

JAMAICA

No. 29 - 2015

I assent,



P. L. Allen

Governor-General.

27th day of November 2015

AN ACT to Amend the Criminal Justice (Administration) Act to make provision for sentence reduction on guilty pleas, to facilitate the review by the Court of Appeal, in limited circumstances, of a sentence that is fixed by law and to provide for other related matters.

[30th day of November 2015]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Criminal Justice (Administration) (Amendment) Act, 2015, and shall be read and construed as one with the Criminal Justice (Administration) Act (hereinafter referred to as the "principal Act") and all amendments thereto.

Short title and construction.

Insertion of
new Parts
IA and IB
into
principal
Act.

2. The principal Act is amended by inserting immediately after Part I the following as Part IA and Part IB—

“ PART IA. *Reduction of Sentence upon Guilty Plea*

Interpretation. 42A. For the purposes of this Part—

“appointed day” means the day on which this Part and Part 1B comes into operation;

“Court” means a court exercising criminal jurisdiction;

“defendant” has the meaning assigned to it under section 25(1);

“first relevant date” means the first date on which a defendant—

(a) who is represented by an attorney-at-law; or

(b) who elects not to be represented by an attorney-at-law,

is brought before the Court after the Judge or Resident Magistrate is satisfied that the prosecution has made adequate disclosure to the defendant of the case against him in respect of the charge for which the defendant is before the Court.

Application
of Part.

42B. This Act shall apply to criminal proceedings whether instituted before or after the appointed day.

Provisions of this Part not to apply to a defendant who pleads guilty to murder falling within sections 2(1) and 3(1A) of the *Offences Against the Person Act* or to any offence pursuant to a plea agreement.

42C. The provisions of this Part shall not apply to a defendant who pleads guilty to—

- (a) the offence of murder falling within section 2(1) of the *Offences Against the Person Act*;
- (b) the offence of murder, in circumstances where section 3(1A) of the *Offences Against the Person Act* applies; or
- (c) an offence following plea negotiations and the conclusion of a plea agreement pursuant to the provisions of the *Criminal Justice (Plea Negotiations and Agreements) Act*.

Reduction of sentence upon guilty plea to an offence.

42D.—(1) Subject to the provisions of this Part, where a defendant pleads guilty to an offence with which he has been charged, the Court may, in accordance with subsection (2), reduce the sentence that it would otherwise have imposed on the defendant, had the defendant been tried and convicted of the offence.

(2) Pursuant to subsection (1), the Court may reduce the sentence that it would otherwise have imposed on the defendant in the following manner—

- (a) where the defendant indicates to the Court, on the first relevant date, that he wishes to plead guilty to the offence, the sentence may be reduced by up to fifty *per cent*;
- (b) where the defendant indicates to the Court, after the first relevant date but before the trial commences, that he wishes to plead guilty to the offence, the sentence may be reduced by up to thirty-five *per cent*;

- (c) where the defendant pleads guilty to the offence, after the trial has commenced but before the verdict is given, the sentence may be reduced by up to fifteen *per cent.*

(3) Subject to section 42E, and notwithstanding the provisions of any law to the contrary, where the offence to which the defendant pleads guilty is punishable by a prescribed minimum penalty the Court may—

- (a) reduce the sentence pursuant to the provisions of this section without regard to the prescribed minimum penalty; and
- (b) specify the period, not being less than two-thirds of the sentence imposed, which the defendant shall serve before becoming eligible for parole.

(4) In determining the percentage by which the sentence for an offence is to be reduced pursuant to subsection (2), the Court shall have regard to the factors outlined under section 42H, as may be relevant.

Reduction of sentence upon guilty plea for the offence of murder falling within section 2(2) of the *Offences Against the Person Act.*

42E.—(1) Subject to subsection (3), where a defendant pleads guilty to the offence of murder, falling within section 2 (2) of the *Offences Against the Person Act*, the Court may, in accordance with subsection (2), reduce the sentence that it would otherwise have imposed on the defendant had the defendant been tried and convicted of the offence.

(2) Pursuant to subsection (1), the Court may reduce the sentence in the following manner—

- (a) where the defendant indicates to the Court, on the first relevant date, that he wishes to plead guilty to the offence,

the sentence may be reduced by up to thirty-three and one third *per cent*;

- (b) where the defendant indicates to the Court, after the first relevant date but before the trial commences, that he wishes to plead guilty to the offence, the sentence may be reduced by up to twenty-five *per cent*;
- (c) where the defendant pleads guilty to the offence after the trial has commenced, but before the verdict is given, the sentence may be reduced by up to fifteen *per cent*.

(3) Notwithstanding subsection (2), the Court shall not impose on the defendant a sentence that is less than the prescribed minimum penalty for the offence as provided for pursuant to section 3(1)(b) of the *Offences Against the Person Act*.

(4) In determining the percentage by which the sentence for an offence is to be reduced pursuant to subsection (2), the Court shall have regard to the factors outlined under section 42H, as may be relevant.

Reduction of sentence of life imprisonment.

42F. Where the offence to which a defendant pleads guilty is one for which the Court may impose a sentence of life imprisonment, and the Court would have imposed that sentence had the defendant been tried and convicted for the offence, then, for the purpose of calculating a reduction of sentence in accordance with the provisions of this Part, a term of life imprisonment shall be deemed to be a term of thirty years.

Court may request information to make a determination in relation to sentencing and parties may make submissions.

42G.—(1) The Court may, in order to make a determination in relation to sentencing under this Part, request from the parties to the criminal proceedings, a written statement comprising the agreed basis of the plea, including any facts that are disputed between the parties.

(2) The parties to the criminal proceedings may make submissions to the Court relating to the issue of sentence reduction and the Court shall, in making a determination in relation to sentencing, give consideration to the submissions.

Factors to be considered by the Court in determining reduction of sentence.

42H. Pursuant to the provisions of this Part, in determining the percentage by which a sentence for an offence is to be reduced in respect of a guilty plea made by a defendant within a particular period referred to in 42D(2) and 42E(2), the Court shall have regard to the following factors namely—

- (a) whether the reduction of the sentence of the defendant would be so disproportionate to the seriousness of the offence, or so inappropriate in the case of the defendant, that it would shock the public conscience;
- (b) the circumstances of the offence, including its impact on the victims;
- (c) any factors that are relevant to the defendant;
- (d) the circumstances surrounding the plea;
- (e) where the defendant has been charged with more than one offence, whether the defendant pleaded guilty to all of the offences;
- (f) whether the defendant has any previous convictions;

- (g) any other factors or principles the Court considers relevant.

Making of regulations and Rules of Court.

42I.—(1) The Minister may make regulations for the proper administration and giving effect to the provisions of this Part.

(2) Rules of Court may be made, dealing generally with matters of practice and procedure for the purposes of this Part.

Amendment of sentence reduction percentage by Order.

42J. The Minister may, by order subject to affirmative resolution, amend the percentages by which a sentence may be reduced under sections 42D(2) and 42E(2).

*PART IB. Review of Sentences Punishable
by Prescribed Minimum Penalty*

Review of sentence punishable by prescribed minimum penalty where Court determines that sentence is excessive.

42K.—(1) Where a defendant has been tried and convicted of an offence that is punishable by a prescribed minimum penalty and the court determines that, having regard to the circumstances of the particular case, it would be manifestly excessive and unjust to sentence the defendant to the prescribed minimum penalty for which the offence is punishable, the court shall—

- (a) sentence the defendant to the prescribed minimum penalty; and
- (b) issue to the defendant a certificate so as to allow the defendant to seek leave to appeal to a Judge of the Court of Appeal against his sentence.

(2) A certificate issued to a defendant under subsection (1) shall outline the following namely—

- (a) that the defendant has been sentenced to the prescribed minimum penalty for the offence;

- (b) that the court decides that, having regard to the circumstances of the particular case, it would be manifestly unjust for the defendant to be sentenced to the prescribed minimum penalty for which the offence is punishable and stating the reasons therefor; and
- (c) the sentence that the court would have imposed on the defendant had there been no prescribed minimum penalty in relation to the offence.

(3) Where a certificate has been issued by the Court pursuant to subsection (2) and the Judge of the Court of Appeal agrees with the decision of the court and determines that there are compelling reasons that would render it manifestly excessive and unjust to sentence the defendant to the prescribed minimum penalty, the Judge of the Court of Appeal may—

- (a) impose on the defendant a sentence that is below the prescribed minimum penalty; and
- (b) notwithstanding the provisions of the *Parole Act*, specify the period, not being less than two-thirds of the sentence imposed by him, which the defendant shall serve before becoming eligible for parole.

Review of prescribed minimum sentence for person serving term of imprisonment.

42L.—(1) Subject to subsection (4), a person who—

- (a) has been convicted before the appointed day of an offence that is punishable by a prescribed minimum penalty; and

- (b) upon conviction of the person, the trial judge imposed a term of imprisonment that was equal to the prescribed minimum penalty for the offence,

may apply to a Judge of the Court of Appeal to review the sentence passed on his conviction on the ground that, having regard to the circumstances of his particular case, the sentence imposed was manifestly excessive and unjust.

(2) An application under subsection (1) shall—

- (a) be made within six months after the appointed day or such longer period as the Minister may by order prescribe;
- (b) outline the circumstances of the particular case which, in the opinion of the person, rendered the sentence imposed on him manifestly excessive and unjust; and
- (c) contain such other particulars (if any) as may be prescribed.

(3) Where the Judge of the Court of Appeal reviews an application made pursuant to subsection (1) and determines that, having regard to the circumstances of the particular case, there are compelling reasons which render the sentence imposed on the defendant manifestly excessive and unjust, the Judge may—

- (a) impose a sentence on the person that is below the prescribed minimum penalty; and
- (b) notwithstanding the provisions of the *Parole Act*, specify the period, not being

less than two thirds of the sentence imposed by him, which the person shall serve before becoming eligible for parole.

(4) Subsection (1) shall not apply to a person who is serving a term of imprisonment for the offence of murder.

Legal representation.

42M. A person to whom section 42K or 42L applies may, in seeking to have his sentence reviewed, make an application for legal aid.”.

Consequential amendment.

3. The *Legal Aid Act* is amended in section 15 by inserting next after subsection (4), the following new section as subsection (5)—

“(5) An application for legal aid may be made by or on behalf of a person in relation to proceedings relating to the review, by a Judge of the Court of Appeal, pursuant to section 42K and 42L of the *Criminal Justice (Administration) Act*, of a prescribed minimum penalty imposed on the person).”.

Passed in the Senate this 5th day of June, 2015 with eleven (11) amendments.

FLOYD E. MORRIS,
President.

Passed in the House of Representatives this 3rd day of November, 2015.

MICHAEL A. PEART
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Sgd Heather E. Coste
Clerk to the Houses of Parliament.