

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

**PRACTICE DIRECTION 7E  
NO. 1 OF 2020**

**SENTENCING FOR THE OFFENCE OF MURDER**

This Practice Direction is made pursuant to rule 6(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 and supplements rule 7(1).

This Practice Direction is applicable to the Territory of Anguilla only.

**Introduction**

In order to promote consistency, sentencing to a custodial term for the offence of murder shall hereafter follow the approach below to be applied in the Member States and Territories falling under the jurisdiction of the Eastern Caribbean Supreme Court.

This Practice Direction may be cited as the *“Practice Direction on Sentencing for the Offence of Murder for the Eastern Caribbean Supreme Court”*.

**Interpretation**

1. In this Schedule –

*“Adult”* means a person aged 18 or over.

*“An act of terrorism”* for the purpose of this guidance means a death arising from:

- (i) an act of a person on behalf of, or in connection with, any organization which carries out activities directed towards the overthrowing or influencing by force or violence the lawful government of a state; or
- (ii) an act intended to raise in the public a fear of future and further indiscriminate violence against bystanders in a public place.

*“Child”* bears the meaning under the relevant domestic legislation.

*“Criminal gang”* means a group of three or more persons who share a criminal purpose.

*“Determinate sentence”* means a sentence fixed as to the amount of time to be spent imprisoned.

*“Whole life sentence”* means a sentence of imprisonment for the duration of the offender’s natural life.

### **Sentences for murder**

- 2. A conviction for the offence of murder may result in one of the following sentences:
  - a. Sentence of death;
  - b. A whole life sentence;
  - c. A determinate sentence;
  - d. Detention by the court where an offender has been found to be insane or suffering relevant mental illness; or
  - e. Detention at the court’s pleasure.

### **Sentence of death**

- 3. Sentence of death, where lawful for murder, may only be considered in cases:
  - a. Where the offender was aged 18 or over when he committed the offence;
  - b. Where there has been a conviction after trial;

- c. Which are 'the rarest of the rare';
- d. Which are 'the worst of the worst';
- e. Where there is no reasonable prospect of reform of the offender;
- f. Where the offender has been appropriately evaluated by a psychiatrist;
- g. Where the character of the offender and any other relevant circumstances are taken into account so far as possible as mitigation in the offender's favour;
- h. Which are compared with other murder cases and not with ordinary civilized behavior; and
- i. Where the object of punishment cannot be achieved by any means other than sentence of death.

### **Whole life sentence**

- 4. The appropriate starting point is a whole life sentence if:
  - a. the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high; and
  - b. the offender was aged 18 or over when he committed the offence.
  
- 5. Cases where the seriousness of the offence could be considered exceptionally high include:
  - a. the murder of two or more persons;
  - b. where the murder is associated with a series of serious criminal acts;
  - c. where there is a substantial degree of premeditation or planning;
  - d. the abduction of the victim;
  - e. a murder involving sexual or sadistic conduct;
  - f. a murder involving prolonged suffering or torture;
  - g. the murder of a police officer, emergency service worker, prison officer, judicial officer, prosecutor, health worker, teacher, community worker

or any other public official exercising public or community functions or as a political activist, or if the offence arose because of the victim's occupation or voluntary work;

- h. a murder relating to membership of a criminal gang;
- i. a murder which is an act of terrorism;
- j. a murder motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (e.g. people of a particular religion, race or ethnic origin, language, or sexual orientation or age or having a particular disability);
- k. a murder involving the actual or threatened use of explosives or chemical or biological agent;
- l. a deliberate killing for payment or gain (e.g. a contract killing, or for inheritance, or insurance payout);
- m. where the offender is assessed as likely to commit further offences of serious violence and is therefore a substantial danger to the community;
- n. a murder by an offender previously convicted of murder; or
- o. a murder by an offender who has a record for multiple previous convictions for serious offences of violence.

### **Determinate Sentence**

6. The appropriate starting point is a determinate sentence of 40 years, within a range of 30-50 years:

- a. In cases not falling in paragraph 3 or 4; or
- b. Where a case falls within paragraph 4:
  - i. but the court considers that the offence (or the combination of the offence and one or more offences associated with it), does not warrant a whole life sentence; and
  - ii. the offender was aged 18 or over when he committed the offence.

7. Cases that could fall within paragraph 6 include:
  - a. where the offender has pleaded guilty and would otherwise face a whole life term<sup>1</sup>;
  - b. a murder involving the use of a firearm;
  - c. a murder arising unplanned in the course of a felony (e.g. in a robbery or burglary);
  - d. a murder intended to obstruct or interfere with the course of justice;
  - e. a murder involving a lesser degree of sexual or sadistic conduct than referred to above; or
  - f. a murder in the context of a significant history of domestic violence.
  
8. If:
  - a. the offender was aged 18 or over at the time of the offence;
  - b. the case does not fall within paragraph 4(1) or 6(1), and
  - c. the offence falls within paragraph 9 below,  
the offence is normally to be regarded as sufficiently serious for the appropriate starting point to be a determinate sentence of 30 years, within a range of 20-40 years.
  
9. Cases that would normally fall within paragraph 8 are where the offender took a bladed weapon or blunt instrument to the scene intending to:
  - a. commit any offence; or
  - b. have it available to use as a weapon; and
  - c. used that weapon in committing the murder.

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<sup>1</sup> In such a circumstance, there would be no further discount on account of the guilty plea.

10. If the offender was aged 18 or over when he committed the offence and the case does not fall within paragraph 4, 6 or 8, the appropriate starting point is a determinate sentence of 25 years, within a range of 15-35 years.
11. If the offender was aged under 18 when the offence was committed, the appropriate starting point is a determinate sentence of 20 years, within a range of 10-30 years. If the sentence is 'detention at the court's pleasure', the court must set a minimum time to be served and then review the circumstance of the offender annually from the date of sentence.

### **Aggravating and mitigating factors**

12. Having chosen a starting point, the court should take into account any further aggravating or mitigating factors pertaining to the offence to the extent that it has not allowed for them in its choice of starting point. Care must be taken not to double-count.
13. Aggravating factors (separate from those mentioned in paragraphs 5 and 7) that may be relevant include:
  - a. a significant degree of planning or premeditation;
  - b. the victim was vulnerable because young or elderly or had a disability or because geographically isolated;
  - c. mental or physical suffering inflicted on the victim before death;
  - d. abuse of a position of trust or authority over the victim;
  - e. where the offence involved a great risk of death to another person or persons;
  - f. where the offence was an organized criminal activity;
  - g. where the offence occurred at the home of the victim or any other person;
  - h. where the offence was committed to conceal another offence;

- i. the use of duress or threats against another person to facilitate the commission of the offence;
- j. where the victim was providing a public service or performing a public duty;
- k. where the offence is committed in the presence of children;
- l. where the offence is committed at or near an educational institution;
- m. where the offence is committed in view of the public;
- n. where the offence is unprovoked;
- o. concealment, disposal, desecration, destruction or dismemberment of the body; or
- p. being on bail at the time of the murder.

**14.** Mitigating factors that may be relevant include:

- a. an intention to cause serious bodily harm rather than to kill;
- b. where the offender was acting under duress;
- c. where the offender does not have a record of previous convictions for personal violence;
- d. where the offender offered assistance to the authorities;
- e. where the offender suffered a mental disability which lowered his degree of culpability;
- f. where the offender was provoked;
- g. where the victim was the aggressor;
- h. a belief by the offender that the murder was an act of mercy;
- i. the age of the offender;
- j. where the offender was not aware of the full consequences of his action because of his age or disability;
- k. good prospects for rehabilitation;
- l. where the offender is unlikely to reoffend; or
- m. remorse.

### **Credit for plea**

15. Subject to paragraph 7(a), where the offender has pleaded guilty at the first practicable opportunity, he may receive a discount of up to one-third of any determinate sentence.

### **Time on remand**

16. Credit must be given for time spent on remand, to be calculated with precision<sup>2</sup>.

### **Parole**

17. Where appropriate, the court should declare the minimum term to be served before consideration for parole.

### **Effective Date**

This Practice Direction will come into effect on the 1<sup>st</sup> day of September, 2020.

Made this 4<sup>th</sup> day of August, 2020.

**Dame Janice M. Pereira, DBE**

**Chief Justice**

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<sup>2</sup> See the requirements for assessing time on remand in **Gomes v The State** 2015 UKPC 8, at para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen** 2011 CCJ 6.