

**STATEMENT ON TARIFFS AND GUIDELINES FOR
SENTENCING FOR CERTAIN OFFENCES**

16th JANUARY 2002

At the opening of the Grand Court in May 1998, former Chief Justice Harre announced the Sentencing Tariffs and guidelines for certain prevalent offences. These included drug trafficking, unlawful use and possession of firearms, motor vehicular and sexual offences as well as certain other offences against the person. That announcement in 1998 followed consultation and consensus at all levels of the local judiciary.

Recently, there have been expressions of concern arising from the perception, particularly with regard to drug offences, that the tariffs and guidelines are not being strictly followed or applied.

Consequently, the judges of the Court of Appeal, the Grand Court and the Magistrates have recently met to consider and to once again agree together what the tariffs and guidelines for sentencing for those categories of offences should be. The principles which we are about to reaffirm relate to offences in respect of which an immediate term of imprisonment will be the norm and where an accused has unsuccessfully pleaded not guilty. A guilty plea, especially an early one, is always viewed favourably and will usually result in a discount. Other considerations may result in further discounts and of traditional importance here is full

co-operation and assistance given to the Police and even moreso where that leads to the detection or prevention of other serious offences.

By way of further introduction, we note that the tariffs and guidelines now to be announced will largely be in affirmation of those announced in 1998 and it should always be remembered that a tariff means a sentence to be applied in a typical case. Mitigating factors will reduce it and aggravating factors will increase it.

As regards **ASSAULT CAUSING GBH** under Section 201 of the Penal Code:

While the legislation has laid down a maximum penalty of life imprisonment for this offence, the circumstances under which it may be committed vary infinitely and the sentences handed down by this Court since 1998, have necessarily ranged from terms of probation to 12 years immediate imprisonment.

We are obliged to note that this provision of the Penal Code needs to be modernized as it could not be the modern legislative intent to regard the very wide range of circumstances under which offences of grievous bodily harm might be committed as being all amenable to the maximum penalty of life imprisonment.

We recommend that the Code be amended to create two categories of offence. The first being the offence of causing

grievous bodily harm with intent carrying the maximum penalty now prescribed. The other, unlawfully causing grievous bodily *simpliciter* and not being an offence of specific intent to do grievous bodily harm, carrying a maximum penalty of 5 years. This recommendation is in keeping with the state of the law in the United Kingdom, Jamaica and other Commonwealth jurisdictions.

As regards **FIREARM OFFENCES** contrary to the Firearms Law:

The legislation is quite clear that the possession or use of any **unlicensed lethal barrel firearm** is an extremely serious offence. Under the Firearms Law the maximum penalty for possession of an unlicensed firearm is 20 years and a fine of CI\$100,000. The tariff for that offence unless there are very mitigating circumstances will be 10 years. If on the other hand aggravating circumstances exist, for instance, the use of the firearm for the commission of a serious offence, the tariff will be in keeping with decided cases and will be significantly higher.

As regards **SEXUAL OFFENCES**:

*For RAPE, which has become alarmingly prevalent, an offender can expect a tariff of between 10 and 12 years imprisonment.

*For DEFILEMENT OF A GIRL UNDER 12 YEARS a similar tariff of between 10 and 12 years will be applied.

*If the victim is over 12 but under 16 years of age, the Law prescribes a maximum penalty of 7 years. The Courts regard all sexual offences as very serious and all too prevalent. While the actual age of the girl within each category and the circumstances of the offence will always be important considerations, the basic tariff here will be 5 years where the offender had no reasonable cause to believe or did not in fact believe that the girl was above the age of 16 years.

As regards **DRUG OFFENCES** under the Misuse of Drugs Law and in particular those related to the widespread problem with cocaine abuse in these Islands, the following tariffs are now confirmed:

For simple possession, the Court will always do what it properly can to steer an offender along the path of rehabilitation using such resources as are available. Over the past year, 6 charges of simple possession were brought in conjunction with other charges involving possession with intent to supply or importation. In those circumstances, and if the latter charges are proved, the Court has typically allowed the sentence to reflect the more serious offence and might properly see no need to impose a separate penalty for the possession offence.

Where the offence is possession *simpliciter* with no related element of dealing or importation but an apparent addiction, the new approach to sentence recognises that the

emphasis should be upon rehabilitation. This is the category of offence for which the Drug Court regime will be primarily established. The intention there will be to ensure compliance with counselling, physical and psychological therapy and random drug testing. The length of the regime will be determined by the needs of the addict.

Nevertheless, there will be offenders who are in possession not linked to trafficking but who are not yet shown to be addicted and in respect of whom a sentence of deterrence might be appropriate. In such cases a tariff for amounts ranging from 1 gram to 10 grams has for many years been and will continue to be 9 to 12 months imprisonment and a fine of up to CI\$1,000.00 for a first offence. For a second or subsequent offence – 1 ½ years and a fine of up to CI\$2000.00.

At the other end of the scale of gravity, that is to say, trafficking in hard drugs in any quantity as defined in the Misuse of Drugs Law, the maximum penalty prescribed for offences involving 2 ounces or more is 20 years for the first offence and 30 years for a second or subsequent offence with an unlimited fine in each case. That of course is the maximum – the sentence for the worse possible offence by the worse possible offender.

The tariff for a first such offence, involving less than 2 ounces of cocaine or less than 4 grams of cocaine base without mitigating circumstances, will be 8 years.

For offences involving 2 ounces or more or 4 grams or more of cocaine base without mitigating circumstances the tariff will be 10 to 12 years. 15 years or more will be imposed where such an offence involves substantial importation or dealing in anyway either in powder or crack cocaine. We would define 'substantial importation or dealing' as any transaction involving several ounces or kilo quantities.

The Courts recognise that many of the people caught are couriers or intermediaries and that the worse offenders in the chain of distribution often remain concealed. Therefore there will be a substantial discount on sentence for those offenders who are prepared to co-operate with the police in their enquiries.

As regards **OFFENCES OF DISHONESTY:**

*For ROBBERY, a first offence involving the use of a firearm could attract a tariff of 14 years.

Otherwise for a first offence of an aggravated nature, 8 years will be imposed.

For aggravated offences of BURGLARY, a first offence will attract a tariff of 4-6 years.

For BURGLARY, without aggravating circumstances, a second or subsequent offence will attract a tariff of 3-4 years.

It should be emphasised however that we consider home invasions whether by night or by day very serious offences and any such offence is likely to be discouraged by appropriate prison sentences.

For offences of THEFT or related offences, depending on the value of the property stolen and any other aggravating factors, particularly where there is a breach of trust in the context of a relationship of employment, an immediate term of imprisonment ranging from 1 to 4 years for a first offence, and an order for repayment, will likely be imposed. The tariff could be higher still depending on the seriousness of the offence.

For HANDLING STOLEN GOODS, the tariff will be 2 to 3 years immediate imprisonment for serious offences in this category and the tariff may be higher if there are previous convictions relating to dishonesty.

TRAFFIC OFFENCES:

We are happy to report that the number of traffic accidents where death has occurred has been greatly reduced. There was one such accident where alcohol was involved in 2001. As announced in 1998, the tariff will be 5 years imprisonment, for offences of causing death by dangerous driving involving alcohol, speed or other aggravating factors. In the absence of such aggravating circumstances, the tariff will be 3 years.

Offences of **Driving Whilst Intoxicated** are in and of themselves serious offences and will continue to attract the kinds of tariffs which the Summary Court has been handing down. These will typically involve immediate periods of disqualification for at least a year and significant fines. Such offenders where appropriate may also be required to undergo therapy and counselling for alcohol abuse. It must always be remembered that the Law also prescribes a possible penalty of immediate imprisonment.

PRINCIPLES OF SENTENCING:

It is the duty of this Court to identify and affirm the principles and guidelines which are to be applied in the exercise of discretion upon the imposition of sentence.

We now reaffirm them for the guidance and understanding of the public as so often we discern understandable hesitation amongst the public in the acceptance of sentences which are imposed.

The exercise of sentencing is never an easy one. There inevitably exists a tension between the public interest in deterring the offender and others who might offend and the important objective of tailoring the sentence to ensure that the offender is given a proper opportunity for rehabilitation.

The primary aims of sentencing are rehabilitation, deterrence, incapacitation and restitution, but not necessarily in that order.

The Court is always faced with a dilemma whether to impose upon any defendant a sentence in the name of general deterrence, to reflect the offender's culpability or to seek to influence his future behaviour by subjecting him to an appropriate measure of supervision, treatment or preventive confinement. Sometimes a combination of these objectives must find expression in the same sentence. Often, this is not possible. A primarily deterrent approach is not likely to assist the offender towards conformity with the law in the future and may positively damage such future prospects as already exist. Measures designed to assist the offender to regulate his behaviour may appear to diminish the gravity of the offence and weaken the deterrent effect of the law on potential offenders. Faced with this conflict the Court must always decide which objective should prevail in the particular case depending on the particular circumstances. With this in mind the Court must always consider carefully those factors which will push a sentence either above or below the specified tariff – We refer of course to mitigating or aggravating circumstances.

The object of setting and announcing tariffs for sentencing is not to set measures which are cast in stone but to advise everyone on what the guidelines and likely consequences will be. The object is also importantly to warn would-be offenders of the disastrous consequences of committing

serious offences in the hope that they will be deterred from doing so.

The Chief Justice will shortly be issuing a Practice Direction for publication in the Cayman Islands Law Reports which will express the foregoing principles in a more appropriate form for those purposes.

Anthony Smellie
Chief Justice

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