

267.23 Breach of trust frauds

R v Collins 2019 EWCA Crim 978 D pleaded on the day his case was listed for trial to an offence of fraud. D befriended V who was an autistic young man. D became homeless and was invited into the home of V and his mother. On the day of the offence, D asked V for his bank card and PIN. V gave D both because he did not want D to shout as he had done in the past when he didn't get his way. V told D to only take out £10. D withdrew £210 from the cash machine and told V that he'd only taken £10 to buy cigarettes for both of them. D kept the £200 for himself. V checked his bank account the following day and discovered what had happened. He challenged D on Facebook, but D denied taking the money and sent text messages to V trying to disengage from what he had done. D was aged 25 at the time of the offence and had 18 convictions for robbery, assault, burglary and sexual offences. The Judge noted that the amount of fraud was only £200 but the offence was made more serious because D had befriended V and used a degree of intimidation. The Judge, when considering the Sentencing Guidelines for Fraud, concluded that this was a Category 4A case. There was high culpability, an abuse of trust and deliberate targeting of a vulnerable victim. She noted that D himself had had a difficult upbringing and a number of mental health issues. The Judge started at 18 months and gave a discount for a plea on the day of trial. Held. The Judge erred in finding that this was a case of higher culpability. It is true the case was 'in abuse of trust', a factor indicating 'higher culpability'. However, the Judge should have also taken into account that the offence was an 'Opportunistic one-off offence; very little or no planning' – a factor indicating lower culpability. Taking the two factors together we sentence on the basis of medium culpability, **10 weeks** not 16 months.

Note: It was a mean offence against a vulnerable victim, by a man with a very bad record. The breach of trust seems very significant as was the fear generated. A sentence between the Judge's one and the Court of Appeal's one seems appropriate. Perhaps a start at 12 months and 2 months off for the mitigation and plea. Ed.