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Empirical Study on the Issue of Blank Appeals by Defendants Pleading Guilty:Based on an Analysis of 164 Cases Nationwide

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Abstract

Since the wide implementation of the leniency system for guilty pleas, it has become common for defendants who have pleaded guilty to appeal on grounds such as "excessive sentencing" in an attempt to serve sentences locally or seek further mitigation. The blank appeals reflect a significant value conflict between fairness and efficiency, which is particularly pronounced in cases involving leniency due to guilty pleas. Judicial practice shows differing attitudes between prosecutorial and judicial authorities, and even within these systems, regarding the handling of blank appeals by defendants who have entered guilty pleas. This study will examine a sample of second-instance criminal cases involving appeals by such defendants nationwide, aiming to reveal the current state of judicial practice and provide data to support strategies for addressing blank appeals in guilty plea cases.

Keywords: guilty plea; blank appeal; sample analysis; prosecutorial appeal

1. Sample selection

This article uses "leniency for pleading guilty and accepting punishment" and "appeal" as key words, "criminal" as the cause of action and case type, "second instance" as the trial procedure, and "September 1, 2019 to March 1, 2024" as the trial date. Searching for public judgment cases in Wolters Kluos advance database, a total of 4,098 search results were obtained. It covers 31 administrative divisions in mainland China (except Hong Kong, Macao and Taiwan Province). In order to screen mature samples as widely as possible, the starting date of this data search is the next month after the

Supreme Peoples Procuratorate proposed the goal of increasing the application rate of the leniency system for pleading guilty and accepting punishment to 70%. Considering that the retrieval time span is large, the retrieval scope covers a wide range, and the workload of specific case statistics is large, this paper plans to select 200 cases from the above case database as analysis samples by combining multi-segment sampling and systematic sampling.¹

After manual screening, the appeal case in which the defendant pleaded guilty and accepted punishment in the second instance was excluded; Although the defendant pleaded guilty and accepted punishment at the review and prosecution stage, the leniency system of pleading guilty and accepting punishment was not applied in the first instance due to reasons such as confession and punishment, failure to refund dirty compensation, and failure to confess truthfully; After the defendant pleaded guilty and accepted punishment, a total of 153 cases were appealed against the part of the incidental civil lawsuit. It still needs to be noted that, in view of the objective fact that not all judgment documents are published on the Internet, it is difficult to achieve complete accuracy in the data statistics of this empirical study. However, overall, this article will analyze the data of guilty pleas and punishment appeals nationwide, and examine the problem of blank appeals by defendants who plead guilty and accept punishment.

2. Blank appeal rate of defendants pleading guilty and accepting punishment

(1) Definition of blank appeal

Blank appeal refers to the case where there is no substantive reason to appeal, that is, the defendant who pleaded guilty and accepted punishment in the first instance filed an appeal on the grounds of "excessive sentence" in order to "stay in prison" or "ask for lightness again", but there was no substantive reason. Among them, the detention appeal means that the defendant has no substantive objection to the conclusion of the first-instance judgment. The appeal is to use the trial period of the second instance and the principle of no additional punishment on appeal to extend the detention trial period without increasing the punishment, so that the remaining sentence after the detention period is offset against the sentence can meet the conditions of staying in the detention center to serve his sentence, so as to achieve the purpose of evading prison labor and considering his family. Speculative appeal refers to the fact that the defendant objects to the sentencing after the court of first instance makes a judgment based on the sentencing recommendation. In fact, he is lucky about the principle of no additional punishment on appeal, and attempts to protect the defendants

¹ First of all, according to the random selection of 10 administrative divisions from 31 administrative divisions (the 31 administrative divisions are sorted according to the number of cases, and the serial numbers are assigned 1-31, and the random sampling applet is used to randomly select 10 with 31 as the total number), including Guangdong, Shandong, Zhejiang, Liaoning, Anhui, Jiangxi, Hunan, Henan, Jilin and Tianjin. Secondly, taking the above results as screening conditions, it is obtained that the case search results are 1,908, including 427 judgments and 1,479 rulings, and 58 judgments and 142 rulings are to be selected proportionally. Finally, the cases are sorted by correlation, and a systematic sampling method is adopted. The sampling interval of judgments is about 7, and the sampling interval of rulings is about 10.

lenient benefits from pleading guilty and accepting punishment, and further seeks the possibility of a lighter or mitigated punishment when the principle of no additional punishment on appeal is obtained.²³

According to the grounds for appeal recorded in the judgment documents, combined with the conviction and sentencing standards and the basis of the second-instance judgment, the grounds for appeal of the defendant who pleads guilty and accepts punishment can be summarized into four categories: error in fact finding, error in law application, illegal procedure, and excessive sentencing. The overall situation is as follows as shown in Table 1. It should be noted that since the defendant appealing in the case of pleading guilty and accepting punishment is not unique, and the defendants reasons for appeal are not unique, the total number of reasons for appeal should be greater than 153. According to statistics, there are 4 cases where two defendants who plead guilty and accept punishment have different appeal requests in the same case, and 6 cases where defendants who plead guilty and accept punishment have different appeal reasons in the same case, including the combination of procedural violations and errors in fact finding, involuntary The combination of confession and punishment and excessive sentencing, etc., so there are 163 grounds for appeal in total.

Type of grounds of appeal ⁴	Specific grounds for appeal	Number of cases/piece	Proportion/%
Error in finding facts	Wrong finding of facts and insufficient evidence	14	10.43
	Does not constitute a joint crime	2	
	Minor circumstances do not constitute a crime	1	
Wrong application of law	Error in determining the charge	3	6.13
	Error in determining the amount of crime	7	
Procedural violations	Procedural flaws	4	6.13
	Defendant pleaded guilty and	6	

² See Dong Kun: "Research on the Issue of Detention Appeal in Cases of Pleading Guilty and Accepting Punishment Leniency", in "Inner Mongolia Social Sciences (Chinese Edition)", Issue 3, 2019: 118.

³ See Bu Yangyang: "On the relationship between the right to appeal and the right to protest under the leniency system for pleading guilty and accepting punishment", published in "Law Journal", Issue 4, 2021: 122.

⁴ Considering that the lawyer had not yet expressed his representative opinion when the defendant appealed, only the reasons for appeal written in the defendants appeal were used as the judgment materials.

	accepted punishment involuntarily		
Improper sentencing	Only the sentence is too heavy	54	77.30
	Beyond the scope of sentencing recommendations	7	
	Failure to identify or wrongly identify sentencing circumstances ⁵	40	
	To serve a sentence in detention	14	
	Change the sentence to suspended sentence due to new facts and reasons	11	
Total		163	100

Table 1

Among them, the appeals of error in fact finding include unclear facts, insufficient evidence, not constituting a joint crime, and minor circumstances that do not constitute a crime, with a total of 17 cases, accounting for 10.43%; Appeals of improper application of the law include wrong identification of crimes and wrong identification of crime amount, with a total of 10 cases, accounting for 6.13%; Appeals for procedural violations include flaws in investigation, examination and prosecution, trial and other procedures, as well as involuntary cases of defendants pleading guilty and accepting punishment, such as ignorance of the defendant, non-compliance of pleading guilty and accepting punishment, coercion of pleading guilty and accepting punishment, with a total of 10 cases, accounting for 6.13%; However, the appeals of excessive sentencing should have included cases without specific reasons for appeal and cases with specific reasons for appeal. The former refers to appeals only on the grounds of "excessive sentencing" or appeals without explaining reasons, with a total of 54 cases, accounting for 33.12%; The latter includes the situation that the first-instance judgment exceeds the sentencing recommendation on the grounds of "excessive sentencing", the first-instance judgment omits the sentencing circumstances, the defendant clearly indicates that he will stay in prison to serve his sentence, and new facts and new reasons appear after the first-instance judgment. Most of the new facts and new reasons are that the defendant gets the victims understanding, the community issues an evaluation opinion, and then requests to change the sentence to probation. The latter has a total of 72 cases, accounting for 44.17%. Judging from the proportion of grounds for appeal, the total proportion of appeals with excessive sentencing is 77.92%. It can be said that Excessive sentencing is the main reason for defendants to appeal in cases of pleading guilty

⁵ According to the statutory sentencing circumstances and discretionary sentencing circumstances, it includes the following circumstances: excessive defense, excessive avoidance of danger, suspension of crime, attempted crime, accomplice, coerced accomplice, surrender, confession, meritorious service, victims fault, first-time offender, occasional offender, return of stolen goods and compensation, obtaining understanding, pleading guilty and accepting punishment, etc.

and accepting punishment. Among them, the proportion of appeals filed only on the grounds of excessive sentencing is not

(2) Blank appeal rate

According to the definition of blank appeal, blank appeal mainly includes the "detention appeal" filed by the defendant in order to stay in prison to serve his sentence, and the "speculative appeal" in which the defendant uses the principle of no additional punishment on appeal to protect the lenient interests he has obtained and then seeks leniency again. Therefore, the blank appeal includes not only the situation where the defendant clearly stated that he would stay in the prison to serve his sentence in the specific reason for appeal, but also the "potential black number" of the defendants appeal in the prison without the specific reason for appeal and the realistic possibility of speculative appeal. First of all, the situation in which the defendant clearly stated that he wanted to stay in the prison to serve his sentence refers to the situation in which the defendant clearly stated that he wanted to stay in the prison to serve his sentence in the second-instance judges arraignment, the second-instance judges arraignment and the second-instance trial, and the defender clearly stated that the defendant appealed to stay in the prison to serve his sentence, totaling 14 cases. Secondly, the defendant only filed an appeal on the grounds that the sentencing was too heavy. The procuratorate believed that the defendants appeal without any change in evidence after getting lenient treatment from the application of the system of pleading guilty and accepting punishment was an estoppel of the system of pleading guilty and accepting punishment, and the lenient system of pleading guilty and accepting punishment was no longer applicable. There were 27 protests on the grounds that the sentencing in the first instance was abnormally light. Speculative appeal refers to the cases in which the defendant applied to withdraw the appeal, totaling 17 cases. What needs to be explained here is that although the procuratorial organs protest makes the courts judgment may not be restricted by the principle of no additional punishment on appeal, but there is also the possibility of retaliatory protest when the procuratorial organ protests against the appeal of the defendant who pleads guilty and accepts punishment. Therefore, it cannot be judged solely by whether the procuratorial organ protests to judge that the defendant who pleads guilty and accepts punishment is only based on excessive sentencing. An appeal on the grounds is a speculative appeal. In essence, speculative appeals are based on the speculative psychology of the defendant who pleads guilty and accepts punishment. The logical premise of this speculative psychology is that the lenient benefits that the defendant who pleads guilty and accepts punishment has obtained can be protected by the principle of no additional punishment in appeal and will not be withdrawn. When the procuratorial organ lodges a protest, the possibility of ensuring that the lenient benefit will not be recovered is greatly reduced, and the suddenly expanded litigation risk will make the speculative defendant apply to withdraw the appeal. Therefore, the data of speculative appeal is judged to be more rigorous and reliable based on the protest behavior of the procuratorial organ and the defendants application to withdraw the appeal.

Finally, the "potential black number" of the defendants appeal refers to the situation that the court of first instance sentences a penalty of less than one years fixed-term imprisonment. After all, after deducting the detention period and starting the second-instance procedure, the remaining sentence is closer to the conditions for execution by the detention center. Of course, in appeals based solely on excessive sentences, counting the "potential black number" of appeals left by the defendant should be the number of speculative appeals excluded. Later, a total of 15 pieces were carried out. In summary, the number of blank appeals is conservatively estimated at 46, with a blank appeal rate of 28.22⁶

3. Judicial response to the blank appeal of the defendant who pleaded guilty and accepted punishment

(1) Protest by procuratorial organs

According to the provisions of Article 584 of the Criminal Procedure Rules of the Peoples Procuratorate, if the original procuratorial organ believes that the first-instance judgment of the peoples court at the same level has legal supervision matters such as errors in fact determination, errors in law application, obviously improper sentencing, serious violations of procedures, etc., it shall lodge a protest. Although there is no explicit provision in laws and regulations, it has become a common practice in judicial practice that the original procuratorial organ lodged a protest after the defendant pleaded guilty and pleaded guilty. Empirical data shows that the original procuratorial organ has filed a total of 77 cases of protest, and the reasons for protest include the following two categories: First, the original procuratorial organ believes that the leniency system for pleading guilty and accepting punishment is no longer applicable after the defendant who pleaded guilty and accepted punishment appeals, so the first-instance judgment sentenced abnormally light, and then filed a protest, totaling 74 cases; Second, the original procuratorial organ believed that the first-instance judgment had legal supervision matters such as errors in fact determination, errors in law application, obviously improper sentencing, and serious violations of procedures, and then filed a protest, totaling 3 cases, see Table 2.

In addition, according to Article 589 of the Criminal Procedure Rules of the Peoples Procuratorate, in cases where the procuratorial organ at the next higher level appears in court to support the protest, it can either fully support the protest reasons of the original procuratorial organ, or supplement or change the protest reasons of the original procuratorial organ, or withdraw the protest to the peoples court at the same level without supporting the protest reasons of the original procuratorial organ, which means that there are different judgments between the superior and subordinate within the procuratorial organ on the protest situation of the same case. Among the 77 cases in which the above-mentioned former procuratorial organs filed protests, 75 cases in which the procuratorial organs at the next higher level appeared in court to support the protest; In two cases,

⁶ See Min Fengjin: "Why Appeal for Pleading Guilty and Accepting Punishment: An Empirical Investigation from the Perspective of Detention and Serving a Sentence", published in "Hubei Social Sciences", Issue 4, 2019: 128.

the original procuratorial organ filed a protest on the grounds that the leniency system for pleading guilty and accepting punishment was no longer applicable. The procuratorial organ at the next higher level believed that the protest was improper, and the conclusion that the defendant no longer pleaded guilty and accepted punishment could not be inevitably deduced from the act of appeal, and the peoples court at the same level applied to withdraw the protest; Among the 75 cases in which the procuratorial organ at the next higher level appeared in court to support the protest, especially among the 72 cases in which the original procuratorial organ filed a protest because the leniency system for pleading guilty and accepting punishment was no longer applicable, there were 4 cases in which the procuratorial organ at the next higher level supported the protest but supplemented or changed the reasons for the protest.⁷

Serial number	Case No.	Grounds for Appeal	Reasons for protest	Referee results and reasons
1	(2020) Lu 02 Xing Zhong No. 69	Wrong charge	It should constitute the crime of extortion, and the original judgment is wrong.	Commute the charge and reduce the sentence.
2	(2020) Zhejiang 07 Xingzhong No. 209	Minor plot	No sentencing recommendation was adopted, no similar cases were sentenced in the same way, and the original sentence was abnormally heavy.	The appeal and protest were rejected and the original judgment was upheld. The reasons are as follows: the court of first instance has issued a sentencing recommendation adjustment letter to the original procuratorial organ, but it has not adjusted the sentencing recommendation, and the sentencing of the original trial is appropriate.
3	(2019) Liao 04	Sentence changed	The court of first instance should apply probation to	The protest and appeal were rejected and the original

⁷ Article 589 Paragraphs 1, 2 and 4: If the peoples procuratorate at the next higher level thinks that the protest is correct against a case in which the peoples procuratorate at a lower level lodges a protest in accordance with the second-instance procedure, it shall support the protest. If the peoples procuratorate at the next higher level thinks that the protest is improper, it shall listen to the opinions of the peoples procuratorate at the lower level. After listening to the opinions, if the protest is still considered improper, it shall withdraw the protest to the peoples court at the same level and notify the peoples procuratorate at the lower level. If the peoples procuratorate at the next higher level supports or partially supports the protest opinions, it may change or supplement the reasons for the protest, timely prepare a letter of opinions supporting the protest, and notify the peoples procuratorate that filed the protest.

	Xingzhong No. 276	to suspended sentence	the defendants abnormally heavy sentence.	judgment was upheld. The reasons are as follows: comprehensive and sufficient consideration is given in sentencing, and there is nothing improper in the sentence imposed.
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Table 2

(2) Judgment of the Court of Second Instance

As among the 153 appeals cases of plea and punishment, there were 4 cases where different defendants had different reasons for appeal in the same case. After inspection, the procuratorate did not file a protest, and the results of the second-instance judgment were to reject the appeal and uphold the original judgment. Therefore, the count of the judgment results of the court of second instance will be added by 4 cases to the sample number of appeals of guilty pleas and punishment, totaling 157 cases. After counting the results of the second-instance judgment of the above-mentioned appeal cases of guilty plea and punishment, it was found that a total of 110 cases were ruled by the court of second instance to uphold the original judgment, with a maintenance rate of 70.51%; There were 45 cases changed by the court of second instance, of which 26 cases were aggravated, 18 cases were mitigated, and only 1 case was changed; The court of second instance ruled that two cases were remanded for retrial. The reason for appeal was that the facts of the case were unclear and the evidence was insufficient. See Table 3 for details.⁸

Result of the second instance judgment	Number of cases/piece	Status of protest by the procuratorate	Withdrawal of appeal by the defendant ⁹	Withdrawal of protest by the procuratorate
Uphold the original judgment	110	38 cases protested because the leniency system for pleading guilty and accepting punishment was no longer applicable; 2 protests due to legal supervision	26 Withdrawn	5 Withdrawal ¹⁰
Remand for retrial	2	1 case protested because the leniency system for pleading guilty	0 Withdrawn	0 Withdrawn

⁸ See (2021) Jin 02 Xing Zhong No. 215 Criminal Ruling and (2021) Lu 09 Xing Zhong No. 62 Criminal Ruling

⁹ The defendant withdrew his appeal because the original procuratorial organ filed a protest because the leniency system for pleading guilty and accepting punishment was no longer applicable

¹⁰ Three of them were withdrawn because the defendant withdrew his appeal, and only two were withdrawn because the higher procuratorate did not support the protest

		and accepting punishment was no longer applicable		
Sentence changed and aggravated	26	25 cases protested because the leniency system for pleading guilty and accepting punishment was no longer applicable	7 Withdrawal	0 Withdrawn
Reduction of sentence	18	9 cases protested because the leniency system for pleading guilty and accepting punishment was no longer applicable; 1 protest due to legal supervision	1 Withdrawal	0 Withdrawn
Change the charge	1	1 case protested because the leniency system for pleading guilty and accepting punishment was no longer applicable	0 Withdrawn	0 Withdrawn
Total	157	77 Protest	34 Withdrawn	5 Withdrawal

Table 3

(3) Practical attitude towards blank appeal

1. Procuratorial organ protest mode. Except for a few cases where there are legal supervision matters, the main reason why the original procuratorial organ filed a protest was that it believed that the appeal of the defendant who pleaded guilty and accepted punishment caused the original trial to no longer apply guilty plea and accepted punishment, and the sentencing was abnormally heavy, with a total of 70 cases, accounting for 90.90% of the cases in which the procuratorial organ filed a protest. Although there are also a few higher-level procuratorial organs who do not recognize the original procuratorial organs inference that the appeal of the defendant who pleaded guilty and accepted punishment is equivalent to the original trial, and do not support the protest, the vast majority of higher-level procuratorial organs support the original procuratorial organs protest to deter the blank appeal of the defendant who pleaded guilty and accepted punishment, with a support rate of 97.14%.

2. Collaborative mode of legal inspection. Many courts of second instance (23/70) recognize that the defendants appeal of pleading guilty and accepting punishment is equivalent to the inference that pleading guilty and accepting punishment is no longer applicable to the original trial. When the procuratorial organ files a protest, it can get rid of the shackles of the principle of no additional punishment on appeal and change the sentence to increase the punishment. Even in order to prevent the defendant who pleaded guilty and pleaded guilty from appealing at the last minute of the appeal period, the court of first instance specially served the first-instance judgment documents to the defendant who pleaded guilty and pleaded guilty and then to the procuratorial organ, so as to ensure

that the appeal period expires before the protest period, so that the procuratorial organ has absolute initiative on whether to protest or not.¹¹

To sum up, the problem of blank appeals for defendants who plead guilty and accept punishment accounts for a large proportion in practice. Its harm will not only degrade the efficiency value of the leniency system for pleading guilty and accepting punishment, but also lead to a waste of judicial resources caused by the idling of the appeal trial procedure. It will also cause academic circles to question the legality of the protest model of procuratorial organs. Therefore, regarding the blank appeal of defendants who plead guilty and accept punishment, the handling mode independently explored by judicial organs is not the best solution. The conflict between the criminal appeal system and the leniency system of pleading guilty and accepting punishment should be examined from the legal system level, and it should be dealt with by strengthening legislative supply.

¹¹ Li Xuesong learned about the practice when he went to w City of h Province in November 2017 to carry out the investigation on the "Pilot Reform of the leniency system for guilty pleas and punishment in criminal cases". See Li Xuesong: "From Empirical Facts to Standardized Research and Judgment: Where to Expedited Appeal?", in *Journal of the National Prosecutors College*, Issue 2, 2021: 127.