

Sentencing Explained

NSW
Sentencing
Council

Talking sentencing in NSW



Episode 6 Study Guide

Determining a sentence in the District Court with Judge Donna Woodburne SC

Background

- (1) Describe the role of the District Court. Consider:
 - (a) What type of criminal cases come before the District Court?
 - (b) What is the appellate jurisdiction of the District Court?Information on the [District Court website](#) may help you with this question.

Sentence hearings in the District Court

- (2) Under what circumstances would the District Court be closed to the public?
- (3) Describe the role of the judge, the prosecution and the defence during the sentencing hearing (including any submissions that may be made).
- (4) Why may the offender take the witness box during the sentencing hearing?
- (5) What subjective circumstances of the offender may the defence wish to highlight during the sentencing hearing?

Considerations in a sentence hearing

- (6) [Section 21A of the Crimes \(Sentencing Procedure\) Act 1999 \(NSW\)](#) describes the factors the judge must consider when determining an appropriate sentence. What are the “aggravating” and “mitigating” factors that may be relevant?
- (7) Which aggravating factors does Judge Woodburne consider more serious?

- (8) Which mitigating factors does Judge Woodburne highlight and why?
- (9) How does Judge Woodburne explain moral culpability?
- (10) The purposes of sentencing are an important part of determining an offender's sentence. What purposes does Judge Woodburne mention?

Sentences of imprisonment

If a judge is considering a term of imprisonment as the appropriate punishment, they will consider a sentence and a non-parole period.

- (11) What is the purpose of parole?
- (12) How does the judge determine the non-parole period?
- (13) What role do "special circumstances" play when a judge is determining the non-parole period and the balance of the sentence?

Non-custodial alternatives

Judge Woodburne says "the Court must not sentence an offender to imprisonment unless it is satisfied, having considered all possible alternatives, that no other penalty is appropriate. So, in every sentencing decision, I must consider all possible alternatives". See also [section 5 of the Crimes \(Sentencing Procedure\) Act 1999 \(NSW\)](#).

- (14) What alternatives to imprisonment does Judge Woodburne describe?
- (15) Why might a judge not record a conviction when sentencing an offender?
- (16) Describe the following alternatives and why, according to Judge Woodburne, a judge may use them:
 - (a) conditional release order
 - (b) community corrections order

For more information on these orders, see the [website of Corrective Services NSW](#).

Determining the appropriate sentence

- (17) Why does Judge Woodburne find sentencing offenders difficult? What does her Honour consider when trying to determine the appropriate sentence?
- (18) What is meant by "instinctive synthesis" in the sentencing process?

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