



## SUPREME COURT OF JUDICATURE OF JAMAICA

### PRACTICE DIRECTION (CRIMINAL)

#### ADVANCE SENTENCE INDICATIONS

This Practice Direction is issued after consultation with the Judges of the Supreme Court. It is intended to govern the practice in the Supreme Court and Gun Courts as well as for guidance of Judges of Parish Courts.

#### PREAMBLE

The primary purpose of a sentence indication is to ensure that a defendant is in a position to make an informed decision as to plea. In criminal trials research has shown that in a number of cases a guilty plea would generally be entered by the accused if, prior to the commencement of the trial, an indication was given by the judge of the sentence the defendant would likely receive on a plea of guilty. This formalised sentence indication process is intended to achieve the following:

- i) the expeditious disposal of criminal cases, resulting in the optimal use of valuable court time spent on cases that require a trial;
- ii) a marked reduction in the trauma suffered by victims of crime by avoiding the rigours of a trial;
- iii) a reduction in anxiety suffered by defendants through lessening the time between charge and disposition of cases; and
- iv) direct savings in costs and valuable resources resulting from the reduction in the number of cases proceeding to trial.

#### 1. PURPOSE

1.1. The purpose of this Practice Direction is to:

- (a) establish a formal process, following the principles in *R v Goodyear* [2005] EWCA Crim 888, for the giving of an indication by a judge, of the sentence a defendant will likely receive if he or she pleads guilty at the stage in the proceedings at which the indication is sought and in accordance with paragraph 8 of this Practice Direction. The *Goodyear* procedure is expressly adopted and adapted to apply also at the level of Parish Courts.
- (b) safeguard against the creation or appearance of judicial pressure on the defendant to plead guilty.

## **2. CONTEXT**

2.1. In this Practice Direction:

2.1.1. **“defendant”** means a person accused of a criminal offence;

2.1.2 **“court”** means the Supreme Court, Gun Court, Regional Gun Court (Western) or a Parish Court;

2.1.3. **“judge”** means either a Judge of the Supreme Court or a Judge of a Parish Court and includes a person appointed to act in either of those offices.

## **3. PROCEDURE**

3.1. A judge before whom a defendant is appearing may give a sentence indication if a defendant makes an application for such an indication.

3.2. It may not be appropriate for a judge to provide a sentence indication in cases of a minor nature or for which terms of imprisonment are unavailable.

3.3 An application for a sentence indication should be made in the form set out in the Schedule to this Practice Direction, but does not affect the right of an accused to change his or her plea at any time prior to sentencing. The requirement for a written application does not preclude a judge from permitting an oral application to be made by the defence, where the judge considers an oral application to be adequate.

3.4. A sentence indication may relate to:

3.4.1. a sentence of a particular type;

3.4.2. a sentence of a particular quantum;

3.4.3. a sentence of a particular type and/or of a particular quantum;

3.4.4. a sentence that would not be imposed; or

3.4.5. a combination of sentences.

3.5. A sentence indication should be confined to the maximum sentence, to be imposed if a plea of guilty is tendered at the stage of the proceedings at which the indication is sought. The judge should not indicate the maximum possible sentence following conviction, after trial.

3.6. Subject to direction 3.7, the judge may grant a sentence indication if he or she is satisfied that the information available at that time is sufficient for that purpose.

3.7. Without limiting direction 3.6, the judge shall be in receipt of the following information before granting a sentence indication:

3.7.1. a summary of the facts agreed on by the prosecution and the defence on which the sentence indication is granted; and

3.7.2. information as to any previous conviction(s) of the defendant.

3.8. The judge may request a probation or social enquiry report, a psychiatric evaluation or any other report considered useful to assist in granting a sentence indication.

3.9. Where the judge proposes to act on an application for a sentence indication, the judge shall give both the defence and the prosecution an opportunity to be heard on the matter. Where appropriate, counsel may refer to the guidelines set out in ***R v Goodyear*** and any other relevant material to provide assistance to the judge.

3.10. The judge retains an unfettered discretion to decline to give a sentence indication, with or without giving reasons for his or her refusal to do so.

3.11. The judge may also reserve his or her position until such a time as he or she feels able to give an indication.

3.12. If a judge has declined to give a sentence indication it remains open to the defendant to make another request for an indication at a later stage.

3.13. A defendant is not permitted to make a request for a sentence indication of different sentences that might be imposed if he or she were to offer various possible pleas in respect of a particular charge or count.

3.14. A sentence indication should not be requested if there is uncertainty between the prosecution and defence about an acceptable plea to the charge or any factual basis relating to the plea. If there is a basis for a plea agreed by the prosecution and defence, it should be reduced into writing and a copy provided to the judge. Alternately, if a judge is prepared to proceed without the basis of the plea agreed being reduced into writing, that basis should be clearly outlined and noted in the official record of the court, with a clear indication that it has been agreed to by both the prosecution and the defence. Any basis for plea will be subject to the approval of the judge.

3.15. Unless an oral application for a sentence indication is permitted by a judge, an application for a sentence indication should be in writing, signed by the defendant and by counsel for the defendant, stating that counsel has clearly explained the consequences of the application to his or her client. Where an oral application is permitted the fact that counsel has clearly explained the consequences of the application to his or her client should be confirmed to the judge by both the defendant and counsel for the defendant and noted in the official record of the court.

#### **4. ROLE OF DEFENCE COUNSEL**

4.1. Defence counsel should not seek a sentence indication without a signed authorisation from the defendant, in the form set out in the Schedule to this Practice Direction, stating that he or she wishes to seek a sentence indication.

4.2. Defence counsel must enquire from the defendant whether he or she fully understands that:

- a) a plea of guilty should only be offered if he or she is guilty;
- b) the sentence indication reflects the situation only at the given time; and
- c) the sentence indication only relates to matters about which a sentence indication is sought and other proceedings which may follow automatically will not be dispensed with.

#### **5. GRANT OF SENTENCE INDICATION**

5.1. A sentence indication shall be granted in open court with a full recording of the entire proceedings.

5.2. Counsel for the prosecution and the defence along with the defendant must be present.

#### **6. RECORD OF SENTENCE INDICATION**

6.1. The court shall record a sentence indication.

#### **7. SECOND OR SUBSEQUENT SENTENCE INDICATION**

7.1. The court may in exceptional circumstances grant an application for a second or subsequent sentence indication where, since the previous sentence indication, there has been a change in circumstances that is likely to materially affect the question of the appropriate sentence type or quantum.

#### **8. DURATION OF A SENTENCE INDICATION**

8.1. A sentence indication has effect:

8.1.1. until 4 p.m. on the date specified by the court;

8.1.2. if no date is specified, until 4 p.m. on the expiry of 5 working days after the date on which the sentence indication was granted, whether or not the same judge is sitting.

## **9. PUBLICATION OF INFORMATION**

9.1. A person shall not publish any information about any request for a sentence indication or any indication that has been granted until after the accused has been sentenced or the charge has been dismissed.

## **10. NON-ADMISSIBILITY OF SENTENCE INDICATION IN PROCEEDINGS**

10.1. The fact that a defendant made a request for a sentence indication is not admissible in evidence in any proceedings. Further, no reference to the sentence indication hearing is admissible in a subsequent trial.

## **11. BINDING EFFECT OF SENTENCE INDICATION**

11.1. Subject to direction 8, a sentence indication once given is binding on the judge who gave it and on any judge who subsequently assumes conduct of the case, save in exceptional circumstances.

11.2. In circumstances where the judge proposes to depart from a sentence indication, this must be done in a way that does not give rise to unfairness.

## **12. EFFECT OF SENTENCE INDICATION ON APPEAL**

12.1. A sentence indication is not subject to appeal but the right of the defence to appeal against sentence, is unaffected by this Practice Direction.

## **13. NON-ACCEPTANCE OF SENTENCE INDICATION**

13.1. The fact that a defendant does not plead guilty after a sentence indication is given by a judge does not preclude that judge from presiding over the subsequent trial unless the judge is both the tribunal of law and fact.

## **14. FORMS**

14.1. The relevant forms are contained in the Schedule to this Practice Direction.

*Zaila McCalla OJ*  
*Chief Justice*  
*..., 2016*

**SCHEDULE**

**FORM 1**

**SENTENCE INDICATION**

**Practice Direction: Number ... of 2016**

**Request for Sentence Indication [Direction 3.3 'Procedure']**

In the..... Court.....

The Queen  
vs

.....

*for*

.....

This request is made by..... represented by .....  
for the court to indicate:

[Please tick one or more where applicable]

- a sentence of a particular type
- a sentence of a particular quantum
- a sentence of a particular type or of a particular quantum
- a sentence that would not be imposed
- a combination of sentences

in relation to a proposed plea of guilty of.....

Include:

1. Summary of the facts as agreed by the prosecution and the defence.
2. Information as to any previous conviction(s) of the accused.

Dated this .... day of ....., 20

Signed.....  
*Defendant*

Signed.....  
*Defence counsel*

**FORM 2**

**SENTENCE INDICATION**

**Practice Direction: Number .... of 2016**

**Defence Counsel’s authority to apply for Sentence Indication**

**[Direction 4.1 ‘Role of Defence Counsel’]**

*(Where there will be a **written** application)*

In the ..... Court .....

The Queen

vs

.....

*for*

.....

I ..... hereby certify that my counsel....., has explained to me and I understand that:

1. I should only enter a plea of guilty if I am actually guilty of what I am pleading guilty of;
2. The indication I am seeking will only reflect the situation at the time the indication is given;
3. Any indication will only relate to matters about which the indication is sought and other proceedings which may follow automatically will not be dispensed with; and
4. Any indication does not affect my right to change my plea at any time prior to sentencing if I were to enter a plea of guilty.

Having been so advised I confirm that I wish to seek the sentence indication in terms of the Request for Sentence Indication to be signed by me today after I sign this authorisation.

Dated this .... day of ....., 20

Signed.....

*Defendant*

**FORM 3**

**SENTENCE INDICATION**

**Practice Direction: Number .... of 2016**

**Defence Counsel’s authority to apply for Sentence Indication**

**[Direction 4.1 ‘Role of Defence Counsel’]**

*(Where there will be an **oral** application)*

In the ..... Court.....

The Queen

vs

.....

*for*

.....

I ..... hereby certify that my counsel....., has explained to me and I understand that in relation to my proposed plea of guilty of.....:

1. I should only enter a plea of guilty if I am actually guilty of what I am pleading guilty of;
2. The indication I am seeking will only reflect the situation at the time the indication is given;
3. Any indication will only relate to matters about which the indication is sought and other proceedings which may follow automatically will not be dispensed with; and
4. Any indication does not affect my right to change my plea at any time prior to sentencing if I were to enter a plea of guilty.

Having been so advised I wish the court to indicate the following [*please tick one or more below where applicable*]:

- a sentence of a particular type
- a sentence of a particular quantum
- a sentence of a particular type or of a particular quantum
- a sentence that would not be imposed
- a combination of sentences.

Dated this .... day of ....., 20

Signed.....

*Defendant*