

SENTENCING PRACTICE NOTE 2003

1. *Order of submissions*

The order of submissions will be at the direction of the judge who may require the Crown to go first. There will be no right of reply, save with special leave.
2. *Crown obligations*
 - 2.1 Where a summary of facts has not previously been read after the prisoner has pleaded guilty Crown counsel will read a summary of facts before submissions are made.
 - 2.2 A sentencing memorandum is to be filed and served two clear working days before the sentencing date (eg; by Tuesday for a Friday sentencing) to address any relevant issues, and in any event should include:
 - (a) The relevant purposes and principles of sentencing the Crown wishes to draw to the Court's attention in terms of sections 7 and 8 of the Sentencing Act 2002 (subsequent references are to that Act).
 - (b) The aggravating factors the Crown will emphasise, in terms of s9.
 - (c) The sentence(s) imposed on co-offenders (sentencing notes to be provided if available).
 - (d) The Crown view concerning the appropriate sentence range or tariff.
 - (e) Information to establish the prevalence of the offence either nationally or within the region.
 - (f) Whether a sentence of preventive detention or a minimum period of imprisonment is sought.
 - (g) Whether any supplementary orders are sought for reparation, forfeiture, or destruction of property.
 - (h) Where there is no obvious tariff case and where counsel intends to rely on a Court of Appeal decision or other sentencing decisions, the memorandum should have copies of those cases attached. Generally where a Court of Appeal guideline decision is available, references to other decisions will not be of assistance.

3. *Defence obligations*

- 3.1 Following a plea of guilty, if issue is taken with any aspect of the summary of facts which may affect the sentence likely to be imposed, defence counsel should advise the Crown of such dispute within two working days of the sentencing date being set. In such instances counsel should confer in an endeavour to resolve the dispute by amendment to or deletion from the summary. Failing resolution it may be necessary for evidence to be called before the sentencing judge in terms of s24. In such event counsel should forthwith advise the Registrar of the dispute so that hearing arrangements can be made if necessary.
- 3.2 Where suppression of name is to be sought defence counsel should advise the Crown at least 3 clear working days before the sentencing date, to enable Crown counsel to obtain the views of the complainant and other affected parties.
- 3.3 A memorandum should be filed and served two clear working days before sentencing, to address any relevant issues and in any event should include:
 - (a) The relevant purposes and principles of sentencing the defence wishes to draw to the Court's attention, in terms of sections 7 and 8.
 - (b) Mitigating factors the defence will emphasise, in terms of s9.
 - (c) Where counsel intends to rely upon sentencing decisions in other cases the procedure in para 2.2 (h) shall apply.
 - (d) If defence counsel intends to rely upon references or other written materials in mitigation the originals or copies of the materials should be annexed to the memorandum.
 - (e) If there is to be an application for leave to apply for Home Detention, that should be indicated. If there is to be an application for deferral of the sentence commencement, affidavit(s) setting out reasons and proposed arrangements for the interim period may be required.

4. *Assistance to the authorities*

- 4.1 Where the prisoner has given assistance to the police or other authorities and it is desired that such assistance be taken into account at sentencing

on a confidential basis, counsel should confer and prepare a joint memorandum for consideration by the sentencing judge. Such memorandum should be placed in a sealed envelope and be filed at least two clear working days before the sentencing date. In such cases the confidential information should not be referred to in open Court, but the judge will take account of it.

- 4.2 If the confidential information is of particular sensitivity and is known only to Crown counsel, a sealed envelope memorandum should be filed and the judge shall determine the nature of any disclosure.

Notes:

1. This Practice Note applies with immediate effect to all High Court sentencing and to District Court sentencing where the charges were laid indictably, or the prisoner elected trial. It will also apply to sentencing in the District Court when the sentencing Judge requests that the Crown or prosecution make submissions at sentencing.
2. This Practice Note contemplates that a summary of facts will be made available in all cases resolved by guilty plea, whether before or after committal.
3. The tradition of oral submissions on sentencing will remain. The aim of the practice note is to ensure that the Court and counsel have access to all relevant materials prior to the sentencing hearing.

21 May 2003

Rt Hon Dame Sian Elias, GNZM
Chief Justice

D J Carruthers
Chief District Court Judge