

**287.5 Children as victims**

*Att-Gen's Ref 2018 Re Scott 2018 EWCA Crim 1336* D pleaded late to four counts of attempted murder and one count of dangerous driving. D split up with his former partner, B, with whom he had three children. B was the primary carer for the children. In the weeks prior to the offence, D had stopped attending work, had become convinced that his new partner was having an affair and told others that people were going to harm his children. On a day that he was due to care for his two sons, he argued with B, behaved irrationally and told B of his concerns. He repeated that people were after him. The next day he apologised for his behaviour and seemed calmer. With B's consent he collected his three children and one step-daughter with a view to going shopping. Over the next day and a half, D travelled with the children from Southampton to the Isle of Wight and then to Liverpool, Manchester and Huddersfield. Shortly after midnight, D deliberately drove his car at over 90 mph into the boundary wall of a public house. This was a deliberate attempt to kill all four children. In the two-and-a-half-hour period prior to the crash, D had attacked each of the children with a hammer. After the collision, D was found by the car. He had no serious injuries. He tested negative for alcohol but positive for cocaine. All four children suffered depressed fractures of the skull. The eldest, aged 8, also suffered pelvic, wrist and hand fractures, a laceration to the pancreas and bleeding to the gut. She has regular nightmares and suffered from a loss of balance. Her speech has been affected and she had headaches and mood swings. The second child, aged 7, had her skull shattered into multiple fragments. She was still in hospital at the time of sentence having undergone 13 operations. She will suffer from lifelong disability and will be wheelchair-dependent for the rest of her life. The third child was aged 21 months and was left with a hole in his skull which it is hoped will eventually heal. He now suffers from significant cognitive impairment with a risk of further cognitive difficulties. Some of those may not become apparent until his teenage years. The fourth child was 9 months old. He is missing a large part of the left side of his skull and is scarred. He will need surgery to deal with the skull defect. [The dreadful injuries and future prospects are not listed in full.] D was aged 29 at the time of the appeal with no previous convictions. During his arrest and subsequent police and other interviews, D maintained that he did not intend to harm the children and lied repeatedly. The Judge arrived at a determinate sentence of 35 years before giving credit for the guilty plea. That represented her assessment of all the circumstances, including aggravation and mitigation up to that point. Held. The victims in this case were four young children who were particularly vulnerable. Each child suffered dreadful injuries with long-term consequences. There was a gross breach of trust in relation to each of them. It is clear that some of the children were old enough to understand what the offender was doing whilst the attacks took place. B's life had been blighted. Those are very significant aggravating factors which must increase the level of sentence. With regard to mitigation, mental disorder can be a factor which lowers an offender's degree of culpability. However, D's state was an acute drug-induced psychosis as a result of taking cocaine. Therefore, little or no weight should be attached to this factor. The Sentencing Council's guideline indicates a maximum of 10% reduction for a guilty plea tendered on the day of trial. The Judge had accepted counsel's submissions that the gravity of the offences required D to take time to acknowledge his wrongdoing. It was submitted that D was now remorseful. These reasons did not justify a 20% reduction. The [sentence] should have gone significantly beyond the upper range of the guideline. 48 years should have been reached after the 10% credit for the guilty plea. So, **life with 24-year minimum term**, not 14 years.

Note: The Court made an intention to kill an aggravating factor. In fact, it is an element of the offence. Ed.

**287.6 Criminal gangs etc.**

*Att-Gen's Ref 2017 Re Adams and Others 2017 EWCA Crim 1353* D and W were convicted of conspiracy to murder and pleaded to aggravated burglary and causing GBH with intent [the aggravated burglary and the GBHs are dealt with at **221.10**]. In 2015, ED was the victim of a violent attack outside a nightclub, committed by V. He was attacked with machetes and his hand was partially severed. The conspiracy to murder was committed in revenge for that attack. It was organised by ED and it targeted V and his father. The plan was for W and D to shoot and kill V and the scene of the intended shooting was reconnoitred on three occasions. ED made sophisticated and extensive use of a number of unregistered pre-pay phones, which had been discarded and replaced as the planning went on. On the day of the shooting, D and W drove to the scene in a stolen Mercedes and waited for V. [There is no reference to any actions of ED on this day.] V stopped his van at traffic lights. The Mercedes drove alongside the van so that the passenger window was next to the van driver's window. The Mercedes passenger then shot V in the head through the window. The glass shattered and V slumped onto the passenger seat. The car then sped off. The Mercedes was recovered and a shotgun cartridge was found in the footwell. After the attack, V was assisted by various drivers who witnessed the incident. He suffered a massive wound to the right side of his face, including injury to his eye socket, cheek, jawline and surrounding muscle tissue. Some pellets also entered his lung. Remarkably, V survived, largely due to the skill of the surgeon who operated on him. V said he was in constant pain, had difficulty in sleeping and breathing and was unable to walk far. D's DNA was found. D was now aged 34 and had a large number of previous convictions. When he was aged 17 he was sentenced to 8 years' detention for aggravated burglary and causing GBH with intent for breaking into a public house and attacking the landlord in an attempt to get money. A sword was used to wound and boiling water was poured on the victim. D was sentenced for escape from an open prison and possession of ammunition without a certificate. He also had convictions for robbery from a cash-in-transit van and attempted robbery of a jeweller's shop. W was now aged 33 and had previous convictions for aggravated burglary and false imprisonment. He was sentenced to 5 years' detention and also to 2 years' imprisonment for possessing prohibited ammunition. ED was aged 25 at the time of the appeal and had previous convictions for driving and public order offences. He was sentenced to 38 months' detention for possessing amphetamine with intent to supply and possessing ammunition without a certificate. The Judge said that D and W were highly dangerous, ruthless, professional criminals who were prepared to use extreme violence to further their aims. He said the aggravating factors included targeting of a vulnerable victim, an intention to kill,<sup>1</sup> careful planning and the use of a firearm. The Judge imposed a life sentence for both defendants with a minimum term of 121/2 years.

Held. The overall minimum term of 121/2 years does not reflect the extreme gravity of the offending. The Judge failed to assess the notional determinate sentence for all the offences. The conspiracy to murder should have attracted a starting point of 30 years for D and W. This was a premeditated revenge attack, carried out in public at a busy road junction. Members of the public were at risk. For the conspiracy to murder, we move to **34 years**. For the aggravated burglary, 18 years and 8 months was appropriate, see **221.10**. Together the two sentences make 52 years 8 months. With totality we arrive at 46 years. That makes a **life sentence** with a minimum term of **23 years**. For ED, **life imprisonment** with a minimum term of **15 years**, not a determinate sentence of 16 years.

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<sup>1</sup> Both the Judge and the Court of Appeal considered that an intention to kill was an aggravating factor. It is in fact an element of the offence of conspiracy to murder.