

Advanced Sentencing Preparation

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Overview of Presentation

1. Preparation

- Knowing your client
- Best realistic sentencing outcome
- Evidence to support submissions
- Responding to the Crown case

2. Advocacy Strategies

- Tendering documentary evidence
- Oral evidence
- Written submissions (objective and subjective factors)
- Oral submissions
- Response to Crown submissions

1. Preparation

Who is your client and what is their case on sentence?

(a) Timing of preparation

(b) Casting the net wide –

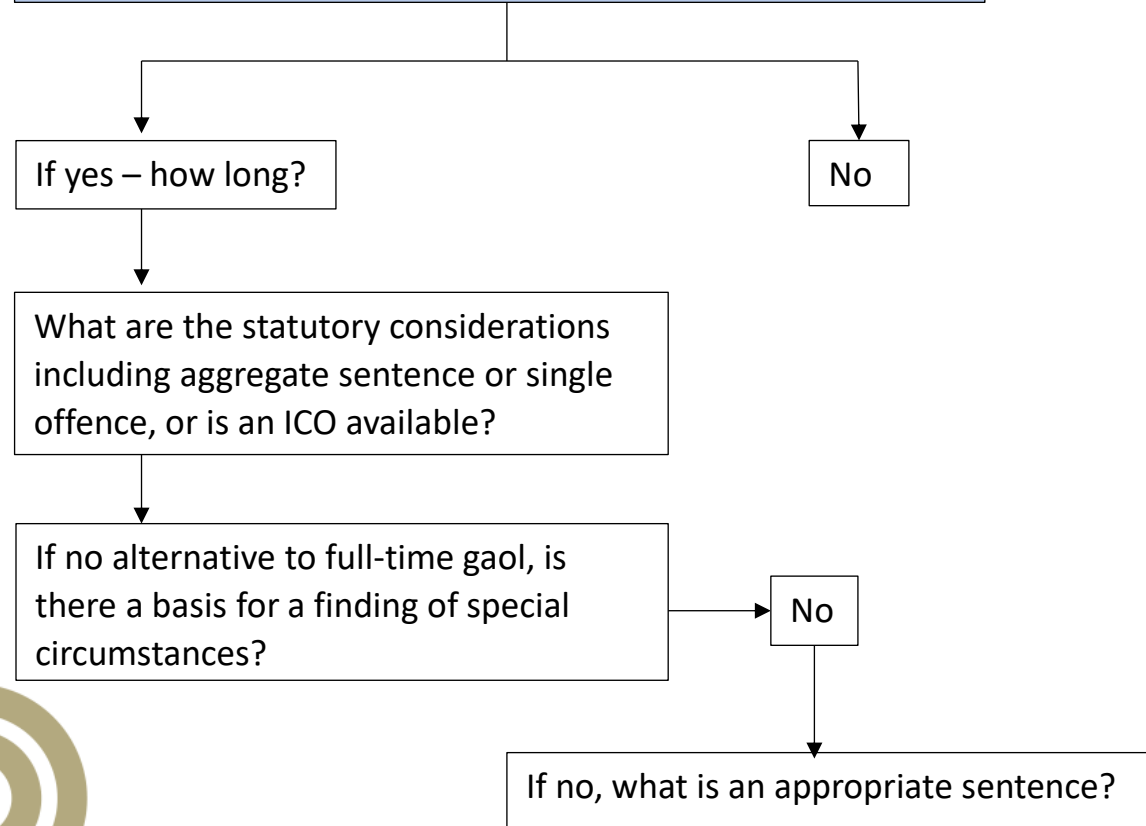
- Obtain key background material
- Conferencing with support people in the community
- Obtaining corrective services records

(c) Refining subjective material – review, identify key material, summarise material relevant to submissions if voluminous



What is the best but realistic sentencing outcome?

PART A: Is section 5, *Crimes (Sentencing Procedure) Act 1995* crossed?



PART B: Are there alternative sentencing considerations?

- Consider:
- Walama List?
 - Section 11 bond?
 - Rehabilitation referral?
 - Community-based programs and referrals?



What evidence do you need to support your submissions?

Expert evidence	Other evidence
<p>Expert evidence on subjective matters such as mental illness, cognitive impairment or childhood trauma</p> <p>Briefing an expert:</p> <ul style="list-style-type: none">• <i>How to frame the letter of instruction?</i>• <i>What material to source your expert with?</i>	<p>i. Community based reports: The client who does not have a diagnosable condition but has a complex background eg social dysfunction, poor insight, vulnerability in the community</p> <p>ii. References, employment history, custodial programs etc.</p> <p>iii. Future focused materials (treatment or rehabilitation plans, post release supports).</p>



How do you respond to evidence in the Crown case?

- (a) Review and check the Crown bundle
- (b) Implement strategies for dealing with Crown bundles that include “everything but the kitchen sink”
- (c) Victim Impact Statement (VIS)
- (d) Sentencing Assessment Report (SAR)



2. Advocacy Strategies

What material should be tendered?

- (a) What documents to tender
- (b) Choosing between affidavits and letters
- (c) Presenting voluminous material
- (d) Dealing with objections to defence material



Whether (and what) oral evidence to call on sentence?

(a) Presenting a positive subjective case

- The advantages and disadvantages of calling your client
- Who else to call, when and why

(b) How to deal with the Crown seeking defence witnesses for cross-examination



Written submissions

Objective matters	
After guilty plea	<ul style="list-style-type: none">• Agreed facts• Managing disputes on facts
After conviction (trial/hearing)	<ul style="list-style-type: none">• Using trial evidence to determine findings of fact
Submissions – objective features	<ul style="list-style-type: none">• Seriousness• Role• Parity (if applicable)• Form 1 offences



Written submissions

Subjective matters	
Aggravating factors	<ul style="list-style-type: none">• In the home of the victim or any other person• Abuse of trust / position of authority• Vulnerable victim• Series of criminal acts or multiple victims
Mitigating factors	<ul style="list-style-type: none">• Unlikely to reoffend• Prospects of rehabilitation• Assistance to authorities
Additional factors	<ul style="list-style-type: none">• Mental illness• Youth• Physical ill health/advanced age• Onerous custody



Oral submissions

Persuasive oral submissions and avoiding “Your Honour, I rely on my written submissions.”



Response to Crown submissions

(a) Consideration of Crown written submissions

- Identify areas of contention
- Check authorities (particularly on obscure points)

(b) Making submissions in reply



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