

ABSTRACT

In the criminal trial, when the court has made a decision, a prosecutor representing for a plaintiff, has a duty to report that case to the Department of Appellate Litigation, which is a part of Office of the Attorney General, to examine and balance the power of the court by appealing that judgment or decree of the trial court. Within the Department of Appellate Litigation, there is an appellate prosecutor to response for the criminal prosecution in the Appellate Court and the Supreme Court.

The appellate prosecutor has a power to consider the cases which emanate from the trial court to make a decision whether or not it should be appealed to the Appellate Court or the Supreme Court. In making a decision, there is no provision for the prosecutor to conduct because the decision will be considered with of the appellate prosecutor to appeal or not to appeal is considered by the trial judgment, the reason granted by the trial judge and the sentence that defendant will be convicted. Because of no strict standard for the appellate prosecutor to make a decision, the injured would not be able to aware of whether the judgment or decree will be appealed or not. Unlike foreign countries, the prosecutor is a part of discretion in sentencing to a defendant, so the defendant can anticipate the sentence that he will be convicted. In addition, the defendant can expect that whether the prosecutor will be appealed the judgment or not.

Basically, facts and law can be appealed under the law restriction in the criminal law. In considering the question of fact of the higher court, judge has to find fact from the evidence admitted consistently with the law of evidence. If the prosecutor thinks the facts existed in the case are inadequate, he should ask the court to add more evidence to make the case clear and equitable. In the criminal case, it can be either good or bad for defendant to appeal, so the prosecutor, on behalf of government, should not only do the case for purpose of sentencing the defendant, but he should create the standard function of the prosecutor also.