

SENTENCING GUIDELINES

OF THE EASTERN CARIBBEAN SUPREME COURT

INTRODUCTION

It is my distinct honour to introduce for use by the Courts of the Eastern Caribbean, these Sentencing Guidelines.

It is universally accepted that the rule of law is maintained and strengthened by securing public confidence in the transparency and consistency of judicial approach. One of the areas of greatest public interest and comment, sometimes uninformed, is sentencing.

Over the years, judiciaries across the Commonwealth have established sentencing guidelines to guide their courts in the approach they should take to sentencing. In the jurisdiction of the Eastern Caribbean, judges and magistrates are required to give reasons for the sentences they impose. These Sentencing Guidelines are intended to guide them in the process of determining and explaining sentences. They are also intended to achieve consistency of approach, but not uniformity of sentences. It is not intended that the guidelines will replace the discretion of the individual judge, master or magistrate in determining the appropriate sentence within the applicable range. In the case of some offences, the application of the guidelines may alter sentencing practice. In the case of serious drug offences, it is intended to do so.

The idea of Sentencing Guidelines for the Eastern Caribbean appeared at the onset to be a daunting task having regard to the disparity of laws relating to offences and the sentences prescribed across our nine Member States and Territories. At all stages a considerable amount of research was necessary. This required time and resources. Nevertheless, it was a worthwhile endeavour. To achieve this task, in June 2017, I established a Sentencing Advisory Committee (SAC). The SAC's membership is currently comprised of co-chairs, Her Ladyship the Hon. Mde. Gertel Thom, Justice of Appeal of the Eastern Caribbean Supreme Court and chair of the Judicial Education Institute (JEI), and His Lordship the Hon. Mr. Iain Morley, High Court Judge of the Eastern Caribbean Supreme Court, along with the following members: Her Ladyship the Hon. Mde. Alice Yorke-Soo Hon, Justice of Appeal of the Supreme Court of Trinidad and Tobago; Her Ladyship the Hon. Dame Maura McGowan, Judge of the High Court of England and Wales; His Lordship the Hon. Mr. Trevor Ward, High Court Judge of the Eastern Caribbean

Supreme Court; His Lordship the Hon. Mr. Shiraz Aziz, Judge of the High Court of the Turks and Caicos Islands; and Her Honour Ms. Tamara Gill, Chief Magistrate of Grenada. They were ably supported by Mrs. Sirah Abraham and Dr. Jason Haynes of the US Embassy for Barbados and the Eastern Caribbean and British High Commission in Barbados. It is undoubtedly due to the unwavering support and hard work of all these persons that we have made such progress on this project.

Following in-depth discussions and collaboration, the SAC caused the Draft Guidelines to be published, and invited comments from the judiciary, the magistracy, the public and private Bars, the University of the West Indies, the Social Services Department of the Public Service, Chambers of Commerce and the general public. This consultation was quite successful. Several submissions were received. These were given due consideration by the SAC and adjustments were made.

The Sentencing Guidelines require judges and magistrates to take specific steps when sentencing. These steps are outlined in Practice Direction 8B No. 2 of 2019. It is intended that the Guidelines be applied in all cases unless to do so would be contrary to the interest of justice. The reasoning process for any sentence must be given as well as any decision not to follow a Guideline. It is expected that judges and magistrates will produce structured and well-reasoned sentencing remarks and that this will become normal practice. The publication of those sentencing remarks will be encouraged. This, in turn, will allow the courts, legal practitioners, students of law and the public, to better understand the principles and practice of sentencing.

To this end, sensitisation workshops were conducted across all nine Member States and Territories. The sessions engaged the participation of not only judicial officers, but a broad cross-section of other stakeholders ranging from prison officers, to legal practitioners. This exercise was invaluable. It allowed a further testing of the proposed Guidelines, for further adjustments to be made and, importantly, the exercise doubled as a preparatory tool for the implementation of the Guidelines.

A permanent Sentencing Committee will be established shortly. This Committee will continue the work undertaken by the SAC. and prepare sentencing guidelines for other offences. The Committee will also regularly review and update the guidelines in keeping with legislative and

societal changes across the Member States and Territories. Where changes arise, they will be published in hardcopy and on the website of the Eastern Caribbean Supreme Court.

A considerable amount of work has been undertaken in preparing these Guidelines. I wish to express my sincere gratitude to co-chair, the Hon. Mr. Iain Morley for his focused and tireless efforts in guiding the process over the last two years. I also record profound gratitude to our chair of JEI, the Hon. Mde. Gertel Thom for all her assistance and support despite her extra workload with other JEI training initiatives. I am also grateful to the other members of the SAC, who provided invaluable input, assisted with training and generally gave of their time, experiences and knowledge. I also record my thanks to His Lordship the Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal of the Eastern Caribbean Supreme Court, who chaired the inaugural meeting of the SAC and otherwise provided input and assisted with our training sessions. I express my gratitude to Mr. Jayde Jean, Judicial Research Assistant, for the initial research done on the laws and sentencing practices across our Member States and Territories, which provided a useful starting point in carrying out this process. I am also grateful for the immense assistance given to me by Mrs. Michelle John-Theobalds, Chief Registrar of the Eastern Caribbean Supreme Court, who brought her drafting skills to bear on the Sentencing Guidelines Rules and Practice Directions, and her tireless efforts in shepherding them through the drafting agencies in the nine Member States and Territories. I also wish to thank the United States Embassy and the British High Commission for their financial contribution and invaluable support to this Sentencing Guidelines Project through Ms. Sirah Abraham. I thank her profoundly for her dedication and unwavering assistance throughout all stages of the process. I wish to thank the resident judges across the Member States and Territories who took the lead in organising and executing training workshops in their State/Territory as well as all those persons and organisations who made submissions to the SAC. Their contributions were invaluable and, if not fully reflected in our final product, were closely considered. Finally, I thank all those persons who, though not specifically mentioned, played a part and assisted in various ways in reaching this milestone.

I am confident that these Sentencing Guidelines will enhance the quality of criminal justice in the Eastern Caribbean States. This is just the beginning. This first set of guidelines will be monitored and reviewed as necessary by the permanent Sentencing Committee. Further

guidelines will be published in the future as the Committee continues this important work for the benefit of the people of our region.

Dame Janice Pereira DBE, LLD

Chief Justice

September, 2019.