

Pleading guilty in a criminal matter

Your guide to

The Law in Victoria

The Court Process

Sentencing

DOOGUE
GEORGE
defence lawyers

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Pleading Guilty

The vast majority of criminal law cases involve the conduct of a guilty plea.

In many criminal law cases, our clients attend their first appointment and admit that they have done something wrong. Very often, our clients have already been interviewed by the police and admitted their wrongdoing.

At other times our clients admit some or most of what is alleged by the police but there is some dispute that remains to be resolved. This dispute is often about the exact facts of what happened or a question about what the most appropriate charges are to plead guilty to. In those circumstances, it is the task of the defence lawyer to resolve the case on the most appropriate charge and conduct a guilty plea, also called a plea in mitigation, so that our clients receive the most favourable sentence possible.

The Authors



Andrew George Director Accredited Criminal Law Specialist

"Having to attend Court to answer any allegation of offending inevitably provokes distress. Our role as criminal defence lawyers is to ease that distress by applying our expertise and skill to resolutely achieve an outcome that is advantageous for our clients."

Andrew George is a Director of Doogue + George with over 25 years of defence experience and Criminal Law Specialisation.

Andrew's established reputation gives his clients a respected voice in the courts and his experience in preparing non-contested cases for indictable and summary criminal offences is fundamental to achieving the best outcome for his clients, no matter what the charge or allegation.

Andrew believes that it is a privilege to represent a client at Court and strives to achieve the most successful outcome.

Kristina Kothrakis Director Accredited Criminal Law Specialist

"We listen to what our clients want to achieve, understand their objectives and work tirelessly to achieve the best outcome. That, along with a strong case theory, well supported by evidence is absolutely fundamental to success."

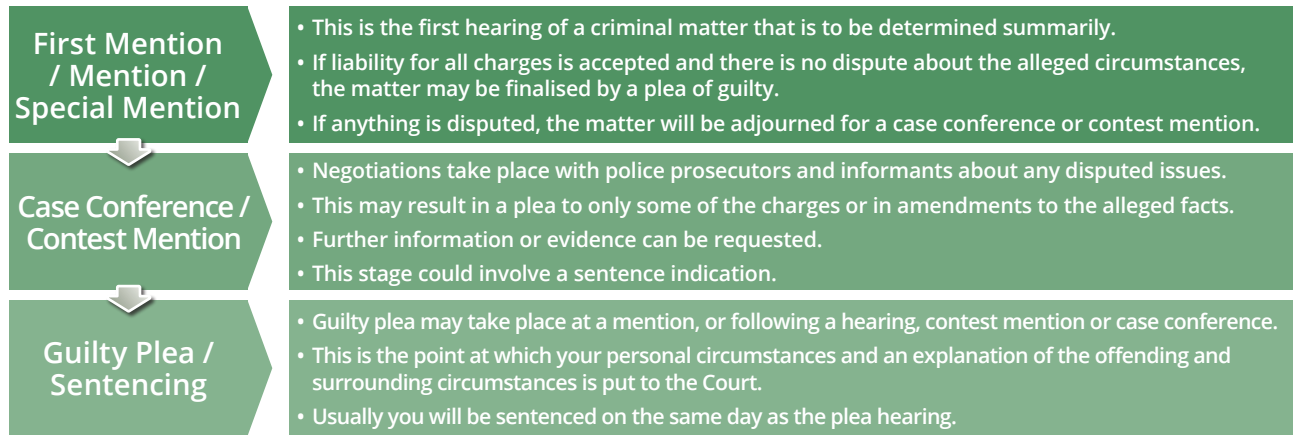
Kristina Kothrakis works closely with her clients to understand what their objectives are and works tirelessly to try and achieve that end goal. Kristina understands that being charged by police and appearing at Court can be very daunting, so good communication, sound advice and being well prepared are crucial to achieving the best possible outcome.

When representing clients on pleas of guilty, Kristina is attentive to the individual circumstances of her clients and such, is highly skilled at achieving the best possible outcome.

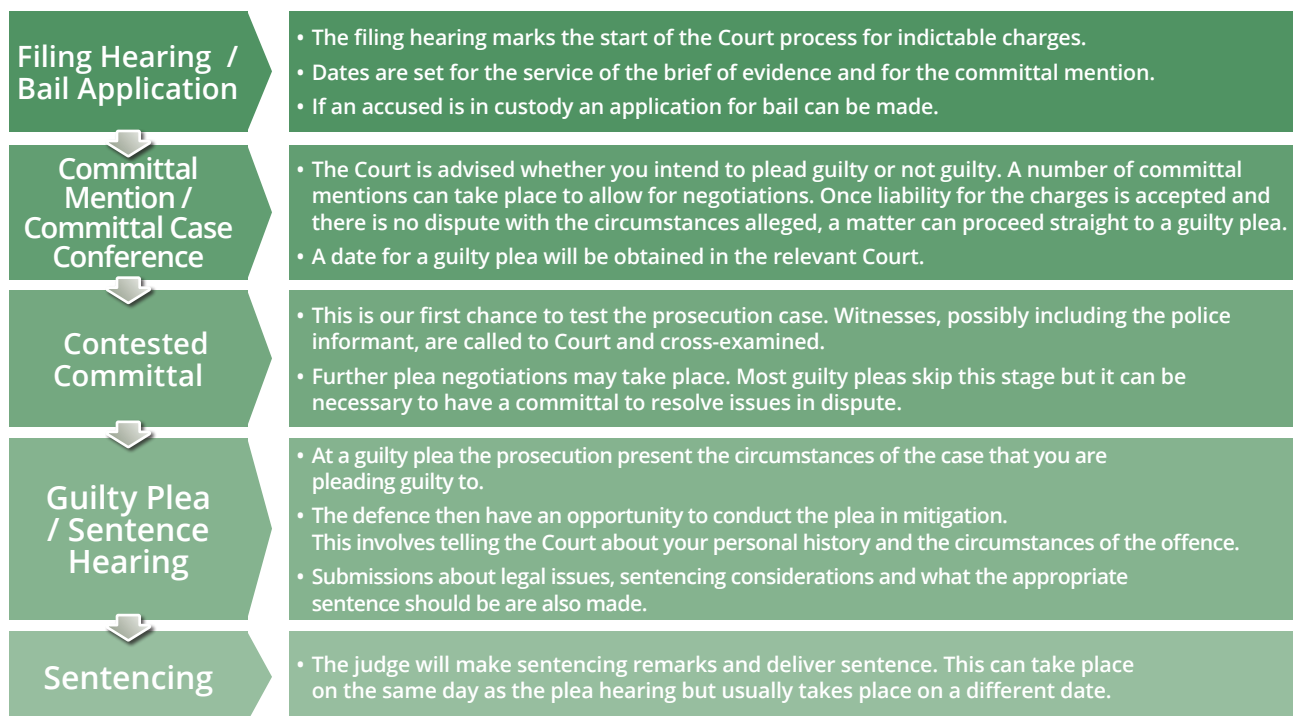


The Process

Pleading Guilty in the Magistrates' Court



Pleading Guilty in the County or Supreme Court



What is the Point of a Plea in Mitigation?

The point of the plea in mitigation is to obtain the best possible result for the client. This is done by assisting the Court in determining the appropriate sentence to be passed upon someone who has been found or has pleaded guilty to a criminal offence. The defence lawyer's role is to inform the Court about the circumstances and history of an offender - so that the Court is informed about WHO they are sentencing not just WHAT they have done.

A sentencing Judge has a broad discretion as to the range of possible sentences:

"[S]entencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions."

VEEN v. THE QUEEN (No. 2) [1988] HCA 14
Joint judgment of Mason CJ, Brennan,
Dawson and Toohey JJ

A well conducted plea that informs the Court about our client and their circumstances can make a vast difference to the final sentence.

A poorly conducted plea, uninformed and unprepared could result in a person serving a much harsher penalty than they ought to.

What Takes Place at a Plea in Mitigation?

Pleas in mitigation occur in the Magistrates' Courts and the higher Courts. The process is similar although the process is slower and more formal in the higher Courts. The higher processes for a plea in mitigation for indictable cases in the higher Courts and summary cases in the Magistrates' Courts are outlined in the following section.



Indictable Cases

Arraignment

The prosecution will have prepared a document called an indictment that contains the charges to which our client is pleading guilty. If it has not happened previously, the charges will be put to our client and he or she will enter pleas of guilty. This process is known as arraignment. If our client has a criminal history it will be put to him or her at this stage so that it can be admitted and taken into consideration by the Court.

The Prosecution Opening

The prosecution opens the plea hearing by describing to the Judge the circumstances of the offence and pointing to different aspects of the evidence. At times the circumstances described in the opening are agreed between the prosecution and the defence. At other times parts may remain in dispute. The prosecution might be called on to tell the Court what it says the sentencing range should be and advise if the prosecution is making application for any ancillary orders (such as forfeiture or forensic sample orders). The prosecution may tender or read to the Court victim impact statements prepared by those who have been affected by the offences.

The Defence Submissions / The Plea in Mitigation

Following the prosecution opening the defence conduct a plea in mitigation. The plea in mitigation always involves making sentencing submissions to the Court. The plea can also involve tendering expert reports from psychologists, psychiatrists or other experts, tendering character references or calling witnesses to give evidence about our client.

During the plea the defence provide information to the Court, tell the client's side of the story and detail their life history for the Court. The defence then make submissions about the legal principles that apply, the findings of fact that can be made and what the appropriate penalty should be.

A plea is an exercise in persuasion. Through presenting information and arguments to the Court, the defence lawyer aims to persuade the Court that the most appropriate sentence for the offender is one most favourable to the offender. Often the defence argue for a sentence that prioritises rehabilitation while the prosecution argue for a more punitive sentence.

Summary Cases

A very similar process is followed in the Magistrate's Court. First the defence appears and informs the Court that the matter will proceed as a plea of guilty. The police prosecutor then withdraws any charges that are not proceeding. The prosecutor then reads the police summary of the allegations and tenders the prior convictions, if any, of our client. After the prosecutor finishes the defence conduct a plea in mitigation, as described above.

What Makes a Good Plea?

A good plea should tell a compelling story that persuades the Court to accept the best possible interpretation of events being alleged by the prosecution. It should also obtain the best possible sentencing result for the client.

Prior to the plea taking place the most favourable factual basis possible should be agreed between defence and the prosecution.

The decision to plead should be made as soon as possible. A person who pleads guilty receives a discount in penalty. The earlier the plea, the greater the discount.

Early identification of a plea allows more time to prepare the plea in mitigation. All the necessary information can be gathered and time spent conceptualising and structuring the plea. For example, an appropriate a treatment or rehabilitation plan can be organised or restitution, such as repayment of money obtained in the offending, can be made.

Early identification of a plea allows more time to prepare the plea in mitigation. All the necessary information can be gathered and time spent conceptualising and structuring the plea. Where appropriate a treatment or rehabilitation plan can be organised, restitution such as repayment of money obtained in the offending can be made.

Investigation of events and relationships surrounding the offence needs to take place and information about the following obtained:

- The role of people - whether the client was the principal
- Events leading to the offence
- Whether the offence was premeditated or spur of the moment
- The relationship between the offender and the victim
- The presence of any situational pressures
- Whether the client was subject to the influence of others
- The amount of damage caused by the offence
- Circumstances, if relevant, of the police investigation
- The client's response to the police investigation
- Any benefit obtained from the offending
- Level of intoxication at the time (if any)
- Events post offence
- Background of the client including: schooling; work history; financial position; mental health; substance abuse issues; plans for the future; criminal history

A good plea must take account of all available information and use it to tell a compelling story about the client.

The advocate is involved in the creative, analytical interpretation of all the material to construct the most convincing narrative that can be presented to the Court.

“The plea-maker’s role is to obtain the best possible result for the client. It is a most important function because it is one in which good advocacy is most effective in producing a different and a more favourable result for the client. A mere presentation to the court of background information and some mitigatory factors about the offender and the offence followed by a request for leniency does not make a good plea.

It is unhelpful and amounts to an abrogation of the advocate’s true role, which is to persuade. An effective plea must be thoroughly prepared and presented as a constructive argument directed to achieve a specific result. It must be persuasive, balanced and courageous.”

Professor George Hampel AM QC,
“Sentencing and the Plea in Mitigation” LJ (1990) 64 No 9



A Contested Plea

If there remains a dispute about some factual circumstances of the case it is possible to plead guilty to the charge but dispute aspects of what happened. If the defence wishes to dispute facts it bears the onus of establishing mitigating facts on the balance of probabilities. The prosecution must establish aggravating features to the criminal standard of beyond reasonable doubt.

Both sides may call witnesses to give evidence about the events. Ultimately the court must decide what version of the facts to sentence upon and what weight should be given to mitigating and aggravating factors.

Running a contested plea is a course that should be pursued with caution, at times any benefit obtained by the plea of guilty may be lost by examining witnesses about the events. Disputing aspects of what happened can be interpreted by the court as not taking responsibility for your actions.

The Sentencing Process

A sentencing Judge has a duty to consider all the circumstances of the offence and the offender. The ultimate sentence is arrived at as a result of balancing and weighing all relevant matters. The balancing of all relevant matters makes each case unique and can mean it is difficult for a lawyer to tell their client precisely what sentence they should expect.

Assessment of Offence Gravity

The Court will consider how serious the offending is by taking into account the offence and what is required to establish it, the maximum penalty, the circumstances of the offending in the prosecution opening and current sentencing practices.

Assessment of Circumstances of the Offender

The Court will consider the personal history and prior character of the offender including age, employment, health, living arrangements and family support. These factors can sometimes assist in establishing mitigating factors on the plea such as ethnicity, race, aboriginality, age - young or old, intellectual disability, mental illness, intoxication and drug addiction.

Evaluation of Policy Considerations

The Court must then evaluate the application of principles related to policy considerations such as a discount for a plea of guilty, hardship of the sanction as applied to the offender or their family, discounts for providing assistance to authorities and considerations of delay.

Consideration of Sentencing Purposes

The only purposes for which a sentence can be imposed are:

- Deterrence - specific and general
- Rehabilitation
- Denunciation
- Protection of the community

Application of General Sentencing Principles

General sentencing principles also overlay a sentence. These principles include:

Parsimony - requires the selection of the least severe sentencing option open to a sentencer which achieves the purpose or purposes of punishment in the instant case.

Proportionality - a sentence of imprisonment imposed by a court should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime considered in the light of its objective circumstances.

Parity - the punishment of co-offenders is a fundamental consideration in sentencing. The principle of parity of sentence is based upon notions of equal justice.

Totality - the sentencer should ensure that the total sentence remains 'just and appropriate' for the whole of the offending.

Crushing sentences - the Court should not impose a crushing sentence, one that would provoke a feeling of helplessness or destroy any reasonable expectation of useful life after release.

Ancillary orders - As well as the sentence imposed by the court, the court may make other secondary or ancillary orders, usually upon application by the prosecution.

These orders can include:

- Forfeiture and related orders - for the forfeit of illegal property or the proceeds of crime.
- Forensic sample order - for the provision and retention of DNA samples
- Orders against licence - to suspend a drivers licence or cancel it and disqualify a person from driving.
- Sex Offenders registration scheme
- Compensatory Orders

Legal Support

Doogue + George lawyers have considerable experience in dealing with pleas of guilty.

If you need expert advice regarding your matter, visit www.doogue.com.au or call **03 9670 5111** for more information.

You will need
proper advice and support
to get the best possible result.
It could change your life.

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