

309.3 Cases

R v Smith 2018 EWCA Crim 1510 D pleaded to two outraging public decency counts. In June 2018, at about 3 pm, D appeared at the window of a community centre and a class of adults, mostly in their 60s, saw him masturbating. D moved to another window and to the next until one of the class gestured for him to go away. He went to a tree about 20 feet away and carried on masturbating. At one point an 11-year-old girl walked past. D was still masturbating when the police arrived. He was arrested and released on bail. In October 2017, D masturbated in Peterborough Cathedral during a wedding service until someone spoke to him. He then moved and continued in the same way. D was told to leave and he carried on masturbating in a car park until he was arrested. D was aged 54. His previous convictions were: 2013, exposure (community order, varied to a suspended sentence); November 2014, a public order offence, exposure and outraging public decency (community order); November 2016, outraging public decency (18 weeks) and breaches of notification requirements in February 2014, March 2014, May 2014, December 2015, March 2016 (two offences) and December 2016 (custody). D had a history of schizophrenia and refused to engage with a mental health evaluation. The Judge noted there was persistence in the first offence and the second was in a cathedral and when D was on bail. Held. There was considerable nuisance and significant distress. His previous offending was very persistent. There was no indication D will move to contact offending. The first offence involved an 11-year-old. We start at 12 months, not 15, and with plea move to 10 months not 12. The second location was chosen for impact. There are usually children at weddings. We start at 15 months, not 24, and with plea move to 13 months, not 21. With totality we reduce that to 8 months and 10 months making **18 months** not 33.