

Sentencing Alert No 91

28 October 2014

Appeals, Court of Appeal

Double jeopardy reduction, The

Att-Gen's Ref No 45 of 2014 2014 EWCA Crim 1566 LCJ D pleaded to two counts of conspiracy to supply and was sentenced to five years. D was subsequently convicted of rape and sentenced to five years to run concurrently with his six-year sentence for the drugs offences. Held. The order to make the sentences concurrent made the rape sentence unduly lenient. The principle of double jeopardy remains. [However sentencing has changed considerably since 2006.] This court is more conscious of the position of victims. It is entirely proper for the Court not to refer to 'double jeopardy' where there is no reduction for it in sentencing. In future, the Court of Appeal will not refer to 'double jeopardy' where no question of the consideration of double jeopardy arises. The principle does not arise here.

Factual basis

Defence needs investigating

R v Evans 2014 EWCA Crim 1916 D pleaded to murder and was sentenced to a minimum term of 22 years. A number of psychiatric reports were prepared on D who pleaded guilty after the PCMH, but three weeks before trial. D never denied the facts surrounding the offence, the only issue was the availability of the defence of diminished responsibility. As soon as it was confirmed following the medical evidence that D could not run that defence, he pleaded guilty. The Judge began with a starting point of 25 years and afforded D credit of 3 years. Held. There was no good reason to deny D the full credit for his plea which he had intimated as soon as he was advised he had no diminished responsibility defence. Full one-sixth credit given.

Murder

Basic principles Knife or other weapon 25-year starting point

R v Beckford 2014 EWCA Crim 1299, 2 Cr App R (S) 34 (p 285) D was convicted of murder. V, aged 19, was a member of a rival gang. D drove a stolen car into V, ramming him off his bicycle with tremendous force. D was aged 22 but had no licence and a poor record with three violent offences, including two robberies in 2009. This Court has said on many occasions the setting of the minimum term is not achieved by slavishly and mechanically following Criminal Justice Act 2003 Sch 21. Courts must achieve a just result. Judge entitled to conclude that D took a weapon to the scene. **24-year** term upheld.

Passport offences

False passport/ID documents, Using or possessing More serious than using it to obtain employment etc.

R v Lasgaa 2014 EWCA Crim 1822 D pleaded (full credit) to having an identification document with improper intention. D was an Algerian who had overstayed on a visitor's visa which expired in 2008. D was stopped at the Channel Tunnel whilst on a coach to Germany. He had on him a Belgian ID document and a bank card, both in the same false name. His explanation for the bank card was that he had used the account of an Algerian to operate as self-employed. He had purchased the ID document off the Internet to visit a German woman he met online and whom he may have been intending to marry to obtain legitimate EU immigration status. D was of good character. The Judge emphasised the importance of preserving the integrity of the UK's borders. Held. The Judge was right to consider the time D had been an overstayer. D had been unlawfully

living and working in the UK for over five years and, although caught leaving the UK, his intention was to return. D had a counterfeit document which would have been used to enable him to continue his long-assumed false identity. The Judge must have started at 27 months. He was entitled to do so. **18 months** was not excessive.

Prison offences

Possessing transmitting/receiving devices etc. in prison

Prison Act 1952 s 40D(3A) **[1]** (possession of transmitting/receiving device etc. in prison)

Modes of trial Triable either way

Maximum sentence On indictment maximum 2 years. Summary maximum 6 months

R v Saliuka 2014 EWCA Crim 1907 D was convicted of possessing class A and B drugs with intent to supply and of possessing a phone and SIM card inside a prison. In D's shared cell, prison officers found a large amount of heroin, several wraps of cannabis and the phone and SIM card. D was aged 24 with an appalling record. He was on recall. The Judge found that D organised the smuggling of the drugs and had done so on several occasions, inferred from the wide range in purity. Held. The unlawful possession of mobile phones is much prized in prison since it gives unlimited and unmonitored access to others outside the prison, by which means harassment, intimidation and interference with the course of justice may be carried out and escapes and other criminal enterprises planned and in cases of modern i-Phones also unlimited access to the internet and communication by unmonitored emails giving rise to all manner of dangers. Many decisions of this Court emphasise the need to punish such cases severely. **18 months** on each concurrent, consecutive to a 5 1/2 years for the drugs offences upheld.

[1] Inserted by Crime Security Act 2010 s 45, in force 26/3/12.

Robbery

Street robbery ***More than one robbery***

R v Jalo and others 2014 EWCA Crim 1910 D, J and C pleaded to robbery of two women committed at the same time. J and C pleaded to another street robbery. D additionally pleaded to an attempted street robbery. All received full credit. D with another male, attempted a robbery, by pulling at V1's handbag. Her necklace snapped and she screamed. The police chased D and the male and arrested them. D was bailed for this offence. Three days later, a robbery involved D, J and another took place. V2 was asked the time and V2 took out his phone and his phone was seized. V2 was asked what else he had and was threatened. He tried to run but two males approached from behind. One attempted to stab V2 in the eye with a pointed metal bar and V2's eyebrow was cut either with the bar or by the assailant's jewellery. The third male tripped V2 up and pulled him to ground. V2 was kicked and punched and his pockets were rifled through. The attackers made off with a £1,500 chain and V2 suffered a 2cm cut to the eye, which needed stitches. Over three months later, there was a robbery involving all three defendants wearing hoods. They ran towards two young women and seized them. They snatched their gold necklaces and ran away. J was aged 18 and C was 20 on appeal. Both had previously committed several offences in a sustained pattern, including robbery, attempted robbery and theft or attempted theft. Their convictions were in late 2013, with both receiving custody (either in prison or a YOI). D was aged 19 on appeal and was of effectively good character. The Judge started at 6 years. He gave an extended sentence (4 years' detention and 2 years extended licence) in each case. Held. There is a need, particularly with young offenders, to consider the offenders as individuals and the application of guidelines to each of their offences. The Judge was wrong to assess the defendants as dangerous. A starting point of six years after trial for the attempted robbery is unimpeachable. The rest were level 1, not level 2. For C we start at 4 1/2 years, so **3 years'** YOI. D's lack of convictions was balanced out by the extra robbery he faced. So for D and J **4 years'** YOI.

Sex offences: Children, with

Seeking/asking for sexual activity with children

Post 2014 guideline case

R v Simms 2014 EWCA Crim 1888 D pleaded (25% credit^[1]) to attempting to meet a child after sexual grooming, thereby breaching a SOPO. D also pleaded to possessing indecent photographs of a child (x4), with one level 4 and the others at level 1. The offences were committed shortly after D had been released on licence. Police discovered these offences following a check of D's laptop, pursuant to the SOPO. D had accessed a chatroom called 'Teen chat' and contacted a 14-year-old girl whom he had arranged to meet. There was intent to have sexual relations conveyed by the conversation. D was emotionally immature and displayed some remorse but he had almost ten similar convictions. Two involved meeting or communicating with girls under 16. The Judge said he arrived at 7 years by giving meeting offence 4 years, SOPO offence 2 years and 2 years for the photos. Held. The critical feature is that D committed precisely the same sorts of offending very recently, committed whilst on licence and breaching a SOPO. 10-year EDS (**7 years'** custody and 3 years' extended licence) was severe, but not excessive.

^[1] This is what the Judge gave on one offence and it is assumed that this is what he gave to all the offences.

Victim surcharge

Breaches of orders

The date which determines which rules apply is the date of the offence for which the Suspended Sentence Order/Community Order was imposed^[1]. If there is more than one date, it is the date of the earliest offence.

^[1] *R v Howell* 2014 EWCA Crim 1903

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