

# Banks on Sentence

## Sentencing Alert No 88

**11 September 2014**

### **ABH**

#### ***Relationship offences***

*R v Thomas* 2014 EWCA Crim 1715 D pleaded to ABH. He pleaded guilty at a mention just before his trial. D had lost his temper and dragged V, his partner, by the hair a short distance across a road with a significant degree of force. He then kicked her twice in the back as she lay on the floor. V suffered chipped teeth, bruising to her chin and back and cuts and grazes however she made no complaint. The incident was captured on CCTV and her injuries seen by her sister and the police. D was aged 29 now and had 18 convictions (five as a juvenile) for violence. His last was in 2011 for affray and possessing a firearm with intent (12 months) but he had been out of trouble for 18 months since his release. D's longest custodial sentence was a 2- year DTO and he had received six immediate custodial sentences in all. Despite having regular arguments and threatening V, D indicated remorse and a need to change his outlook. The Judge placed this in category 1 as V was vulnerable as she knew D was capable of anger and violence, therefore greater harm. It was higher culpability as D had used his shod foot as a weapon and the offence occurred in a public place, leading to V's humiliation. Held. The expression 'serious injury' must be interpreted within the context of ABH and not a more serious offence, such as GBH. 'Serious injury' differentiates between an injury on the margin of being an actual injury and injury which is more substantial, and in the context of ABH, is serious. Chipped teeth and facial damage are not trivial matters to a young woman. In this case, V's injuries were serious and the Judge was entitled to place this in category 1. He was also entitled to rely on D's antecedents and go outside the range. That said, regard was to be had to a) the full extent of V's injuries, b) D's genuine remorse, c) D's pre-trial plea and d) D's previous attacks not warranting a term of over 12 months. **3 years**, not a 5-year extended sentence (4 years' custody and a 1-year extended licence).

### **Blackmail**

#### ***Violence occurs, Serious***

*Att-Gen's Ref Nos 39, 40, 41 and 42 of 2014* 2014 EWCA Crim 1557 Three defendants were convicted of false imprisonment. D pleaded guilty (20% credit) to the same charge. V bought cannabis from D. V was driven to D's flat. After a "horrendous" humiliating and brutal attack to V's face, with D wielding a hammer and others helping,

V's was told to pay £1,500 debt. V was tied up, placed onto a body bag and hit again. D hit V on the head with the hammer. He fell and was punched. D then repeatedly hit V in the face, particularly in the eye and mouth. V's teeth were deliberately broken. The attack was recorded. Threats were made to kill and rape V. V's belongings were taken and D hit V's legs with the hammer making walking difficult. Two defendants visited P, V's partner. A phone call was made to V. During the call, D held the hammer to V's head, demands were made for £1,500, and threats made that one of them would rape P. P had no money. V was driven to an isolated wood whilst the defendants discussed killing V there. V took the threats as genuine. Further demands for money were made. V was untied, driven back, his property returned and he was given some cannabis resin. D offered V money not to give evidence. D was 21 and had an extensive record, including violence. He was dependent on drugs. The others were aged 17 (with an ABH and drug conviction), 22 and 19 (neither with convictions). Held. For D, **14 years**, (**10 years custody** and 4 years extended licence) with a 3-year consecutive sentence for two unrelated supply counts (as before). For the others **7 years'** YOI, not 4, **4 years**, not 2 and, **8 years'** YOI, not 5.

## **Confiscation**

### ***Defendant absconds***

*R v Okedare* 2014 EWCA Crim 1173 D was convicted in his absence of conspiracy to commit benefit fraud. He failed to appear for trial and a warrant was issued. At the confiscation hearing, again in his absence, the Judge ruled that of Proceeds of Crime Act 2002 s 6 applied but neither Proceeds of Crime Act 2002 s 27 and 28 applied. D, still absent, appealed the making of the confiscation order. It was conceded that the Judge was neither entitled to rely upon section 6 alone, nor upon section 27. D contended that he had not been afforded any of the protections under section 28(5), namely a) an obligation on the prosecution to make reasonable efforts to contact him, b) those potentially affected by the confiscation order have a right to be heard at the hearing, and c) the statutory assumptions under section 10 will not apply. Held. Following the explanatory notes and clear legislative intent, a court is entitled to make a confiscation order under section 6 [in conjunction with] section 28. We accept this is at variance with the heading of section 28. However that heading might apply to the time the defendant absconds. Since the original confiscation order in this case was made by the Judge under section 6 alone, and without the protections afforded by section 28(5), we quash it, and remit the matter to the Crown Court.

## **Death by Careless driving (Simple)**

### ***Single misjudgement/Momentary inattention***

*R v East* 2014 EWCA Crim 1651 (Plea 10%. D, driving a coach full of students, failed to see V, riding a motorbike, and to give way. V hit D as D pulled out from a junction. V's driving was not at fault and he had no time to avoid D. D may have had a restricted view because of another vehicle. D aged 67 had a good driving record. Held. All surrounding circumstances must be considered, including D's inattention. Passengers and busy traffic are not significant aggravation. The appropriate sentence would have been a **community order**, not 10 months.)

## **Immigration offences**

### ***Exploiting immigrants through employment***

*Att-Gen's Ref No 28 of 2014* 2014 EWCA Crim 1723 D was convicted of conspiracy to facilitate a breach of immigration law and of using unlicensed security operatives (2 years concurrent not altered). D ran a business providing security guards and employed 155 people during the conspiracy. Near the end of the scheme, D generated false paperwork or altered documents to hide employees were working illegally in the UK. D assured clients that his employees' credentials were genuine, even when challenged. The employees were exploited, some working for £3 per hour and for periods of 24 hours without rest. D denied knowledge of what was going on despite making annual profits of between £45,000-£278,000 from employing around 75 illegal workers over the course of five and a 1/2 years. D was aged 44 at sentence with no previous convictions. He was not involved in the facilitation of entry into the UK. Held. There was a high degree of planning. D was the ring leader. There was substantial gain. The following non-exhaustive considerations apply a) whether the offence is isolated or not, b) the duration of offending, c) [antecedents], d) motivation, whether commercial or humanitarian, e) the number of individuals involved in the breach of immigration law, f) whether they were strangers or family, g) the degree of organisation, h) whether the defendant recruited others, i) the offender's role and j) whether D's conduct involved exploitation of or pressuring others. D's company was designed to circumvent immigration controls and involved several people on a large scale over a considerable period. It was aggravated by the false documents to government departments. Although some of the business was legitimate, a significant part was not. **8 years**, not 4 and a 1/2

## **Offences against the Person Act 1861 s 20**

### ***Victim seriously injured, Unexpected***

*R v Robinson* 2014 EWCA Crim 1661 D pleaded (full discount) to s 20 assault. V and a friend walked up some stairs in a pub. D, who had been drinking, walked down the stairs. Words were exchanged and D grabbed V. D then pushed and pulled V to the top of the stairs and punched V once in the face. V was knocked down, fell down the stairs and hit his head on the floor. D left. V was unconscious with a fractured skull and swelling to the brain. V's injuries were life-threatening. V made a good physical recovery but would have serious lifelong problems. In interview D took responsibility, having initially said he acted in self-defence. D was aged 20, had a drink driving conviction in 2011 and had references. D lived with his parents and was employed. He showed remorse. The Judge found this was level 1 due to the injuries and the need to deter. Held. The attack was unprovoked. The Judge was unjustified in going above the top end of level 2. No higher culpability factors were present. 24 months' YOI not 30.

## **Rape**

### ***Defendant aged 15-16***

*R v JW* 2014 EWCA Crim 1407 (Plea. Five rapes of a child under 13. V was D's brother, three years younger than D. D raped V every two to three weeks. Both boys in foster care and autistic. V was an elective mute and D had Asperger's. D was obsessed with violence and death. D told Social Services about inappropriate touching, admitted rapes and how he was attracted to children. Age 19, but offending occurred when he was 14 to 16. No convictions. D gained gratification from offending and the control he exerted but had had a significantly disturbed childhood. For an adult we would start at 18 years. With age etc. 10-11 years. **Extended sentence (7 years' custody and 4 years' extended licence) not excessive.**)

## **Sexual Offences Prevention Orders**

### ***Minimum and maximum length***

*R v Wilkins* 2014 EWCA Crim 1175 D pleaded to sexual activity with a child (×4) and making indecent photographs. He formed a relationship with a woman over the Internet. She had two daughters aged 10 and 15. D moved in with them and began to sexually abuse the elder daughter by touching her breasts and vagina and then tried to remove her clothing. She resisted but he was too strong. He inserted his finger into her vagina. There were 23 images at levels 1 to 4 found on his computer. D was aged 56 and had convictions for indecent assault in 1982 and 1991. The Judge imposed an indefinite SOPO. Held. Though the terms of the order needed amending, there was nothing wrong with an indefinite order. These were serious offences carried out by a man with relevant previous convictions and had shown no insight into the harm caused by such offending. There was a significant risk of further similar offending from D at this time and no indication when, if at all, that risk might diminish to the extent that the order may become unnecessary. Moreover, D was allowed to apply to vary or discharge the order. Indefinite order upheld.

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