JUDGMENTS, EXECUTION THEREOF

631.40 JUDGMENT ON CONVICTION, JUDGMENT ROLL

Where the judgment roll fully complied with section 631.40, and where the information filed as part thereof disclosed the nature and extent of and all other essential information with reference to relator's three prior convictions, the relator was not lawfully detained because the judgment itself did not set forth the nature of such prior convictions, but referred to them only as "three prior convictions." State ex rel v Utecht, 230 M 582, 43 NW(2d) 258.

The trial court in pronouncing sentence must state the nature of the offense for which the prisoner has been convicted; but a description of the crime in the judgment is generally sufficient if, in connection with the record, it affords the defendant information sufficient to protect him against future prosecutions for the same offense. State ex rel v Utecht, 231 M 339, 43 NW(2d) 258.

Where the prisoner was placed in jail preliminary to his trial on Nov. 29, and thereafter convicted on Dec. 30, and thereafter sentenced on Jan. 21 of the following year, the judge may issue an order on May 18, 1953, changing the beginning of the sentence from Dec. 30 as stated in the original sentence, to Nov. 29, where it was the evident intention to give the prisoner credit on his term for the amount of time spent in jail preliminary to the date of the sentence. OAG June 19, 1953 (341-K-2).

Except as otherwise provided by statute a court may not change or modify a valid sentence after the court term at which the sentence was imposed has expired. OAG Aug. 24, 1953 (341-K-9).

631.42 FORM OF SENTENCE TO STATE PRISON

Due process in the sentencing of a criminal; right of offender to be informed of pre-sentence information in open court. 34 MLR 470.

Re-sentence without credit for time served; unequal protection of the law; including the void sentence doctrine used and the need for legislation. 35 MLR 239.

Right to presence of counsel at time of the verdict and sentencing. 35 MLR 300.

The court, in sentencing a prisoner to a reformatory, may give the prisoner credit for time spent in the county jail while awaiting sentence. OAG Sept. 23, 1947 (341-K-10).

A prisoner sentenced to a five-year term in the state penitentiary, whose sentence is stayed and who is sent to the workhouse for one year and thereafter placed on probation, should be given credit for the one year spent in the workhouse on his five-year sentence. OAG Sept. 30, 1948 (341-K-10).

CHAPTER 632

NEW TRIALS, APPEALS, WRITS OF ERROR

632.01 REMOVAL TO SUPREME COURT; APPEAL, WRIT OF ERROR

Appeals by the state in criminal cases; trial judge's decision after errorless trial is not subject to review. 34 MLR 344.

Effect of discovery of conclusive new evidence in a criminal case and after expiration of time limit on a motion for a new trial. 36 MLR 533.

Right of a parolee to a hearing upon revocation of commutation of sentence. 36 MLR 537.

A motion for a new trial in a criminal case must not only be noticed but must be heard by the trial court before the time to appeal from the judgment therein expires. State v Nobles, 234 M 38, 47 NW(2d) 473.

The United States constitution does not require a state to provide the expenses of an appeal for an indigent defendant in a criminal case, and the constitution and statutes of Minnesota neither compel nor authorize such procedure. State v Lorenz, 235 M 221, 50 NW(2d) 270.

Where, in a criminal action, defendant was convicted of the crime of murder in the second degree and the only ground which he presents for reversal of the sentence and judgment is that the court erred in refusing to allow him to exercise a peremptory challenge against jurors after ten of such jurors had been passed for cause and had been sworn, the claimed error was made in the course of the trial and was a part of the trial; and, in the absence of a bill of exceptions or a settled case, the appellate court cannot consider the question sought to be presented, since it was not properly before it for consideration. A settled case or bill of exceptions covers only the proceedings in court, and matters not occurring in court may be shown by the affidavit. State v Shannon, 236 M 102, 51 NW(2d) 824.

Certiorari as used in Minnesota is not the common law writ, but is a writ in the nature of certiorari. It is employed strictly in the nature of a writ of error or an appeal. Its legitimate office is to review and correct the decisions and the final determinations of inferior tribunals. Its office is not to restrain or prohibit but to annul. State ex rel v Ruegemer, ... M ....., 57 NW(2d) 153.

Appeal from a conviction in a prosecution under a village ordinance is handled in the district court by the village attorney. OAG Feb. 2, 1948 (772-A-5).

632.02 TRIAL OR SUPREME COURT JUDGE MAY STAY PROCEEDINGS NOTICE

Where a defendant who appealing from conviction filed a petition in the supreme court setting forth facts showing that he had ordered a transcript of the testimony in the case but that he had been unable to procure the cause of lack of time on the part of the court reporter and the petition set forth grounds on which defendant relied for reversal, and as such grounds presented a meritorious appeal further proceedings in the trial court were stayed including imposition of sentence and defendant was admitted to bail on filing a $5,000 recognizance. State v Wilson, 235 M 571, 50 NW(2d) 706.

632.03 WRIT OF ERROR; BY WHOM ALLOWED, WHEN A STAY

In an action for an accounting for funds allegedly embezzled by defendant employee, the burden was on the employer to produce evidence showing what funds came into the employee's possession. The employee's admission made in the course of an investigation rather than in negotiations for settlement was admissible in evidence in an action for accounting for funds allegedly embezzled by the defendant in the amount of $20,920.71 plus interest, but the evidence was insufficient to establish that $80,955.42 additional, was misappropriated. Physicians and Hospitals Supply Co. v Johnson, 231 M 548, 44 NW(2d) 224.

632.05 BILL OF EXCEPTIONS

A ruling or decision in the courts of a trial in a criminal case cannot be reviewed on appeal in the absence of a settled case or bill of exceptions. A settled case or bill of exceptions is confined to the proceedings in court. Any other matters not occurring in court must be shown by affidavit. State v Shannon, 236 M 102, 51 NW(2d) 824.

Where, in a criminal action, defendant was convicted of the crime of murder in the second degree and the only ground which he presents for reversal of the sentence and judgment is that the court erred in refusing to allow him to exercise a peremptory challenge against jurors after ten of such jurors had been passed for

cause and had been sworn. The claimed error was made in the course of the trial and was a part of the trial; and, in the absence of a bill of exceptions or a settled case, the appellate court cannot consider the question sought to be presented, since it was not properly before it for consideration. A settled case or bill of exceptions covers only the proceedings in court, and matters not occurring in court may be shown by the affidavit. State v Shannon, 236 M 102, 51 NW(2d) 824.

632.06 PROCEEDINGS IN SUPREME COURT

The trial court's supplementary instructions, given after the jury had inadvertently disclosed to the court that the jury stood seven to five for conviction, wherein the court urged the jurors not to take an obstinate stand but to discuss all points in the testimony in the spirit of fairness, and that if a "juror finds his judgment holds against the judgment of a majority of the jury" he should again review all the testimony submitted when coupled with further instructions that "no juror should feel that he had been coerced" was not prejudicial or coercive particularly in view of the fact that the jury remained out for an additional 27 hours thereafter before reaching an agreement. State v Doan, 225 M 193, 30 NW(2d) 540.

The appellate court upon appeal in considering whether the evidence supports conviction, must consider the facts proven in aspects favorable to the verdict. State v Ward, 225 M 208, 30 NW(2d) 349.

On appeal from a conviction, the reviewing court will take the most favorable view of the state's testimony of which it is reasonably susceptible and will assume that the jury believed the state's testimony and disbelieved that which contradicted it. State v Homme, 226 M 83, 32 NW(2d) 151.

Where the prosecution introduced evidence of other crimes in prosecution for forgery in the second degree and subsequent to conviction another person confessed that it was he and not the defendant who had committed the independent crime and that confession was controverted by the prosecution, defendant was entitled to a new trial. State v Bock, 229 M 449, 39 NW(2d) 887.

A criminal conviction will not be reversed for mere technical errors where the accused has not been prejudiced through impairment of some substantial right essential to a fair trial; and where the facts and circumstances disclosed by circumstantial evidence formed a complete chain which in the light of the evidence as a whole leads so directly to guilt of the accused as to exclude beyond any reasonable doubt any inference other than guilt, the verdict must stand. State v De Zeler, 230 M 39, 41 NW(2d) 313.

Admission of evidence of other crimes under exception to the general rule is within the discretion of the trial court. The reviewing court will not interfere except in cases of abuse of discretion. State v Gavle, 234 M 186, 48 NW(2d) 44.

A conviction sustained by reasonable evidence cannot be disturbed upon review. State v Lux, 235 M 181, 50 NW(2d) 290.

While the argument of a prosecuting attorney need not be entirely colorless, and may state conclusions and inferences which the human mind may reasonably draw from the facts in evidence, it should not include the attorney's own opinion, or the opinion of the state, as to the guilt of the defendant; nor should it include references to the amount of funds spent in investigation of the case; nor should it be argued in a prosecution for larceny, when the sole defense is a nontaking that a finding of not guilty would allow the defendant to keep the money. An argument containing such matter is so prejudicial that the defendant is entitled to a new trial. State v Gulbrandsen, ... M ..... 57 NW(2d) 419.

In a prosecution for rape the evidence presented sustained a finding that the crime had been committed. Not all cautionary instructions regarding an alibi as a defense are reversible error; but, if such instruction is given, extreme care must be exercised to the end that evidence tending to prove an alibi is given proper consideration by the jury. State v Wilson, ... M ....., 57 NW(2d) 412.

632.07 ADMISSION TO BAIL OR APPEARANCE BEFORE SUPREME COURT

HISTORY. RS 1851 c 129 s 221; 1852 Amend p 28 s 138; PS 1858 c 115 s 9; GS 1866 c 117 s 8; GS 1878 c 117 s 8; GS 1894 s 7392; RL 1905 s 5406; GS 1913 s 9248; 1919 c 95 s 1.

632.08 DEFENDANT COMMITTED, WHEN; COPY OF RECORD FILED

Where the prosecution introduced evidence of other crimes in prosecution for forgery in the second degree and subsequent to conviction another person confessed that it was he and not the defendant who had committed the independent crime and that confession was controverted by the prosecution, defendant was entitled to a new trial. State v Bock, 229 M 449, 39 NW(2d) 887.

632.10 CERTIFYING PROCEEDINGS, STAY

The trial court having overruled a demurrer to the information and bill of particulars and certified the questions, the supreme court accepts the facts set forth in the information and bill as true. State v Schaub, 231 M 512, 44 NW(2d) 61.

An order of the district court granting the motion of a defendant charged with the commission of a felony to quash an indictment is not subject to review by the supreme court on a writ of certiorari. The state has no right to appeal in a criminal case, and questions of law may not be certified to the supreme court without the consent of the defendant. The state may review a judgment quashing an indictment for an information, or sustaining a demurrer thereto, only when such power is expressly conferred by a constitutional or statutory provision. State v Ruegemer, ... M ....., 57 NW(2d) 153.

CHAPTER 633

IN JUSTICE COURT

633.01 JURISDICTION OF JUSTICES OF THE PEACE

HISTORY. RS 1851 c 69 s 165; PS 1858 c 59 s 179; GS 1866 c 65 s 130; GS 1878 c 65 s 139; GS 1894 s 5093; RL 1905 s 3999; 1905 c 104; 1907 c 234; GS 1913 s 7619.

St. Cloud justice of the peace has jurisdiction of a person for violation of an ordinance of any village located in Stearns county. OAG Feb. 28, 1950 (266-B-11).

In a village in Mower county having no municipal court the justices of the peace of the city of Austin and its municipal court have concurrent jurisdiction over all criminal cases within the county except in any municipality wherein there exists a municipal court. The city justices of the village in question have like jurisdiction and any justice of the peace in Mower county has jurisdiction to hear cases involving violation of any ordinance of the village in question for which violation and penalty is prescribed. OAG Sept. 24, 1952 (266-B-24).

Where a village does not have a municipal court, town justices of the peace have jurisdiction throughout the county to hear cases involving a violation of a village ordinance. OAG Dec. 8, 1952 (266-B-24).

The municipal court of the city of Winona, established by Special Laws 1885, Chapter 115, does not have the power in criminal cases to compel the attendance of witnesses outside of the county but within the state. OAG June 20, 1952 (306-B).

There is no general statutory penal provision defining disorderly conduct. Standing alone, a complaint cannot be brought in municipal court for a breach of the peace without specific reference to the commission of some other statutory offense. OAG Aug. 31, 1951 (605-B-18).