

**EASTERN CARIBBEAN SUPREME COURT
CRIMINAL PROCEDURE RULES**

**PRACTICE DIRECTION
No. 1 of 2015**

EARLY GUILTY PLEA SCHEME

This Practice Direction is made pursuant to Rule 2.1 of the Criminal Procedure Rules 2015 and is applicable to indictable criminal offences in Saint Lucia.

1. PURPOSE

- 1.1 The objective of the Early Guilty Plea Scheme is to identify those cases where a defendant is likely to plead guilty and to expedite these cases to an Early Guilty Plea Hearing where sentencing can occur.
- 1.2 A defendant who pleads guilty at an Early Guilty Plea Hearing will qualify for the maximum appropriate sentence reduction. A defendant who pleads guilty at a later hearing is likely to attract lesser reductions in sentence (see paragraph 12 below).

2. CONTEXT

- 2.1 In this Practice Direction:

“court” means the High Court or Magistrate’s Court whichever is applicable in the context.

“judge” means a judge of the Supreme Court and includes a master of the Supreme Court and a person appointed to act in either office.

“Newton Hearing” means the procedure adopted where the defendant pleads guilty to an offence but there is a divergence between the prosecution and defence on the factual basis which would make a material difference to the sentence imposed, thereby

requiring that the judge resolve the dispute to ascertain the correct basis for sentence.

3. TIMING

- 3.1 All indictable matters are eligible for inclusion in the Early Guilty Plea Scheme. The Early Guilty Plea Scheme is designed to bring such cases before:
 - (a) The Magistrate's Court for an Initial Hearing where the case will be sent to the High Court for an early Sufficiency Hearing to be held within eight weeks or at such later time as the judge may direct.
 - (b) The High Court for an Early Guilty Plea Hearing at which arraignment and sentence will take place.
- 3.2 The Early Guilty Plea Scheme will apply to offences triable either way where the election is made to go by way of indictment.
- 3.3 The Early Guilty Plea Scheme allows the defence and prosecution to identify those cases where the defendant is likely to plead guilty and offers a credit on sentence if a guilty plea is offered.
- 3.4 The Early Guilty Plea Scheme encourages discussion between the Office of the Director of Public Prosecutions (ODPP) and the defendant and or his or her attorney before the Early Guilty Plea Hearing takes place where any issues such as basis of plea can be agreed.
- 3.5 An Early Guilty Plea Hearing may be sought by either the prosecution or the defence.

4. REQUEST BY OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS FOR MATTER TO BE PLACED ON EARLY GUILTY PLEA SCHEME

- 4.1 All cases will be reviewed by the ODPP to establish whether the strength of the case is such that the office believes an early plea of guilty may be appropriate.
- 4.2 After a case is reviewed by the ODPP in accordance with clause 4.1 a Notice will be sent out to the defendant indicating that his or her case has been identified to be listed on the Early Guilty Plea Scheme.
- 4.3 Once a case has been listed on the Early Guilty Plea Scheme, the ODPP will be required to make disclosure to the defendant or his or her attorney at least 14 days in advance of the first Sufficiency Hearing.

5. REQUEST BY DEFENCE FOR MATTER TO BE PLACED ON EARLY GUILTY PLEA SCHEME

- 5.1 In indictable cases the defendant or his attorney is at liberty at the Initial Hearing to make a request to be placed on the Early Guilty Plea Scheme, in the manner prescribed in Form 1 of the Schedule to this practice direction. The matter shall be immediately sent to the High Court for an early Sufficiency Hearing to be held within eight weeks of the Initial Hearing or at such later time as the judge may direct.
- 5.2 Where a case is committed to the High Court for sentence, an Early Guilty Plea Hearing will be fixed within twenty one working days thereafter or if not possible at the earliest available time on the court's schedule.
- 5.3 Where a case is sent to the High Court for an early Sufficiency Hearing under the Early Guilty Plea Scheme, notification will be

provided by the Magistrate to the High Court that this case has been identified for the Early Guilty Plea Scheme.

- 5.4 Where the defence requests an Early Guilty Plea Hearing in the Magistrate's Court and a pre-sentencing report (PSR) is either requested by the Defence or ordered by the court, an Early Guilty Plea Hearing will be fixed approximately eight weeks thereafter. Where the defence requests an Early Guilty Plea Hearing and the defendant is committed after the Sufficiency Hearing in the High Court, the judge may order a PSR and fix an Early Guilty Plea Hearing to take place within four weeks thereafter or at such later time as the judge may direct.

6. A PLEA OF GUILTY TO LESS THAN THE WHOLE INFORMATION/INDICTMENT OR TO A LESSER CHARGE

- 6.1 A defendant may plead guilty to some and not all of the charges brought. In such a case, the judge will consider whether that plea represents a proper plea on the basis of the facts set out by the papers.
- 6.2 In any proceedings where the judge is of the opinion that the course proposed by the prosecution or defence may lead to serious injustice, the proceedings may be adjourned to allow the prosecution and defence attorneys to discuss the judge's observations further in an attempt to resolve the issue.
- 6.3 A judge is not bound to accept a plea for a lesser offence. In such circumstances, the parties must abide by the decision of the judge.

7. A PLEA OF GUILTY UPON A BASIS OF PLEA AGREED BY THE PROSECUTION AND DEFENCE

- 7.1 A defendant may put forward a plea of guilty without accepting all of the facts as alleged by the prosecution. This basis of plea

may seek to limit the facts or the extent of the offending for which the defendant is to be sentenced.

- 7.2 A defendant who is unrepresented may make a request for representation to the Legal Aid Authority. The prosecution and defence are encouraged to reach an agreed basis of plea as to the factual basis on which the defendant will plead guilty.
- 7.3 The agreed basis of plea, is subject to the approval of the judge, who is not bound by any such agreement and is entitled of his or her own motion to insist that any evidence relevant to the facts in dispute (or upon which the judge requires further evidence for whatever reason) should be called. The judge will consider whether the agreed basis of plea:
- (a) adequately and appropriately reflects the evidence as disclosed on the charge;
 - (b) is fair; and
 - (c) whether it is in the interest of justice.
- 7.4 Any view formed by the prosecution on a proposed basis of plea is deemed to be conditional on the judge's acceptance of the basis of plea.
- 7.5 A judge is not entitled to reject a defendant's basis of plea in the absence of a *Newton Hearing* unless:
- (a) it is determined that the basis is manifestly false and as such does not merit examination by way of the calling of evidence; or
 - (b) alternatively the defendant declines the opportunity to engage in the process of the *Newton Hearing* whether by giving evidence on his or her own behalf or otherwise.

8. PROCEDURE TO BE APPLIED WHEN BASIS OF PLEA IS AGREED

- 8.1 Where the defendant admits that he or she is guilty, but disputes the basis of offending alleged by the prosecution, the prosecution may accept and agree to the defendant's account of the disputed facts or reject it in its entirety, or in part. If the prosecution accepts the defendant's basis of plea, it must ensure that the basis of plea is factually accurate and enables the sentencing judge to impose a sentence appropriate to reflect the justice of the case.
- 8.2 In resolving any disputed factual matters, the prosecution must consider its primary duty to the court and must not agree with or consent to an agreement which contains material factual disputes.
- 8.3 If the prosecution accepts the defendant's basis of plea, it must be:
- (a) reduced to writing in the manner prescribed in Form 2 of the Schedule to this practice direction;
 - (b) signed by the attorneys for both sides or if unrepresented, by the defendant; and
 - (c) made available to the judge as soon as possible prior to the hearing .
- 8.4 In order to assess whether the plea agreement is in the interest of justice, the judge shall be provided with full details of the plea agreement to allow him or her to understand the facts of the case and the history of the plea discussions. To assist the judge in deciding upon the appropriate sentence, he or she may be furnished with documents including:
- (a) the plea agreement;
 - (b) the sentencing submission(s); and
 - (c) relevant material provided by the defendant and the prosecution.

The parties should be prepared to provide additional material at the request of the judge.

- 8.5 An agreed basis of plea should not contain matters which are in dispute and any aspects which are not agreed must be clearly identified.
- 8.6 If the prosecution lacks the evidence to positively dispute the defendant's account, for example, where the defendant asserts a matter outside the knowledge of the prosecution, those assertions should not be agreed simply because the prosecution does not have evidence to contradict the defendant's assertions. In such a case, the prosecution should test the defendant's evidence and submissions by requesting a *Newton Hearing*.
- 8.7 If it is not possible for the parties to resolve a factual dispute when attempting to reach a plea agreement under this part, it is the responsibility of the prosecution to either consider whether the matter should proceed to trial, or invite the judge to hold a *Newton Hearing* as necessary.

9. A PLEA OF GUILTY WHERE THERE IS NO OR ONLY PARTIAL AGREEMENT BY THE PROSECUTION

- 9.1 Where the defendant pleads guilty, but disputes the basis of offending alleged by the prosecution and an agreed basis of plea has not been reached, the following procedure should be followed:
- (a) The defendant's basis of plea must be set out in writing, identifying what is in dispute and must be signed by the defendant;
 - (b) The prosecution must respond in writing setting out their alternative contentions and indicating whether or not they submit that a *Newton Hearing* is necessary;
 - (c) The judge may invite the parties to make representations about whether the dispute is material to sentence; and
 - (d) If the judge decides that it is a material dispute, he or she may invite such further representations or evidence as they may require and resolve the dispute in accordance with the principles of *R v Newton*.

- 9.2 The decision whether or not a *Newton Hearing* is required is one for the judge. When a decision is made not to hold a *Newton Hearing*, the judge shall indicate his or her reasons for this decision.
- 9.3 Where the disputed issue arises from facts which are within the exclusive knowledge of the defendant and the defendant is willing to give evidence in support of his case, the defence attorney should be prepared to call the defendant to testify. If the defendant is not willing to testify, and subject to any explanation which may be given, the judge may draw such inferences as appear appropriate.
- 9.4 Once the decision has been taken that there will be a *Newton Hearing*, evidence is called by the parties in the usual way and the criminal burden and standard of proof applies. Whatever view has been taken by the prosecution, the prosecutor should not leave the questioning to the judge, but should assist him or her by exploring the issues which they wish to have explored. The rules of evidence shall be followed as during a trial, and the judge should direct himself or herself appropriately as the tribunal of fact.

10. CASES COMMITTED FOR TRIAL

- 10.1 *Cases identified at Sufficiency Hearing as being suitable for Early Guilty Plea by the ODPP and the defence.*
- (a) The judge will commit the case to an Early Guilty Plea Hearing to the next available date after the date of the Sufficiency Hearing in both bail and custody cases.
 - (b) At the Sufficiency Hearing, the defence may make any representations about a PSR for sentencing purposes. A judge will decide whether to order a PSR having regard to the nature of the case. If a report is not ordered then the defence may make representations about the need for a report to the High Court, within seven days of the Sufficiency Hearing.

10.2 *Cases identified before or at Sufficiency Hearing by the ODPP but defendant is indecisive.*

- (a) In cases where there is indecisiveness by the defendant that an Early Guilty Plea Hearing is suitable, the judge may commit the matter to an Early Guilty Plea Hearing to be conducted at the next available date after the Sufficiency Hearing. The matter shall then be scheduled for a Case Management Conference (CMC).
- (b) The defence shall, within 15 days from the date of the Sufficiency Hearing, provide written notification to the High Court and the ODPP to either:
 - (i) request that the Early Guilty Plea Hearing be cancelled; or
 - (ii) state that a guilty plea will be entered at the Early Guilty Plea Hearing.
- (c) Any written notification for cancellation from the Early Guilty Plea Scheme must be in the manner prescribed in Form 3 of the Schedule to this practice direction, and should include that the defendant intends to enter a plea of not guilty. It is not appropriate that a PSR should be ordered in such cases.
- (d) The written notification by the defence that a guilty plea will be entered must:
 - (i) be accompanied by any representations about the need for a PSR.
 - (ii) state clearly to which offences the defendant intends to plead guilty. If a defendant pleads guilty other than on a 'full facts basis' a written basis of plea must accompany the written notification.
- (e) When the Early Guilty Plea is cancelled, the case will then be listed for a CMC on the due date.

10.3 *Cases identified by the defence after the Sufficiency Hearing.*

- (a) After the Sufficiency Hearing, a request to enter the Early Guilty Plea Scheme must be made by written notification no later than fifteen days from the date of the Sufficiency Hearing.
- (b) The written notification to enter the Early Guilty Plea Scheme after the Sufficiency Hearing should:
 - (i) be made to the High Court and copied to the ODPP;
 - (ii) be accompanied by any representations considered appropriate about the need for a PSR; and
 - (iii) state clearly to which offences the defendant intends to plead guilty.
- (c) If a defendant pleads guilty other than on a '*full facts basis*,' a written basis of plea must accompany the written notification.

10.4 *Cases not identified at Sufficiency Hearing as being suitable for an Early Guilty Plea hearing.*

- (a) The judge will commit cases which have not been identified as being suitable for an Early Guilty Plea Hearing for arraignment and trial in the High Court at the earliest available date after the Sufficiency Hearing.

11. EARLY GUILTY PLEA BUNDLE

- 11.1 Where a defendant requests, or following a notice by the ODPP a defendant accepts that a matter be placed on the Early Guilty Plea Scheme, the ODPP must, within twenty one days of being notified, prepare an Early Guilty Plea Bundle for disclosure to serve on both the court and the defence.
- 11.2 An Early Guilty Plea bundle should comprise of the following -
 - (a) A case summary;
 - (b) The victim's witness statement and personal impact statement if one is appropriate;
 - (c) A statement by the defendant if any;
 - (d) Statements of primary witnesses to fact e.g. eye witness statements, medical information;

- (e) Defendant's antecedence; and
 - (f) If appropriate the last and most recent PSR of the defendant, if one exists.
- 11.3 If a defendant has several charges, consideration should be given to dealing with all matters at the same time. This would ensure that there is a totality of sentence imposed, allowing the defendant to get full credit on all offences. This would also allow the defendant to know exactly where he or she is in relation to the term of imprisonment and ultimate release date.

12. SENTENCE REDUCTIONS

12.1 As a result of the introduction of the Early Guilty Plea Scheme, reductions in sentence for a guilty plea will be applied as follows:

(a) Any defendant who

- (i) does not indicate or request entry on the Early Guilty Plea Scheme at the Initial hearing or the Sufficiency Hearing ;
or
- (ii) cancels an Early Guilty Plea Hearing but pleads guilty at a later hearing;

will not receive the maximum credit for that plea, unless a successful submission is made that the Early Guilty Plea Hearing was not the first reasonable opportunity for the defendant to have entered a guilty plea.

(b) The first reasonable opportunity for a defendant to enter a guilty plea will include -

- (i) the indication of a guilty plea when the defendant is first charged;
- (ii) an indication by the defendant to enter a guilty plea at the Initial Hearing.

(c) In such cases, a reduction of one third in sentence may be applied. Cases that are identified for the Early Guilty Plea Scheme either at the Sufficiency Hearing or where an Early Guilty Plea Hearing is requested within twenty one days of the

Sufficiency Hearing in accordance with paragraph 10.3 above, will generally qualify for a one third reduction.

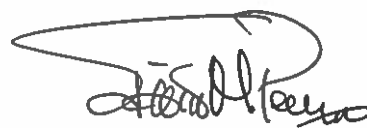
(d) A plea of guilty at the CMC will generally qualify for a reduction of 25%. Later pleas of guilty will attract less credit.

12.2 The court will have regard to the Sentence Indication practice direction issued by the Chief Justice.

13. EFFECTIVE DATE

13.1 This Practice Direction shall come into effect on the 1st day of September 2015.

Made this 22nd day of July 2015



**Dame Janice M. Pereira, DBE
Chief Justice**

