

A young person must be able to talk to someone, and have someone to speak on their behalf, if this is what they want. This could be a parent, other relative or a public servant. It is worth finding out if someone like this is available to talk for the young person.

Remember that most criminal charges refer to offences that may be quite hard to understand. Explaining the charge is more important than just reading it out.

Taking a plea is also quite a frightening experience, and technical words are used in recording the plea. However what you need to really know is whether the young person agrees or not with the charge. Is it admitted? If it is, then that is sufficient to record a guilty plea.

Use of simple language is the best practice, in order to make a young person understand what is going on.

4 Not Guilty Plea – Defended Hearing

If the young person says that he or she is not guilty, then the case will proceed as if they he or she were an adult. In other words, a defended hearing will need to occur for you to determine guilt or innocence.

Ask the young person why they believe they are not guilty. Sometimes they do not understand that what they have done amounts to a crime. An example is theft where three young persons decided to steal some food, and one was given the task of being the lookout. Sometimes this person pleads not guilty, thinking that because he did not go inside, he has not actually committed the offence. But this may be quite wrong, as a matter of law.

Be conscious that it may be the first time that the young person has ever been in a court.

The Police should present their evidence in the usual fashion. But you may help a young person, in asking questions of the police or witnesses.

X SENTENCING

After the court has heard and considered all relevant evidence and has convicted the defendant, the court must impose an appropriate penalty. The maximum penalties available to a court are set out in the Crimes Rules.

If a person has already been acquitted or convicted for an offence, that person must not be tried or punished again for that offence on the same facts (Rule 111 of the Crimes Rules).

1 Sentencing principles

There are 4 main purposes for imposing a penalty –

- Deterrence: The penalty is designed to deter the offender from breaking the law again and to warn others not to do the same.
- Prevention: The penalty is to prevent the offender from doing the same thing again
- Rehabilitation: The penalty is to help the offender to reform and not offend again.
- Punishment: The penalty is to punish the offender for his or her criminal behaviour.

2 Sentencing discretion

The level of penalty to be imposed in each case is a matter for the court to decide. The jurisdiction of the court sets the maximum penalty that can be imposed. The penalty in a particular case must be just and appropriate.

Sentencing

Sentencing requires the court to balance:

- The gravity of the offence
- The needs of society
- The timely and just disposal of the case.
- Before deciding on the penalty, the court must give the offender an opportunity to comment on penalty. The offender may inform the court of any mitigating factors; these favour a lower sentence. The Police may also inform the court of any relevant factors; these may be aggravating factors which support imposing a harsher sentence.

Mitigating factors include:

- Guilty plea
- Remorse
- Reparation
- Reconciliation
- Young age of the offender
- First offence.

Aggravating factors include:

- The use of violence
- Persistent offending
- Damage to property
- Age and vulnerability of the victim
- Value of stolen property
- Premeditated action
- Danger to the public.

3 *A structured approach to sentencing*

The Commissioner has the power to:

- Dismiss the charge despite evidence to convict.
- Discharge the accused without sentence (Rule 139 of the Crimes Rules).
- Order the offender to do community service.
- Impose a fine
- Order the offender to repay stolen money or return property
- Order the offender to pay compensation
- Order the restitution of property
- Put the offender under police supervision (Rule 138 of the Crimes Rules)
- Reprimand the offender.

4 *Sentencing format*

The court must balance all the factors. The court should do so openly and in the following form:

1. Introduction
2. Brief summary of the facts
3. Fix the appropriate sentence
4. Conclusion and order.

Format for a sentencing decision

1. Introduction

- The first paragraph says what the sentencing is for
- Who are you addressing in the sentencing decision.

This sentencing is for Puga who committed an offence under Rule 52(i) of the Crimes Rules.

2. Brief of the facts

On 25 August Puga was drinking beer with Lata in a public place near Hieni's house. Puga shouted obscene words to Hieni's family and caused disturbance to Hieni's family. Puga was drunk.

At the end of the hearing Puga was found guilty of an offence under rule 52(i) of the Crimes Rules.

3. Fixing the proper sentence

- State the penalty imposed by applicable law.

Under the Crimes Rules, the maximum penalty that may be imposed on a person convicted of an offence under Rule 52 is a fine of 3 penalty units (\$150) or 3 months imprisonment. There is no prison in Tokelau, the fine is therefore more relevant in your case.

I also have the power under Rule 136 of the Crimes Rules:

- to reprimand;
- to order community service for a term not exceeding 3 months.

Rules 138 and 139 give me the power also:

- to order work under the supervision of the police. (Rule 138(1)); or
- to convict and discharge with or without special conditions will apply. (Rule 139(1) of the Crimes Rules).
- Principles of sentencing to be emphasised in the present case.

Sentencing

I noted that the offender has appeared before me for the very first time. The Police have confirmed that you are a first time offender. As a young offender who is also a student at USP, you have a promising future. In this regard, I do not want to see you in my court again. Following this sentencing I would like you to stop drinking. You have your future in front of you.

- Consider the views of the victim and the public.

I will take into account Hieni's statement that you have apologised to her family and you were sorry for what you had done. Hieni also confirmed that her family has accepted your apology.

- Identify and state aggravating factors, if any.
- Identify and state mitigating factors, if any. State what discount, if any, you have made but give clear warning of future offending without making categorical and specific threats or promises such as "I promise you will certainly go to prison".

Having considered Hieni's statement that you had apologised to her and her family, and your apology to the court, I am satisfied that you are sorry for the offence you have committed. In your apology to the court you said that you will not re offend.

- What is the most appropriate sentence, if any, taking into account all the circumstances.

Having considered the case, and that you have apologised for the offence committed, and noting that you are a student at USP, I believe the appropriate penalty in your case is to discharge you without conviction on special conditions. These specific conditions must be followed by you for the next 12 months.

4. Conclusion and Orders

- State the conclusion and orders clearly.
- If there is to be a sentence imposed, then it must be announced that the defendant “Is CONVICTED and SENTENCED to.....”.
- State the sentence or penalty imposed, any conditions ordered and any other orders made CLEARLY.

In conclusion I therefore order that you, Puga, are discharged without conviction, under Rule 139(3)(i). However, there are special conditions given to Puga which must be followed.

The special conditions are:

- no more drinking of alcohol within the next 12 months
- no further offending in the next 6 months.

If you intentionally refuse or neglect to obey those conditions you will commit the offence of contempt under Rule 74 of the Crimes Rules. In breaching those conditions, you may also commit the offence of drunkenness under Rule 54 of the Crimes Rules.