

COMMONWEALTH OF DOMINICA

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2019

SUPREME COURT

S.I. 3

COMMONWEALTH OF DOMINICA

STATUTORY INSTRUMENT No. 3 of 2019

RULES

Made by the Chief Justice and two other Judges of the Supreme Court under section 17 of the Supreme Court Order, Chapter 4:01.

(Gazetted 29th August, 2019.)

1. (1) These Rules may be cited as the -

Short title and commencement.

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

(2) These Rules come into force on the 1st day of October, 2019.

2. In these Rules –

Interpretation.

“Court” means the Magistrates’ Court, the High Court and the Court of Appeal of the Eastern Caribbean Supreme Court;

“Court’s website” means the website of the Eastern Caribbean Supreme Court;

“grid” means the grid in a sentencing guideline at stage 3 of step 1;

“Judge” includes any judicial officer of the Court;

“Sentencing Advisory Committee” means the committee appointed under rule 9.

3. These Rules apply to all criminal proceedings conducted in the Court for which sentencing guidelines have been issued.

Application of Rules.

Sentencing guidelines.

4. (1) The Chief Justice and two other Judges of the Eastern Caribbean Supreme Court shall issue a sentencing guideline to outline the approach to be taken when a sentence is being determined for an offence.

(2)

(a) published in the Gazette;

(b) displayed and made available at each court office;

(c) posted on the Court's website.

(3) When sentencing for an offence for which a guideline has been issued, the court must apply the relevant sentencing guideline and sentence, unless to do so would not be in the interest of justice.

(4) If under subrule (3) the Judge does not apply the sentencing guideline, clear reasons for not doing so must be given when passing sentence.

Purpose of sentencing guidelines.

5. A sentencing guideline made under these Rules –

(a) is not intended to achieve uniformity in sentences;

(b) does not restrict judicial discretion;

(c) will achieve a uniform approach to sentencing practice;

(d) is intended to ensure greater consistency in sentences passed;

(e) is intended to promote greater transparency; and

(f) is intended to promote greater public confidence in the administration of criminal justice.

6. (1) A sentencing guideline issued in relation to an offence must be applied in all criminal matters in the Court.

Application of sentencing guidelines by the Court.

(2) The Court of Appeal, when considering an appeal from the lower Court in relation to sentence, must apply any relevant sentencing guideline which is in force.

(3) A sentencing guideline shall supersede guideline cases in respect of a particular offence.

(4) Prosecuting and defence counsel are under a duty to –

(a) be aware of any relevant guidelines;

(b) refer the Court to these guidelines; and

(c) assist in their application.

.....
.....
(a) where on the grid the offence falls; and

(b) which aggravating or mitigating factors apply to the offence and the offender.

(6) Prosecuting counsel must not recommend a particular sentence to the Court but may make an application for an ancillary order, and submissions as to whether the criteria for such an order is met.

7. (1) The Chief Justice may issue practice directions and practice guides under these Rules to supplement the Rules and for the purpose of assisting parties in relation to the practice and procedure to be followed.

Practice directions and practice guides.

(2) A practice direction and practice guide must be applied in conjunction with the Rules.

(3) A practice direction and practice guide must be –

(a) published in the Gazette;

(b) displayed and made available at each Court of-
fice; and

(c) posted on the Court’s website.

(4) The Court must comply with a practice direction or practice guide unless there is good reason for not doing so.

(5) Where the provisions of a practice direction or a practice guide conflict with these Rules, these Rules prevail.

Application of practice
directions.

8. (1) In determining sentence the Court must have regard to any relevant principles stated in a practice direction issued under these Rules.

(2) The Court must –

(a) ensure that all sentences are clearly expressed;

(b) state the reasons for its arrival at the final sen-
tence imposed; and

(c) be consistent with the relevant practice direction
issued on sentencing principles.

(3) In constructing a sentence the Court must –

(a) follow the steps identified in the relevant practice
direction issued; and

(b) identify these steps to the offender in public before the sentence is passed.

(4) In determining whether a suspended sentence is appropriate the Court must have regard to the principles as identified in the relevant practice direction issued in relation to the power of the Court to suspend a sentence.

(5) When sentencing a person below the age of 18, the Court must have regard to the principles as identified in the relevant practice direction issued.

9. (1) The Sentencing Advisory Committee will be responsible for the drafting of sentencing guidelines and will take into consideration –

Sentencing Advisory
Committee.

(a) the victims of crime, and

(b) the impact on the community;

when determining an appropriate sentencing guideline for an offence.

(2) The Sentencing Advisory Committee shall comprise of a minimum of seven persons appointed by the Chief Justice of whom –

(a) a minimum of four must be judicial officers of the Eastern Caribbean Supreme Court; and

(b) a minimum of two must be non-judicial members;

with the Chief Justice as the ex officio President.

(3) A sentencing guideline prepared by the Sentencing Advisory Committee will be published in draft to allow for public consultation, prior to being issued.

(4) The Sentencing Advisory Committee may revise or amend a sentencing guideline and give reasons for doing so.

Made this 16th day of August, 2019.

DAVIDSON KELVIN BAPTISTE
Chief Justice (Ag.)

MARIOMICHEL
Justice of Appeal

VIVIAN GEORGIS TAYLOR-ALEXANDER
High Court Judge

DOMINICA

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