

How Will The Magistrate Determine My Sentence?

If you have a matter before the Downing Centre Local Court and are already seeing the prison gates looming before your eyes, relax.

Jail is a last resort in many cases so chances are, you, like many other defendants who come up before the magistrates in the Downing Centre won't spend a day behind bars.

According to the [Crimes \(Sentencing Procedure\) Act 1999](#), a court cannot order imprisonment unless they are satisfied that no other penalty is appropriate.

Penalties such as the maximum prison time and fine amount are different for each offence and are set out in the legislation. However the court also has the discretion to impose other penalties, such as home detention orders, intensive correction orders, community service orders, and good behaviour bonds.

The other significant non-custodial alternative is dismissal. If you are fortunate enough to get your case dealt with under a [section 10 dismissal](#) or [conditional release order](#), you will be found guilty, but the charges will be dropped and you will not have a criminal conviction recorded. However if you get a non conviction order, you may still have to enter into a good behaviour bond.

In order to get a non conviction order, the court must come to the conclusion that it would not be expedient to record a conviction against your name, for example, if it would reduce the likelihood of further offences being committed by promoting treatment or rehab.

In deciding the matter, the court will consider:

- Your character, antecedents, age, health and mental condition
- If the offence was of a trivial nature
- Any extenuating circumstances
- Anything else the court considers relevant

A good criminal lawyer can enhance your chances of getting a section 10 dismissal.

Of course it will all depend on the individual circumstances of your case but here are some things that magistrates will always take into account when sentencing you. These are called aggravating factors and mitigating factors.

Aggravating factors are those that made your offence more serious, whereas mitigating factors are those which mean that the offence may be dealt with more leniently.

Aggravating factors include:

- The use or threatened use of violence
- The use or threatened use of a weapon
- Previous convictions
- Whether there was substantial harm, loss or injury caused by the offence
- If the victim was vulnerable
- If the act was part of organised criminal activity

Bringing to the attention of the magistrate mitigating factors in your case will help your chances of getting a favourable outcome. These can include:

- No substantial harm, loss or injury caused by the offence
- The offence was not part of organised criminal activity
- You were provoked by the victim
- You were acting under duress
- No previous convictions (or no significant ones)
- Good character

- Unlikely to reoffend
- You show remorse such as accepting responsibility for your actions or made reparations for any loss caused
- You weren't aware of the consequences of your actions because of age or disability
- A guilty plea
- Any pre-trial disclosure to the police
- Assistance to law enforcement authorities

If you are intending on [representing yourself](#) in your matter, bringing along character references and writing a letter of apology to the court is a good idea.

It will demonstrate to the magistrate some of the mitigating factors that they are going to be taking into account when sentencing you.

It is also important to note that being intoxicated, if it was self induced, is not a mitigating factor and therefore can't be relied on to reduce your sentence.

And finally, be polite and courteous in the courtroom – any rudeness to the magistrate will certainly not help your chances!