



A Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court

Drugs and Firearms Offences

Re-Issue

12th April 2021

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019¹ and will deal with drugs offences (page 4), and firearms offences including and concerning ammunition (page 11).

The previous Sentencing Guidelines for drugs offences which came into effect on the 1st day of September, 2020 and for firearms offences which came into effect on the 1st day of September, 2020 are revoked and replaced by this compendium Sentencing Guideline.

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines² and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is

¹ Made pursuant to Rule 7(1) for the Territory of the Virgin Islands, Montserrat, Antigua and Barbuda, Saint Kitts and Nevis, Commonwealth of Dominica, Saint Lucia, Saint Vincent and the Grenadines and Grenada; and Made pursuant to Rule 8(1) for Anguilla.

² As at 12th April 2021.

only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.

It is required that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders³ whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

Step 4

Adjust the figure on assessing totality if sentencing for more than one offence.

Step 5

Give credit for time served on remand.

³ For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines No. 4 of 2019**.

Step 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

DRUGS

In the nine member states and territories of the ECSC there are different drugs offences, and there are often different maximum sentences. For the purposes of this guideline, the expression 'drugs offence' will be used to cover all types of trafficking, cultivation, and possession with an intent to supply, import or export, whether as conspiracy or a substantive offence.

CONSTRUCTING THE SENTENCE

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A drugs case requires an assessment of the quantity by weight of the drug involved (assuming 100% purity, with adjustment permitted for lower purity and/or higher strength, if known), and the role played by a defendant.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to determine the offence category based on quantity. This should include an assessment of the evidence.

Categories arising from quantity are as follows:

QUANTITY - Category 1

Cocaine - 20 kg or more

Cannabis - 400 kg or more

QUANTITY - Category 2

Cocaine - 5-20 kg

Cannabis – 50-400 kg

QUANTITY - Category 3

Cocaine – 100g–5 kg

Cannabis – 1-50 kg

QUANTITY - Category 4

Cocaine – up to 100 g

Cannabis – up to 1 kg

SECOND STAGE

The second stage is to determine the role played by the defendant with reference to the non-exhaustive lists of factors below. It is open to a court to find that a defendant falls between two roles.

LEADING ROLE

- Directing or organising
- Buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial gain
- Uses business as cover
- Abuses a position of trust

SIGNIFICANT ROLE

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward, especially if those involved are children
- Motivated by financial or other advantage, whether or not operating alone
- Some awareness and understanding of scale of operation
- Selling drugs to school children or in prison

LESSER ROLE

- Performs a limited function under direction (eg being a mule)
- Involved by pressure, coercion, intimidation
- Involvement through youth, naivety or exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- If trafficking drugs solely for personal use (considering reasonableness of account in all the circumstances)

THIRD STAGE

Having determined the quantity and role find the starting point by consulting the grid below – applicable for both cocaine and cannabis.

Maximum sentence is 'x'⁴.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

| QUANTITY | Leading Role - A | Significant Role - B | Lesser Role - C |
|-------------------|---|---|---|
| Category 1 | Starting point 65% x Range 50%-80% x | Starting point 50% x Range 35%-65% x | Starting point 35% x Range 20%-50% x |
| Category 2 | Starting point 50% x Range 35%-65% x | Starting point 35% x Range 20%-50% x | Starting point 20% x Range 10%-30% x |
| Category 3 | Starting point 35% x Range 20%-50% x | Starting point 20% x Range 10%-30% x | Starting point 10% x Non-custodial-20% x |
| Category 4 | Likely non-custodial (high level) | Likely non-custodial (medium level) | Likely non-custodial (low level) |

⁴ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation 'x' is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of offence

- Sophisticated nature of concealment
- Attempts to avoid detection
- Attempts to conceal or dispose of evidence
- Exposure of others to more than usual danger, for example drugs cut with harmful substances
- Presence of weapon

MITIGATING FACTORS of offence

- Lack of sophistication as to nature of concealment
- Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
- Dealing to support own habit

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender. These may include:

AGGRAVATING FACTORS of offender

- Previous convictions for drug offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health
- Genuine remorse
- If an addict, offender is taking steps towards rehabilitation
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁵

STEP 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable. Drugs and paraphernalia should be forfeited and destroyed. In addition, consideration should be given to the confiscation of vehicles, boats and other property used in the commission of the offence. It may be appropriate to commence an investigation into the proceeds of crime and/or civil recovery of assets.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

⁵ See **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.

FIREARMS

In the nine member states and territories of the ECSC there are different offences for the prohibited possession, carriage or use of firearms and ammunition, with different maximum sentences. For the purposes of this guideline, the expression 'firearm offence' will be used to cover all types of firearm and ammunition offences.

CONSTRUCTING THE SENTENCE

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A firearm case requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE may be demonstrated for example by the following:

- Causing injury or damage to property with a firearm
- Discharging a firearm to cause terror
- Threatening with a firearm to cause intimidation
- Showing a firearm to be assertive
- The number of firearms
- Dealing in firearms
- Quantities and types of ammunition

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Highest

- Causing or attempting injury with a firearm
- Discharging a firearm to cause terror
- Renting or supplying or dealing or trafficking in five or more firearms
- The firearm is particularly dangerous (eg is an assault rifle or submachine gun)

CONSEQUENCE - Category 2 – High

- There is more than one concealed firearm
- Renting or supplying or dealing or trafficking in less than five firearms
- Causing extensive damage to property with a firearm
- Carrying a firearm openly
- Presence of a firearm during the commission of an offence

CONSEQUENCE - Category 3 – Lesser

- The firearm is at all times concealed
- Ammunition not in a firearm
- None of categories 1 and 2 applies

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS – Level A - High

- Gang membership
- Group activity
- The firearm is associated with drugs supply
- The firearm contains more than two rounds
- The firearm has a round in the chamber
- More than 20 rounds of ammunition not in a firearm
- Any recovered ammunition which is prohibited and impermissible under any licence
- There is an intention to cause injury (which is not caused)
- The firearm is carried at or near a place of worship, educational institution, or substantial public gathering

SERIOUSNESS – Level B - Medium

- The firearm is an imitation and brandished
- The firearm though threatened remains concealed
- Recovered ammunition separately fits an associated recovered firearm
- More than 5 rounds of ammunition not in a firearm
- The firearm is carried in any other public place

SERIOUSNESS – Level C - Lesser

- The presence of a firearm not in a public place is unknown to others
- Ammunition is non-live (eg spent shell casing)
- None of the above levels A and B applies

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below⁶.

Maximum sentence is 'x'⁷.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

When sentencing for ammunition alone, the starting point will usually be at the bottom of the range.

| | Seriousness - Level A | Seriousness - Level B | Seriousness - Level C |
|-------------------------------------|---|---|---|
| Consequence - Category 1 | Starting point 75% x Range 60%-90% x | Starting point 65% x Range 50%-80% x | Starting point 50% x Range 35%-65% x |
| Consequence - Category 2 | Starting point 65% x Range 50%-80% x | Starting point 50% x Range 35%-65% x | Starting point 40% x Range 25%-55% x |
| Consequence - Category 3 | Starting point 50% x Range 35%-65% x | Starting point 40% x Range 25%-55% x | Starting point 30% x Non-custodial-45% x |

⁶ Where there is a mandatory minimum sentence, this may in appropriate cases be the starting point if it is greater than the starting point assessed under these guidelines.

⁷ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation 'x' is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Firearm is modified to make it more dangerous
- Being in a position of authority
- Steps taken to prevent the victim reporting
- Possession motivated by revenge
- Possession committed over sustained period of time
- Attempts to conceal/dispose of evidence
- The firearm is unrecovered and still at large

MITIGATING FACTORS of the offence

- Voluntary surrender of firearm and/or ammunition
- Genuine belief firearm did not require a licence (eg is an antique)
- Genuine mistaken belief item is not a firearm
- Possession as a result of coercion, intimidation or exploitation
- Serious medical condition if it helps to explain why the offence occurred

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for firearms offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁸.

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

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

EFFECTIVE DATE

This Sentencing Guideline will come into effect on the 12th day of April, 2021.

Made this 6th day of April, 2021.

Sgd.

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

Sgd.

**Mde Gertel Thom
Justice of Appeal**

Sgd.

**Mr. Iain Morley
High Court Judge**