appeal grounds stated in the appeal petition. Only those grounds that meet the enumeration requirements can be accepted.

Theory of support for the right of appeal advocates the continuation of the current legal system and the comprehensive preservation of the right to appeal. Scholars who hold this view believe that the leniency system for confession and punishment relies too much on the comprehensive quality and legal literacy of prosecutors, and there are still shortcomings in protecting the rights and interests of defendants, which have not reached the level of similar systems abroad. If the channels for defendants to receive relief are hastily cancelled, it is easy to amplify the judicial risks inherent in the leniency system for confession and punishment. And even with a very low appeal rate in cases of confession and punishment, even if relief procedures are established, it will not cause significant waste of judicial resources.^[4]

3. The practical status of the defendant's right to appeal

The main reason for appeal in cases where the right of appeal is considered to be abused is 'excessive sentencing'. The author used the keyword "appeal rate" to search for public data and sorted out the changes in the appeal rate in cases of confession and punishment. It was found that the appeal rate in both local and national confession and punishment cases remained below 4% all year round, belonging to a relatively low level. With the continuous improvement of the leniency system for confession and punishment, the appeal rate has now shown a slow downward trend. Through sorting out appeal cases based on "excessive sentencing", the author found that although the vast majority of second instance courts believe that the judgment of the original trial court is correct and should be upheld; Only when new circumstances arise during the second instance that need to be considered will the verdict be partially revised. But not all cases have been ruled in this way by the court in the second instance, and there are also cases where the court believes that the sentencing imposed on the appellant in the original trial is too heavy and should be changed in accordance with the law. It can be seen that the appeal reason of "excessive sentencing" does not necessarily mean that the appellant has abused the right to appeal.

4. Response of Prosecutors to "Technical Appeals"

The procuratorial organ restricts the defendant's "false admission of punishment" and "Unjust enrichment" with the right of protest.^[5] From the perspective of the procuratorial organs, the defendant violated their previous commitments, which lost the factual basis for applying the lenient punishment system for pleading guilty. Additionally, due to the court's constraints on the principle of no additional penalty on appeal, they could only reject the appeal and uphold the original judgment. Therefore, the procuratorial organs retract the sentencing preferences based on confession and punishment through

protest. Due to concerns about the "broken window effect", the procuratorial organs are concerned that the existence of "technical appeals", once left unchecked, will induce defendants to follow suit, thereby increasing litigation costs and hindering the construction of judicial authority.

This position of "restricting appeal by protest" is like the "sword of Damocles" hanging over the defendant's head. While trying to prevent the defendant from obtaining "improper interests" through appeal, it indirectly limits the defendant's legitimate right of appeal, or even deprives the right of appeal to some extent. The exercise of the right of protest by the procuratorial organs is to maintain judicial fairness and fulfill their judicial supervision responsibilities. But now it is used to bypass the principle of no additional penalty on appeal, punishing defendants who abuse their rights. Not only is it not conducive to defendants with legitimate and legitimate needs seeking legal remedies through appeals, but there is also a suspicion of directly disregarding the principle of no additional penalty for appeals.

5. Comparative law analysis of relevant extraterritorial systems

5.1 Limitations on the Defendant's Right to Appeal in the US Plea Bargaining System

In the plea bargaining system, there are certain limitations on the right to appeal. According to the Federal Criminal Procedure Rules of the United States, defendants can only appeal if they believe that the judgment is illegal or the sentencing is unreasonable, and other situations are excluded from the right to appeal. Especially due to the emphasis on efficiency value in the plea bargaining system, which allows defendants and prosecutors to conduct comprehensive negotiations on charges, punishments, and counts. Prosecutors usually require defendants to waive their right to appeal in order to improve the success rate of charges; Moreover, the United States federal government and the vast majority of states recognize agreements to waive the right to appeal, while judges only conduct formal review, making the plea bargaining directly determine the final verdict of the defendant. ^[6]

5.2 Guarantee of the defendant's right of appeal in German Plea bargain criminal cases

Unlike the plea bargaining system, Germany adopts a model of completely retaining the right to appeal. Under the unconditional appeal system in Germany, appeal (Berufund) is an unrestricted remedy, and the law has no limitations on the grounds of appeal. The defendant's appeal can trigger a comprehensive review by the higher court in fact and law. Of course, the right of appeal is not affected by the Plea bargain system. Article 35a of the German Criminal Procedure Law stipulates: "If an agreement is made before the judgment (article 257 c), the person involved should also be informed that he has the right to freely decide whether to propose Legal remedy in any case." This is because the German official clearly stated that the criminal consultation system needs to adhere to the obligation of finding the truth in substance, and the agreement reached is essentially a tool for finding the truth. ^[7] However, in agreements reached between the court and the defense, there is often a waiver of the right to appeal. Such authoritarian provisions have not been strictly observed in practice: in practice such "informal agreement" has been repeatedly existed.

6. Theoretical analysis of the issues of the right to appeal and the right to protest

6.1 Methodology for Analyzing the Right to Appeal in Cases of Confessing Crime and Punishment

The original intention of establishing the leniency system for confession and punishment is to improve litigation efficiency and resolve the increasing pressure. On the surface, conflicts between the two are inevitable: in order to pursue efficiency, it is necessary to simplify procedures, reduce rights, and even have the possibility of violating judicial fairness. Under such a proposition, the issue of the right to appeal in cases of confession and punishment often falls into a tension between efficiency and fairness, which is difficult to solve. In fact, we should reduce the abstract debate on "fairness" and "efficiency", starting from the connotation of legal norms, and forming a common value identity. ^[8]

The lenient system of confession and punishment is inevitably based on fairness, and losing fairness means losing legitimacy. The four principles in the "Guiding Opinions on the Application of the leniency System for Confessing Crime and Admitting Punishment" actually revolve around the goal of "achieving fairness": adhering to the principle of adapting crime, responsibility, and punishment is included in the implementation of the criminal policy of combining leniency with severity, and achieving the fairness and justice preset by legislation in both procedural and substantive aspects; Adhering to the principle of

evidence adjudication and the principle of cooperation and restraint among the three organs of public security, procuratorate, and law is to ensure that procedural simplification does not harm the realization of fairness and justice. In the lenient system of confession and punishment, the prosecution will determine the sentence before the court. The court only needs to review the voluntariness of the parties, the legitimacy of the statement, and whether the prosecution's sentencing suggestions are biased. The defendant cannot enjoy the complete procedure anymore, so the simplification of the procedure (including limitations on rights) is inevitable. However, the requirements of Procedural justice are minimal and exist to overcome the situation that people generally think is unreasonable and unfair. "Just because these requirements are minimal, they can be generally understood, accepted and adopted by people".^[9] Therefore, such procedural simplification or restriction of rights is legitimate as long as it does not violate the minimum limit of the procedure. Therefore, the author believes that the restriction of the right to appeal or not requires a dialectical perspective to explain the relationship between fairness and efficiency: in an ideal state, efficiency and fairness are not necessarily antonyms, and the improvement of efficiency within a certain range does not necessarily erode the realization of justice. On the contrary, a positive improvement of efficiency will make justice better realized.

This relationship exists in the lenient system of confession and punishment. Since the defendant repents and pleads guilty and actively seeks compensation, it indicates that his subjective malice is not significant and he has the consciousness of educational correction, and special preventive effects can be achieved without excessive punishment; At the same time, lighter coercive measures and shorter litigation time are given in the process to reduce the negative effects of punishment on individuals in the context of misdemeanor sentencing. If such a discount is not given, it would violate the principle of proportionality between crime and punishment. At the same time, the defendant pleaded guilty and punished, reducing the difficulty of the prosecution's charges and simplifying the process. The public prosecution was able to alleviate the pressure of handling cases, transfer resources to handle difficult cases, and better fulfill the responsibilities. The omission of micro procedures promotes the diversion of complex and simplified cases, which can bring about an overall improvement in the quality of public prosecution at the macro level and promote more complete and extensive judicial justice. It can be seen that the fairness of the lenient punishment system for pleading guilty has not been compromised, and the pursuit of efficiency serves to achieve judicial fairness.

The relationship between "efficiency" and "justice" implies the development and connection views of materialist dialectics: theoretically, the reform direction of the leniency system for confession and punishment lies in continuously improving judicial efficiency without damaging judicial justice, and further "feeding" justice through the improvement of efficiency. If the omission of certain procedures or restrictions on rights can achieve both micro and macro judicial justice, then such value trade-offs are reasonable. As for the critical criteria for derogation or restriction, it should comply with the "imperial clause" in public law - the principle of proportionality, in order to prevent the lack of protection of the rights and interests of parties caused by the expansion of public power in criminal legislation. Specifically, it includes: "substantial leniency" requires adjusting sentencing and selecting coercive measures to coordinate offense with punishment; The principle of "lenient procedure" not only ensures the rights of the defendant but also optimizes the overall judicial resources. In short, it needs to comply with the basic requirements of the principle of proportionality, which prohibits the improper infringement of civil liberties and rights by state public power.^[10]

7. Analysis of the Right to Appeal in Cases of Confessing Crime and Punishment

7.1 Analysis of the Theory of Cancellation and Restriction of the Right to Appeal

The theory of complete cancellation of the right of appeal claims that the defendant's statement of pleading guilty and agreeing to apply the expedited judgment procedure contains a waiver of the right of appeal. The theory of limiting the right to appeal is actually a "compromise theory" that attempts to balance the efficiency of litigation and the function of second instance rights relief. There is no difference in essence between the two theories, but there are differences in the degree of limitation, and both fail to accurately coordinate the dialectical relationship between "efficiency" and "justice".

Firstly, the motivation to restrict or prohibit the right to appeal is clearly insufficient. At present, the appeal rate of cases involving confession and punishment remains relatively low, without causing significant losses to judicial resources. With the gradual improvement of the leniency system for confession and punishment, especially the fulfillment of the duty of prosecutors and judges to interpret and reason, and the improvement of the duty lawyer system, the number of defendants who sincerely

repent gradually increases, and the appeal rate shows a downward trend. Sacrificing the right to appeal, which has a significant impact on the defendant's access to a fair trial, in order to achieve a slight improvement in efficiency, clearly does not comply with the principle of proportionality.

Secondly, the legitimacy of restricting or prohibiting the right to appeal is insufficient. At present, it is difficult for duty lawyers to provide effective legal assistance, the strong sentencing attitude of the procuratorial organs, and the issue of "different judgments for the same case" still cannot be solved. The defendant is inevitably influenced by the procuratorial organs in a dominant position. At this time, it is difficult to justify the intention of limiting or prohibiting the right to appeal contained in the confession and punishment statement. Especially the cancellation of the right of appeal directly denies the possibility of the defendant having an appeal need.

Furthermore, a single trial level cannot provide effective relief for the defendant, and limiting or prohibiting the right to appeal implies obstructing the appeal path and referring the issue to the trial supervision procedure. However, entrusting disputes that could have been resolved by the appeal procedure to the trial supervision procedure is not only detrimental to the continuity and credibility of the judiciary, but also can cause greater waste of judicial resources. In addition, the limitation of the right to appeal theory lacks clear standards for screening the reasons for the defendant's appeal. The so-called standards are preset by scholars, who believe that such reasons represent the defendant's abuse of the right to appeal, but in practice, this can only be said to be possible rather than absolute. Even the reason for "excessive sentencing" may be recognized by the second instance court.

Finally, the limitation of the right to appeal advocates the establishment of an appeal review system to replace the comprehensive review system, in order to fully play the decisive role of the first instance in factual determination. However, a thorough factual trial is difficult to achieve under the lenient system of confession and punishment, and an appeal system is still needed as a supplement. In fact, even scholars who support the first instance trial as the center of factual determination agree that in China, it is necessary to distinguish between different types of cases and only conduct substantive trials for serious and controversial cases.^[11] Therefore, scholars who support the theory of limiting the right to appeal also believe that China currently does not have the conditions for strict restrictions on the right to appeal of defendants in cases of confession and punishment.^[12]

The theory of supporting the right of appeal reflects the respect of public power for civil liberties and rights, which meets the requirements of the principle of proportionality for criminal legislation. In the face of appeals in cases of confession and punishment, we should note that the second instance procedure plays an important role in maintaining judicial fairness and curbing the defendant's abuse of the right to appeal by rejecting the defendant's unreasonable appeal; It should also be noted that the appeal rate of cases of confession and punishment is much lower than other criminal cases, which precisely indicates that the lenient system of confession and punishment, which retains the right to appeal, still plays an important role in improving litigation efficiency. For the concerns of the other two theories, the author believes that after sufficient interpretation and reasoning by prosecutors, duty lawyers, and judges, the defendant foresees the burden of litigation brought by the second trial and the uncertainty of sentencing after the prosecution raises a protest. The defendant will not "freely" retract and choose to appeal, and the defendant who truly needs rights relief can exercise their legitimate rights without any concern.

7.2 The natural relationship between the right to appeal and the right to protest in cases of confession and punishment

There is a huge difference between the lenient system of confession and punishment and the plea bargaining system. The "consultative" thinking lacks soil in China, and the leniency system for pleading guilty and punishment is not essentially a "charge defense negotiation" but a response to the reduced social and personal danger of defendants. We need to take the "obligation to discover substantial truth" of the continental legal system as the main line of constructing the system. The Criminal Procedure Law clearly stipulates that the system of appeal without cause is to lower the threshold of the defendant's right to appeal and fully protect the defendant's right to appeal. This legislative purpose that leans towards the defendant is very obvious. Compared to the intense discussions in the theoretical community, the current judicial interpretation and criminal procedure rules are very cautious in the issue of the defendant's right to appeal in cases of confession and punishment.

Indeed, the existence of the right of protest can urge the defendant to exercise the right of appeal reasonably. Many "technical appeal" cases, when faced with protest, ultimately end up being resolved by the defendant withdrawing the lawsuit. However, for the procuratorial organ to exercise its right of protest,

it should pay attention to the principle of proportionality. Only when the defendant pleads guilty and pleads guilty to punishment, that is, when he does not agree with the main *Corpus delicti*, can he exercise his right of protest to respond. If the defendant's reasons for appeal are reasonable to a certain extent and there is only some speculative psychology in motivation, it may not be necessary to activate the right to protest. The procuratorial organs should try their best to eliminate the intention of abusing the right of appeal through persuasion and education, improve the rate of first instance judgment, minimize the impact of exercising the right of protest on the legitimate rights and interests of the defendant, allocate judicial resources to the track of maintaining judicial fairness and correcting judgment errors, adhere to the dialectical relationship between "efficiency" and "fairness", and achieve a healthy coordination between the right of appeal and the right of protest.

8. Conclusion

The right to appeal, the right to protest, and the collision between the two are inevitable in the design of the judicial system. It is precisely with the corresponding rights and procedures granted to the parties by law that the purpose of the existence of the appeal system can be achieved, and a complete litigation system can be established. Due to the practical pressure of litigation efficiency, criminal justice can relax standards appropriately, but overall, a cautious attitude should still be maintained. Legislatures should not overly emphasize limiting the exercise of either party's rights, but should actively safeguard and reconcile them, especially the right to appeal as a remedy for rights, so that the pursuit of efficiency serves the value of fairness. The key to solving the abuse of the defendant's right to appeal is not to restrict or deprive the defendant's right to appeal, but to recognize the legal basis, protect rights, and strictly administer justice.^[13]

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