

292.15 Pubs/After drinking

R v Clare 2019 EWCA Crim 973 D pleaded on the day of the trial to inflicting GBH. V exited a gentlemen's club in the early hours to have a cigarette. When he tried to re-enter the club he saw D walking out. D had been looking at V in an intimidating way all evening. V put his hand on D's shoulder in order to move past him and D pushed V backwards into the road and punched him in the face. V was knocked to the floor but managed to get back up. He called the police and then saw D walking away from the scene. He called for D to stop but D then ran away at speed. V suffered fractures to the nose and both orbital sockets. He had attended numerous hospital appointments and was awaiting further surgery. V was unable to smell or taste and suffered continuing pain. D was now aged 30 and had 20 previous convictions for offences including offences against the person and public order offences. At the time of committing this offence he was subject to a community order. The Judge said that D was a powerfully built man and must have appreciated his own strength. The Judge considered the factors that increased the seriousness of the offence, namely D's previous convictions, the time and location of the offence, the ongoing effect on the victim and the fact that D had been under the influence of alcohol. The mitigation was that D was a father of three young children. D had himself been the victim of an attack which had left him in a coma and there were potential ongoing problems for him. The Judge also noted that D had remained out of trouble for a period of 3 years and the offence was a Category 1 case with a starting point of 4 years. A 10% discount was given for the late plea. Held. The Judge acknowledged that there was an absence of those factors which would indicate higher culpability. The guidelines include the fact that there was a single blow as one of the factors indicating lower culpability. It was a Category 2 case, but the aggravating factors justify the sentencing at the top of that range (3 years). With 10% credit for the plea, **2 years 8 months** not 3 years 7 months.

292.21 Unprovoked/Unwarranted attack etc.

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292.24 Victim very seriously injured etc.

R v Maxwell 2019 EWCA Crim 130 D pleaded to section 20 (25% credit). D and some friends were drinking and they continued overnight and into the next day. At 3 pm the next day, the atmosphere changed and D and V bickered. D punched V in the face with a clenched fist and V fell. V hit his head on a concrete path. He bled from the head and was unconscious. V had a cerebral oedema and bilateral frontal contusion to the brain. A section of his skull was removed, which would need to be replaced with a titanium plate. V would not return to independent living for the foreseeable future. V's wife has a degenerative spinal condition and had relied on D for her care and to carry out physical things she could not do. D was aged 29. He had 37 previous convictions including: in 2007, battery; breach of an ASBO on 3+ occasions; in 2008, harassment (prison); in 2016, battery; in 2016 assault (conditional discharge); and in 2016, cocaine dealing (30 months). He was in breach of his conditional discharge and his licence. The Judge moved to 4 years 8 months and with plea passed **42 months**. Held. It is difficult to see how the factors indicating higher culpability were engaged. There was modest provocation. The criminal record and the ongoing effect on V moved the case well outside the Category 1 range. V could not play an active role in the day-to-day life of his young child. The Judge was able to reach the highest range of Category 1. The Judge did start close to the maximum, but we dismiss the appeal.