

2014 Practice Note:

Sentencing in the High and District Courts

HCPN 2014/1 (crim) DCPN 2014 /1

Application

Other than with leave of a Judge, this Practice Note applies to all High Court sentencing and to District Court sentencing of Category 3 cases where the Crown is involved. It will also apply to District Court sentencing of other Category 3 cases (no Crown involvement) and Category 2 cases when a Judge requests that the prosecution make submissions at sentencing.

This Practice Note takes effect from 3 February 2014.

Facts where guilty plea

1. When the defendant pleads guilty, the prosecution must have a summary of facts for the Court on which it says the defendant should be sentenced.
2. At the time of a guilty plea, counsel for the defendant must specify whether the summary of facts is accepted.
3. If the summary of facts is disputed, defence counsel and the prosecution must try to resolve the matter. If resolved, an amended summary of facts must be filed by the prosecution with their sentencing memorandum.
4. If a dispute over the summary of facts cannot be resolved, prosecution and defence counsel must notify the Court within 14 days of the guilty plea and seek an indication in accordance with s24(2) of the Sentencing Act 2002.

Order of submissions

5. The order of submissions will be at the discretion of the Judge however ordinarily counsel for the prosecution will go first followed by counsel for the defendant.

6. The Judge may direct that the summary of facts be read.

Crown obligations

7. A prosecution sentencing memorandum must be filed and served 5 clear working days before the sentencing date to address all relevant issues, including:
 - a. The prosecution view on the purposes and principles of sentencing of particular relevance to the case;
 - b. The prosecution view on any applicable aggravating (to both the offence and offender) factors;
 - c. The prosecution view on any applicable mitigating (to both the offence and offender) factors, including the prosecution view on the appropriate reduction to be given for any guilty plea;
 - d. The prosecution view on the appropriate starting point, based on the applicable guideline judgments or case law (where relying other than on guideline judgments, the decision should be attached);
 - e. The view on the appropriateness of an electronically monitored sentence, with supporting reasons;
 - f. Whether a sentence of preventive detention or a minimum period of imprisonment is sought;
 - g. Whether any supplementary orders are sought, e.g. protection orders, reparation, forfeiture or destruction of property;
 - h. The sentence imposed on any co-offender (sentencing notes to be attached if available).

Defence obligations

8. A defence sentencing memorandum must be filed and served 3 clear working days before the sentencing date to address all relevant issues, including:
 - a. The defence view on the applicable purposes and principles of sentencing;
 - b. The defence view on any applicable aggravating (to both the offence and offender) factors;
 - c. The defence view on any applicable mitigating (to both the offence and offender) factors, including the defence view on the appropriate reduction to be given for a guilty plea;


- d. The defence view on the appropriate starting point, based on the applicable guideline judgments or case law (where relying on decisions other than those to which the prosecution has already referred, the decision should be attached);
- e. If an electronically monitored sentence is sought, reasons in support;
- f. Whether the defence wish the court to take account of any restorative justice processes or other matters under s 10;
- g. The defence view on any sentence of preventive detention or minimum period of imprisonment being sought by the prosecution;
- h. The defence view on any supplementary orders being sought by the prosecution.

Assistance to authorities

- 9 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 with the defence sentencing memorandum. In such cases the confidential information should not be referred to in open Court, but the Judge will take account of it. The sealed envelope should be retained on the file in the event of a sentencing appeal.
- 10. If the confidential information is of particular sensitivity and is known only to Crown counsel, a memorandum sealed in an envelope should be filed and the Judge shall determine whether the contents of that memorandum should be disclosed to any other person.

Dated this 12th day of December 2013.


Her Honour Judge J-M Doogue
Chief District Court Judge


Hon Justice H D Winkelmann
Chief High Court Judge