

The prosecutor should act as an officer of the court with regard to negotiating PSA with an unrepresented accused.¹⁰ This is premised on the fact that the accused's right to a trial and liberty and security of a person may be waived. The prosecutor, as an officer of court, should owe the duty to the accused to inform him of the consequences of his decisions on his rights at trial. The prosecutor has the duty to ensure that he gives the judicial officer all the relevant information that pertains to the case such that the appropriate decision is given after the application of an amended section 105A.¹¹ A PSA should not be accepted from an unrepresented accused if doing so would distort the facts disclosed by the available evidence and result in an artificial basis for the sentence.¹² This will guard against undue influence upon the accused.

A PSA from an accused who is not represented should only be accepted if the public interest is satisfied that consideration of given circumstances exist, that justify the negotiation of the PSA.¹³ Some of the circumstances should include

¹⁰ See Guideline 5 of the Director's Policy: The Crown's Role on Plea and Sentence Hearings, Victoria, Australia, available at <http://www.opp.vic.gov.au/getattachment/27855e5d-fc4a-432f-a07d-18e0b402eeb7/9-Crown-s-Role-of-Plea-and-Sentence.aspx> last accessed 16 August 2016

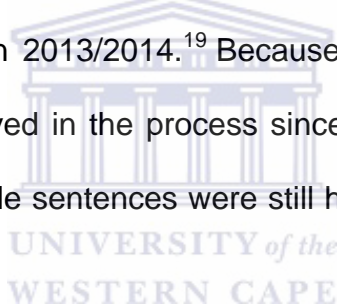
¹¹ Guideline 23 with necessary modification.

¹² Guideline 10.4 of the Guidelines for Prosecutors and the Director of Public Prosecutions, Ireland, available at [https://www.dppireland.ie/filestore/documents/Guidelines_for_Prosecutors_\(Revised_Oct07\)_ENGLISH1.pdf](https://www.dppireland.ie/filestore/documents/Guidelines_for_Prosecutors_(Revised_Oct07)_ENGLISH1.pdf) last accessed 16 August 2016.

¹³ Lawrence S ' Negotiating with the Police & Prosecutors' Aboriginal Legal Service NSW/ACT Ltd Annual Conference, Terrigal, New South Wales, 2 June 2011,

the consideration that alternative charges reflects the ingredients of the offence,¹⁴ and that the available evidence to support the prosecution case is weak in material particulars.¹⁵ Other considerations should be that the PSA would save the court costs and time weighed against the likely outcome of the case if it proceeds to trial,¹⁶ and that it will save a victim and vulnerable witnesses from the trauma that the court hearings may bring.¹⁷

According to the Report of the National Prosecuting Authority for 2014/2015, a total of 1,760 PSAs were arrived at under section 105A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).¹⁸ This represented a 33% increase compared to the 1,323 PSAs recorded in 2013/2014.¹⁹ Because of negotiating these PSAs, valuable court time was saved in the process since lengthy trials were avoided while convictions and suitable sentences were still handed down.²⁰ This disposal



para 58 available at

http://www.alsnswact.org.au/media/BAhbBlshOgZmSSlhMjAxMy8wNy8xNS8yMV8xM18wNV82NjFfZmlsZQY6BkVU/21_13_05_661_file last accessed 16 August 2016.

¹⁴ Lawrence (2011) para 58.

¹⁵ Lawrence (2011) para 58.

¹⁶ Lawrence (2011) para 58.

¹⁷ Lawrence (2011) para 58.

¹⁸ NDPP Annual Report 2014/2015, 39 available at <https://www.npa.gov.za/sites/default/files/annual-reports/Annual%20Report%202014%20-%202015.pdf> last accessed 16 August 2016.

¹⁹ NDPP Annual Report 2014/2015, 39.

²⁰ NDPP Annual Report 2014/2015, 39.

rate was in line with the NDPP's objective of increased successful prosecution.²¹ If section 105A is amended to cater for the unrepresented accused within given parameters, then the NDPP and the courts will be in a position to dispose of more cases.



²¹ NDPP Annual Report 2014/2015, 14.

BIBLIOGRAPHY

TEXTBOOKS

Geldenhuis T & Joubert JJ *Criminal procedure handbook* (1994) Juta and Co.:
Cape Town.

Mathias B *Plea-bargaining and agreements in the criminal process: A
comparison between Australia, England and Germany* (2009) Hamburg:
Verlag GmbH.

Van de Merwe CJ & Du Plesis JE *Introduction to the law of south Africa* (2004)

JOURNAL ARTICLES

Albert WA 'The trial judge's role in plea-bargaining' (1976) 76(7) *Columbia Law
Review* 1.

Asher F 'Fortunately we in Victoria are not in that UK situation" Australian and
United Kingdom Legal Perspectives on Plea-bargaining Reform' *Deakin
Law Review* (2011) 361- 371.

Beker PM 'American plea-bargaining in statutory South Africa' (2001) 34
*Comparative and International Law Journal of South
Africa* 310-324.

Davies A 'Sentences for sale: a new look at plea-bargaining in England and
America' (1970) *Criminal Law Review* 150- 161.

Du Toit S & Synman E 'Defining and evaluating plea-bargaining' (2000) 13
SAJCJ 190- 199.



Esther S 'Plea-bargaining in South Africa: current concerns and future prospects'
(2007) 2 SALJ 206 -245.

Harms LCT 'Demystification of the inquisitorial system' (2011) 14(5) PER/PELJ 1

Rodgers MB 'The development and operation of negotiated justice in the South
African criminal justice system' (2000) 23 SAJ CJ 239- 262 .

Scott RE & Stuntz JW 'Plea-bargaining as a contract' (1992) 101 *Yale Law
Journal* 1909-1968.

Shin HJ 'Do lesser pleas pay?' (1973) 1 *Journal of Criminal Justice* 27- 42.

Stephen JS ' Is plea-bargaining inevitable?' (1984) 97 *Harvard Law Review*
1037- 1107.

CASE LAW

Attorney General of Canada v Roy 18. CRNS 89.

GAS v The Queen (2004) 217 *Canadian Law Reports* 198.

Harksen v Lane NO and Others 1997 (11) BCLR 1489 (CC).

King v Forde [1923] 2 KB 400.

Maxwell v The Queen (1996) 184 CLR 501.

Meissner v The Queen, (1005) 184 CLR 132.

North Western Dense Concrete CC v Directorate of Public Prosecutions
(Western Cape) 1999 (2) SACR 669.

President of the Republic of South Africa v Hugo 1997 (6) BCLR 708 (CC).

Prinsloo v Van der Linde and Another 1997 (6) BCLR 759 (CC).

R V Broekaert (2003) MBCA 16.

R v Dubien (1982), 67 CCC (2d) 341.

R v Pashe (1995) 100 ManR (2d) 61 (CA).

R v Purgh [2005] SASC 427.

R v Sebeko 1956 (4) SA 619.

R v White (1982), 39 Nfld and PEIR 196 (NL CA).

R v Wood (1975), 26 CCC (2d) 100.

R. v Rajaeefard 1996 CanLII 404.

Regina v Kellett (1976) QB 372.

Regina v RT [1992] OJ 1914.

Regina v Toney (1993) 1 WLR 364.

S v Armugga 2005(2) SACR 259.

S v Bopape 1966(1) SA 145.

S v E 1995 (2) SALR 547.

S v Malgas [2011] ZAWCHC 452

S v Marlon De Goede [2012] ZAWCHC 200.

S v Mkhafu 1978 (1) SA 665.

S V Naidoo 1989 (2) SA 114.

S v Nyambe 1978 (1) SA 311 (NC).

S v Phundula 1978 (4) SA 885 (T).

S v Sassin [2003] 4 All SA 506 (NC).

S v Seabi 2003(1) SACR 620.

S v Solomon 2005 (2) SACR 432.

S v Taylor 2006(1) SACR 51.

Wilkes v R [2001] NSWSCCA 97.



INSTITUTIONAL PAPERS

Annual Report of the National Prosecutions Authority 2014/2015.

South African Law Commission (Project 73) *Report on Simplification of Criminal Procedure: Sentence Agreements* (2002).

LEGISLATION

Constitution Act 108 of 1996.

Criminal Procedure Act 51 of 1977.

Criminal Procedure Second Amendment Act 62 of 2001.

Guidelines for prosecutors relating to Plea and Sentence Agreements; 2011.

National Prosecuting Authority Act 32 of 1998.

