

PLEADING GUILTY

You have chosen to plead guilty to the charges against you. As a result you will go through a court hearing at which time the court will determine the appropriate sentence for you. These proceedings are generally called a “sentence” (in the District or Supreme Courts) or a “plea” (in the Magistrates Court).

Pleading guilty and being sentenced by a court resolves a criminal charge completely, bringing the matter to an end (subject to any appeals). The purpose of sentencing proceedings is to punish the offender and to provide a deterrent for any future similar conduct, whilst at the same time balancing the personal circumstances and rehabilitation prospects of the offender.

Preparing for Sentence

Prior to your sentence we will prepare your case thoroughly to ensure we can obtain from the court the most lenient outcome possible. This usually involves steps such as taking a detailed statement from you and obtaining personal information and reports about you to tender to the court, such as medical reports, personal references etc. Often there will be important negotiations conducted with the Prosecution in the lead up to your sentence in order to have a better factual position put before the court, or to reduce the penalty being sought by the Prosecution.

Sentencing Procedure

Sentencing proceedings can take anywhere from a few minutes to a number of hours, depending on the complexity of the matter and the amount of material to be presented to the court.

When your sentencing hearing commences, the court is first advised that you wish to plead guilty. In the Magistrates Court your lawyer can often do this for you. In the District and Supreme Courts, you will actually be “arraigned” and either then or at a later date will be formally required to enter a plea (guilty or not guilty) to the charges against you. If you plead guilty, the sentencing proceeding will then continue, or be adjourned to be heard at a later date.

The court first hears from the prosecutor, who outlines the facts alleged against you. The prosecutor may also advise the court of comparable sentencing decisions that have been imposed in previous cases. The prosecutor may also tender to the court any claims for restitution (compensation for lost wages, damaged property etc.) or any statements from the victim explaining to the court how the offence has affected them (called a victim impact statement).

After the Prosecution has concluded, it is then our turn to speak on your behalf. We will usually make submissions to the court on issues such as:

- a. Your version of the facts alleged against you.
- b. Your personal circumstances (employment, upbringing and current situation in life, etc.).
- c. The appropriate penalty that the court should consider.

The magistrate or judge is entitled to ask questions as the matter proceeds, although these questions are usually asked of the lawyers rather than you.

Sentencing Options

The sentencing judge or magistrate has a number of options open in sentencing you. We will advise you in advance of those we consider most likely in your case, and discuss them with you in detail. In summary, the options include:

- a. Good behaviour bond
- b. Fine
- c. Community Service
- d. Probation
- e. Intensive Correction Order
- f. Wholly suspended jail term
- g. Actual jail term with or without a parole release date or parole eligibility date.

In many instances the judge or magistrate also has to decide whether or not to record a conviction against you (see below).

Conviction

In imposing sentence, the judge or magistrate will usually also have to decide whether or not to record a conviction against you. If a conviction is recorded, it becomes a part of your criminal history. If it is not recorded, then you may publicly deny that you have any criminal history for that offence. There are some exceptions to this, such as when applying for some specific licences or jobs, and you should seek further advice from us if this situation arises. For some sentences such as wholly suspended jail, and actual jail, the judge or magistrate has no discretion and must record a conviction.

For other sentencing outcomes, there is a general discretion on the part of the court whether or not to record a conviction. Usually first offenders, where the offence is not too serious, have a good chance of avoiding a conviction being recorded.

After your Sentence

You will usually be forwarded a notification in the mail (to your bail address) of the outcome of your sentencing proceeding. Often you are required to fulfill certain requirements following your sentencing, such as paying a fine, completing community service, or reporting to a probation officer. Generally speaking, if you breach any of the court’s orders imposed during the course of your sentence, you can be brought back before the court and dealt with again (re-sentenced) for the breach of the court’s original orders.

Both the Prosecution and you have the right to appeal against the sentence imposed upon you if it is thought that the sentence imposed was too light or too heavy. As a rule, sentences will only be varied by the appeal courts if they are considered to be significantly too lenient or harsh.

Following your sentencing, any victim who has suffered personal injury as a result of your offending behaviour may seek to bring an application for compensation against you. Our retainer in this matter does not extend to providing advice in relation to these claims. If you require advice on this issue you should provide instructions to us or an independent law firm to provide that advice.

Questions

Being sentenced is a difficult and stressful time. You will no doubt have lots of questions as the day of your sentence draws closer. We will endeavour to answer all of your questions. Issues such as what to wear, when to turn up, whether you have to say anything, whether the complainant / victim will be there, and other such questions are the sorts of things that we will discuss with you. Feel free to ask us any questions at any time.

Please note: this publication is designed to provide a simple overview and should not be relied upon instead of legal advice.