

§ 15A-1432. Appeals by State from district court judge.

(a) Unless the rule against double jeopardy prohibits further prosecution, the State may appeal from the district court judge to the superior court:

- (1) When there has been a decision or judgment dismissing criminal charges as to one or more counts.
- (2) Upon the granting of a motion for a new trial on the ground of newly discovered or newly available evidence but only on questions of law.

(b) When the State appeals pursuant to subsection (a) the appeal is by written motion specifying the basis of the appeal made within 10 days after the entry of the judgment in the district court. The motion must be filed with the clerk and a copy served upon the defendant.

(c) The motion may be heard by any judge of superior court having authority for the trial of criminal cases in the district. The State and the defendant are entitled to file briefs and are entitled to adequate time for their preparation, consonant with the expeditious handling of the appeal.

(d) If the superior court finds that a judgment, ruling, or order dismissing criminal charges in the district court was in error, it must reinstate the charges and remand the matter to district court for further proceedings. The defendant may appeal this order to the appellate division as in the case of other orders of the superior court, including by an interlocutory appeal if the defendant, or his attorney, certifies to the superior court judge who entered the order that the appeal is not taken for the purpose of delay and if the judge finds the cause is appropriately justiciable in the appellate division as an interlocutory matter.

(e) If the superior court finds that the order of the district court was correct, it must enter an order affirming the judgment of the district court. The State may appeal the order of the superior court to the appellate division upon certificate by the district attorney to the judge who affirmed the judgment that the appeal is not taken for the purpose of delay. (1977, c. 711, s. 1; 1987, c. 398.)