

**EASTERN CARIBBEAN SUPREME COURT
(SENTENCING GUIDELINES) RULES 2019**

**PRACTICE DIRECTION 8A
NO. 1 OF 2019**

GENERAL SENTENCING PRINCIPLES

This Practice Direction is made pursuant to rule 7(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 and supplements rule 8(2).

INTRODUCTION

This Practice Direction highlights the importance of the court giving reasons when sentencing, the factors which the court should take into consideration and how these should be included as part of the sentencing remarks.

THE IMPORTANCE OF GIVING REASONS

All sentences must be clearly expressed and the reasoning given. Factors taken into consideration, whether as aggravating or mitigating, should be set out as part of the sentencing remarks. Any departure from the guidelines must be explained as part of the reasoning. In particular, the court must ensure that there is no element of double counting, meaning that a factor taken into account at one step should not then be taken into account again at a later step.

LIST OF RELEVANT FACTORS

Below is a non-exhaustive list of relevant factors to which the court must have regard.

1. *Credit for an early guilty plea*¹

An early guilty plea is in the public interest and should attract credit of one-third. It is the duty of defence counsel to tell an offender about this. In addition an offender should be told it by the court on first appearance. A late plea of guilty will usually attract significantly less credit. Reasons must be given if the court decides to give no or reduced credit.

2. *Sentence indication*

The court may give a formal indication of sentence prior to plea if sought by the defence. The relevant procedure is described in ECSC Practice Direction No. 2 of 2015². The court should only give this indication if it is appropriate in all the circumstances and the usual principles of sentencing must be applied.

3. *Totality*

3.1 The principle of totality requires a court, when sentencing for more than one offence, to pass a sentence that reflects the total criminality but which is just and proportionate so that the sentence does not exceed what is necessary to reflect the overall offending behaviour. This principle applies regardless of whether the offences form a single episode of criminality or two or more separate acts of criminality.

3.2 A sentencing court must, however, take care when applying the totality principle. Public confidence in the administration of justice requires the Court to explain clearly why it has taken a particular approach to multiple sentences.

¹ See the **Practice Direction No. 1 of 2015** at <https://www.eccourts.org/wp-content/uploads/2012/09/Early-Guilty-Plea-Scheme-PD-No.-1-of-2015.pdf>.

² See the **Practice Direction No. 2 of 2015** at <https://www.eccourts.org/wp-content/uploads/2012/09/Sentence-Indications-re-issue-PD-No.-2-of-2015.pdf>.

3.3 The court's first task is to consider the appropriate sentence for each individual offence applying the relevant guideline. Secondly, it must decide whether the sentences should be made to run concurrently or consecutively. Finally, the court will then assess the overall sentence for justness and proportionality, adjusting the sentence accordingly.

4. *Multiple Offending in One Count or Charge*

Sentences should be increased, even into a more serious category, to reflect the number of instances of offending when it is just to do so. The principle of totality should be considered.

5. *Concurrent and Consecutive sentences*

5.1 In cases where an offender is convicted for more than one offence tried at the same time: (i) where more than one offence is committed in the course of the same transaction or arises out of the same incident or facts, the general rule is that the sentences are to run concurrently with each other (e.g. assaulting a number of persons during a fight); and (ii) where the offences are of a similar nature and were committed over a short period of time against the same victim, sentences should normally be made to run concurrently (e.g. theft by an employee from an employer).

5.2 Where the offender is already serving a sentence for another offence, the court may pass a sentence of imprisonment for the subsequent offence to commence at the expiration of the previous sentence of imprisonment.

5.3 Where the offences were committed on separate occasions, or were committed while the offender was on bail for other offences for which he was eventually convicted, or in cases involving the use of a firearm, consecutive sentences are in principle appropriate.

5.4 Even in cases where consecutive sentences may be ordered, when sentencing for a series of similar offences the court should usually pass a substantial sentence for the most serious offence, with shorter concurrent sentences for the less serious ones.

5.5 A court shall have regard to the totality principle when passing consecutive sentences.

6. *Time served on remand*

All offenders are entitled to credit for the time they have spent in custody on remand for the offence. The court shall state the precise number of days to be credited. The prison authorities, prosecution and defence practitioners must ensure that the court is furnished with accurate information relating to the time spent in custody on remand.³

7. *Pre-sentence reports*

Whether any report is ordered and if any recommendation is followed remains a matter for the discretion of the court. Reasons should be given when a recommendation is or is not followed. If possible, the report must consider the impact of the offence on any victim.

8. *Prevalence*

If there is a high incidence of a particular offence then the court is entitled to take this into account. If it affects the sentence, then reasons must be given. Prevalence can be established by taking judicial notice of local circumstance if appropriate, or by receiving evidence from local police, prosecutors, probation officers, or other appropriate persons.

³ See **Gomes v The State [2015]** UKPC 8, at paragraph 12; **Shonovia Thomas v The Queen** BVIHCRA2010/0006; and **Romeo Da Costa Hall v The Queen** [2011] CCJ 6 (AJ).

9. *Good character*

As a general principle of sentencing good character is a mitigating factor affecting the offender and should result in a reduction of sentence. However, there may be circumstances where the combination of aggravating factors makes the offence so abhorrent that the good character of a defendant may be insufficient to merit a reduction in sentence.

10. *Bad character*

In most cases, bad character, if relevant, is an aggravating factor affecting the offender and may result in an increase in sentence.

11. *Voluntary intoxication*

Voluntary intoxication, whether by drink or drugs, is not a mitigating factor save in exceptional circumstances, and in many cases may be aggravating.

12. *Abuse of trust*

Abuse of trust is an aggravating factor, particularly in sexual offences and offences of dishonesty.

13. *Dangerousness*

In cases involving serious physical and/or sexual violence the court may find the offender to be 'dangerous'. The reasons for such a finding must be expressed in the sentencing remarks.

- a. Dangerousness is established by a finding that the defendant presents a significant ongoing risk of serious harm to any member of the public by the commission of future similar offences. "Serious harm" means death or serious personal injury, whether physical or psychological.
- b. The finding can only be made on the extreme facts of the current offence alone or on the combination of the current offence with previous serious offending.

- c. The court must seek a report on the issue but is not necessarily bound to follow any recommendation. Reasons for not following such a recommendation must be given as part of the sentence.
- d. If the offender is found to be 'dangerous' the court may impose a longer than commensurate sentence. If so, the court should specify the original sentence and additional term imposed to reflect the finding of dangerousness.
- e. Dangerousness should be considered at step 4 as part of the process of considering the principle of totality.

14. Assistance to the prosecuting authorities

If an offender has provided accurate and hitherto unknown information to the prosecuting authorities, enabling serious criminal activity to be stopped and criminals to be apprehended, then in accordance with the case of *Ong v Regina 2012*⁴ there may be a further reduction in sentence. Such information must be confirmed in evidence in camera by a senior police officer.

15. Mentally impaired offenders

Mental impairment⁵ is a relevant consideration if the offender has a diagnosed mental illness or a severe impairment. This must be supported by a report from a suitably qualified professional.

16. Delay

It may be a mitigating factor under step 2 warranting in appropriate circumstances some discount of a sentence, if there has been unreasonable delay through no fault of a defendant or his legal representation between the time of charge and of sentence.

⁴ See *Ong v Regina 2012 NZLR 258* at paragraph 13.

⁵ See *The Queen v Godwin Modeste*, GDAHCR2016/0064.

EFFECTIVE DATE

This Practice Direction will come into effect on the 1st day of October, 2019.

Made thisday of 2019.

Dame Janice M. Pereira, DBE

Chief Justice