

K. H. TOUGH
HER MAJESTY'S GREFFIER

REGISTRAR-GENERAL
OF
BIRTHS
MARRIAGES AND DEATHS

TELEPHONE: (01481) 725277
FASCIMILE: (01481) 715097

*Greffe,
Royal Court,
Guernsey,
PM 2PB.*

12th February, 2004

PRACTICE DIRECTION NO. 1 OF 2004

CRIMINAL SENTENCING IN THE ROYAL COURT

I have been directed by the Bailiff to clarify the position over information to be furnished to the Court in advance of sentencing hearings. The principles are the same both in cases where there has been a trial and after conviction a person has been remanded for sentence and where a person has already indicated a guilty plea.

Prosecution opening statement

It has become the almost invariable practice for the prosecution to produce in the case of guilty pleas a statement of the facts relating to the offence which is agreed with Defence Counsel. Clearly such a statement will not be produced where there has been a trial and there may be other reasons why a statement has not been necessary. The main reason why these statements started to appear was to obviate arguments on the facts, which might require a Newton hearing. Once the plea is recorded the Jurats are given copies of relevant reports and (if the Defence agree) the prosecution outline to read. This does not obviate the need for the full statement being read to the Court at the trial and indeed it will not necessarily have been read in its entirety by individual Jurats. It is there to give them some background and place in context the social inquiry reports which they are expected to have read in full prior to the trial.

The following information should be added to the prosecution statement so it can be checked and agreed by the defence:

1. Time spent in custody since arrest
2. Maximum penalties on each count
3. Print Out of previous convictions – the practice of getting a police officer to prepare antecedent histories can be discontinued as there is almost always a Social Enquiry Report.

The sentencing process

In Guernsey the determination of the sentence to be handed down is a matter for both the presiding Bailiff and Jurats who are sitting on the case. It is the function of the Bailiff to furnish such information to the Jurats concerning previous decisions as to sentence in similar cases and most importantly any guidance from the Court of Appeal. Where there are no local guideline cases the Bailiff is left to glean guidance from other jurisdictions and in practice this will usually mean England and Wales. The authorities which the judges have are principally Archbold, Blackstone, Dr. Thomas' Sentencing Practice and the Criminal Appeal Reports. The Royal Court is now expected to give full reasons for its sentence and accordingly after deliberation it is necessary for the Court to prepare a statement of reasons as to why the particular sentence has been deemed appropriate and this has to be redacted following the deliberation of the presiding Bailiff and Jurats. Inevitably this takes some time and that is why it will be the practice to send counsel away with an indication of the earliest time of which the Court will reassemble.

Disclosure of Defence case

It is emphasised that there is absolutely no obligation on defence counsel to disclose any part of its case or any mitigation prior to the Trial. However there are a number of areas where the Defence can reasonably be expected to assist the Court prior to Trial:

1. The presiding Bailiff should have in good time (normally 7 days in advance) a note of any authorities to which defence counsel may wish to refer at the hearing. In the case of local decisions the name of the offender and any GLJ Reference or the date of the hearing either in the Royal Court or in the Court of Appeal should be indicated.

Copies of local decisions should be furnished if to hand. If reference is to be made to any of the authorities that are mentioned above the year of the edition and page number should be given.
2. The Defence however should indicate as soon as it has read and considered the prosecution opening what part if any of the prosecution case is disputed so the issue of whether there should be a Newton Hearing can be considered initially by the prosecution and then by the presiding Bailiff
3. It may assist the presiding Bailiff in certain cases to have flagged up to him in advance points of mitigation that may not be immediately obvious from the prosecution papers. Anything disclosed in advance by the Defence will be for the eyes only of the presiding Bailiff unless the Defence indicates otherwise.. A further point where early disclosure of mitigation may assist is where the accused will benefit from the opportunity of having its weight evaluated by inviting the prosecution or the probation service to make further enquiries before the trial.
4. Alternatively or in addition there may be references and other documents which the Defence wants the Jurats to read before coming into Court. Those should be given to the Court Greffier who will show them to the Presiding Bailiff before passing them to the Jurats.

Prosecution input into sentencing process

Unlike Jersey the Crown does not offer conclusions. Although with a simpler statutory framework, the Court may have a less complex task in sentencing than its counterparts in the

UK, attention is drawn to the observations of the English Court of Appeal in A-G's reference no 52 of 2003 [9.12.03]. The Court wishes Crown advocates to discharge their duties as ministers of justice by offering comments where appropriate on matters of sentence. They are not expected to carry out detailed research, but inevitably they will be aware of learning here England and Jersey of which it would assist the Court to be informed

K. H. TOUGH
Her Majesty's Greffier