

**EASTERN CARIBBEAN SUPREME COURT
CRIMINAL PROCEDURE RULES**

**PRACTICE DIRECTION
No. 4 of 2014**

SENTENCE INDICATIONS

This Practice Direction is made pursuant to Rule 1.1 of the Criminal Procedure Rules 2008 and is applicable to indictable criminal offences in Saint Lucia.

1. PURPOSE

1.1 The purpose of this Practice Direction is to establish the procedure following the principles in *R v Goodyear [2005] EWCA Crim. 888*, for an indication by a judge, prior to the commencement of a trial or hearing in criminal proceedings, of a likely sentence a defendant might receive if he or she pleads guilty at that point in time.

2. CONTEXT

2.1 In this Practice Direction:

2.1.1 "court" means the High Court.

2.1.2 "Judge" means a judge of the Supreme Court and includes a person appointed to act in the office.

3. PROCEDURE

3.1 The court may give a sentence indication if a defendant who pleads guilty to an offence alleged in a charge, or any other specified offence, makes an application for such an indication.

3.2 An application for a sentence indication must be made in the practice form set out in the Schedule to this Practice Direction, no less than 7 days before the trial.

3.3 A sentence indication may relate to:

3.3.1 A sentence of a particular type;

3.3.2 A sentence of a particular type within a particular range or of a particular quantum;

3.3.3 A sentence that would not be imposed; or

3.3.4 A combination of sentences.

3.4 A sentence indication should be confined to the maximum sentence to be imposed if a plea of guilty were tendered at the stage of the proceedings at which the indication was sought. The judge should not indicate the maximum possible sentence following conviction after trial.

3.5 Subject to 3.6, the judge may grant a sentence indication if he or she is satisfied that the information available at that time is sufficient for that purpose.

3.6 Without limiting 3.5, the court shall have the following information before granting a sentence indication:

3.6.1 A summary of the facts on which the sentence indication is granted, agreed on by the prosecution and the defence; and

3.6.2 Information as to any previous conviction of the defendant.

3.7 The judge may request a pre-sentencing report to assist in granting a sentence indication.

3.8 Where the court proposes to grant a sentence indication, the court shall give both sides an opportunity to be heard on the matter. Where appropriate, the attorneys may provide references to the relevant statutory powers of the court, relevant sentencing guidelines and authorities, and such other assistance as the court may require.

3.9 The judge retains an unfettered discretion to refuse to give a sentence indication, with or without giving reasons for his or her refusal to do so.

3.10 The judge may also reserve his or her position until such time as he or she feels able to give an indication.

3.11 If a judge has refused to give an indication it remains open to the defendant to request a further indication at a later stage.

3.12 A defendant is not permitted to make a request for an indication of the different sentences that might be imposed if various different pleas were to be offered.

3.13 An indication should not be requested if there is uncertainty between the prosecution and defence about an acceptable plea to the charge or any factual basis relating to the plea. If there is a basis of plea agreed by the prosecution and defence, it must be reduced into writing and a copy provided to the judge. Any basis of plea will be subject to the approval of the court.

4. DEFENCE ATTORNEY

4.1 A defence attorney should not seek an indication without written, signed authority from the defendant that he or she wishes to seek an indication.

4.2 A defence attorney must inquire from the defendant whether he or she fully understands that:

- (a) he or she should not plead guilty unless he or she was guilty;
- (b) the indication reflects the situation at the time it is given only; and
- (c) the indication only relates to matters about which an indication was sought and other proceedings which may follow automatically will not be dispensed with.

5. GRANT OF SENTENCE INDICATION

5.1 A sentence indication shall be granted in open court with a full recording of the entire proceedings.

5.2 The prosecution and defence attorneys and the defendant must be present.

6. RECORD OF SENTENCE INDICATION

6.1 The court shall record a sentence indication.

7. SECOND OR SUBSEQUENT SENTENCE INDICATION

7.1 The court may grant a second or subsequent sentence indication if since the previous sentence indication, there has been a change in circumstances that is likely to materially affect the question of the appropriate sentence type or quantum.

8. DURATION OF SENTENCE INDICATION

8.1 A sentence indication has effect:

8.1.1 Until the close of the date specified by the court; or

8.1.2 If no date is specified, until the expiry of 5 working days after the date on which the sentence indication was granted.

8.2 If, after a reasonable opportunity to consider his or her position in light of the indication, the defendant does not plead guilty, the indication ceases to have effect.

9. PUBLICATION OF INFORMATION

9.1 A person shall not publish any information about any request for a sentence indication or any indication that has been granted until after the defendant has been sentenced or the charge has been dismissed.

10 NON-ADMISSIBILITY OF SENTENCE INDICATION IN PROCEEDINGS

10.1 The fact that a defendant made a request for a sentence indication is not admissible in evidence in any proceedings. Further any reference to the sentence indication hearing is not admissible in a subsequent trial.

11. BINDING EFFECT OF SENTENCE INDICATION

11.1 An indication, once given, is, save in exceptional circumstances, binding on the judge who gave it, and any other judge who becomes responsible for the case. In circumstances where a judge proposes to depart from a sentence indication this must only be done in a way that does not give rise to unfairness.

12. AFFECT OF SENTENCE INDICATION ON APPEAL

12.1 The defendant's entitlement to appeal against sentence will not be affected by the granting of a sentence indication by a judge.


13. PRACTICE FORMS

13.1 The Practice Forms are contained in the schedule to this Practice Direction.

14. EFFECTIVE DATE

14.1 This Practice Direction shall come into effect on the 1st day of March 2014.

Made this 30th day of January 2014


Dame Janice M. Pereira
Chief Justice

