

Banks on Sentence

Sentencing Alert No 92

14 November 2014

Affray

Cases **Relationship offences**

R v Crowsley 2014 EWCA Crim 1930 D pleaded (full credit) to affray and possessing an offensive weapon. V had a relationship with D's partner and there was a history of trouble. D sought revenge. D had harassed V on Facebook, receiving a police warning only the day before. V was at home with his partner and brother who, seeing the offenders, forewarned V of trouble. D and his co-accused kicked in V's door and, brandishing a snooker cue and baseball bat respectively, threatened to kill V. V escaped and hid and the offenders ran off. D made no comment in interview and expressed little remorse. He was also on bail. V was left concerned and anxious and considered moving. D was aged 24 on appeal and had significant antecedents, including s 18 from 2009, ABH, threatening behaviour and possession of an offensive weapon. Held. D took a leading role. It was planned. Weapons were taken. Two people were in the house at the time. D had been warned about his behaviour to V. D was on bail with a condition not to contact V. He had just been released from prison. The Judge overstated the case in saying that this was as bad an affray as could be imagined and in taking the maximum as a starting point. There was no violence, no vulnerable victim, it was not racially or religiously aggravated, it was relatively short-lived and, apart from the door, no damage was done. **18 months** in all, not 2 years.

Aggravated burglary

R v Wilcock 2014 EWCA Crim 1890 D pleaded (25% credit) to aggravated burglary, burglary and to handling stolen goods (x4). C pleaded to burglary and one handling offence, receiving 3 years. D and C smashed their way into a house opposite their own, knowing the occupier was absent. Following an untidy search of the house, C was seen by police carrying a large TV which was dropped. She wore dark clothing and gloves. D was caught after a short chase and denied any involvement. A month later, whilst on bail, D entered another house, with the door having been left on the latch. The occupants returned after 10 minutes to see D in their living room. V1 confronted D at the threshold who was carrying a handbag filled with belongings, including a laptop and camera. D had also carrying a 10" knife, found in the house. V1 told D to drop the goods and get out and then tried to grab the handbag. After a struggle, D ran off past V2 dropping most of the goods but still wielding the knife. The knife and a purse were later recovered. The four handling offences related to local burglaries where items were stolen and then pawned or sold soon after. D was aged 32 on appeal with convictions

for 11 burglaries and nine for handling stolen goods. He was also on licence following his last handling conviction when he committed the aggravated burglary. D's complaint regarded totality. Held. These were serious offences committed by a serial burglar and handler. Aggravated burglary is always a serious offence and D went equipped for the first burglary. D found the knife in the second burglary at the property but made no overt threats with it. 5 years for the aggravated one and a total of **9 years**, not 10 ½ years.

Cruelty to children

Violence to a child aged 2-5

Att-Gen's Ref No 73 of 2014 2014 EWCA Crim 1932 D was convicted of cruelty to a child (×2). The offences were carried out over a period of five years or so, beginning in 1997, when V was aged five. V is now in her 20s. The abuse included hitting V to the stomach and other areas where bruising was not visible, pinching, kicking and slapping V. D also threw objects at her, forced V to take cold baths, walked V to and from school using a dog lead and pulled V's hair. D had also blamed V for her problems and described her as "a cancer" and that she should have aborted V and wished that V was dead. D threatened to kill V if she told anyone. It seemed to V that D took pleasure in hurting her. The abuse ended only when D left the family home. V told her father and step-mother after D repeatedly tried to contact her when she had turned 18. V was left with psychological scars which V continued to endure. V suffered from low self-esteem, feelings of isolation and depression. D was in her late forties and of good character. However, she continued to deny the offences and portrayed herself as the victim. D had a low level of intellectual functioning and a psychiatrist noted that immediate imprisonment was likely to severely exacerbate D's anxiety, possibly making her suicidal. Held. This case is very serious which called for a significant custodial sentence. The impacts remain serious. The case falls into the second category. [As it was an old offence] there needed to be exceptional circumstances. [There weren't any.] Even taking her mental state into account, **2 years** was the least sentence available, not 2 years suspended.

Factual basis

Newton hearing abandoned

Loss of guilty plea credit

R v Duggan 2014 EWCA Crim 1368 D pleaded at the earliest opportunity to causing serious injury by dangerous driving. D and V had been involved in an altercation in a pub with D offering to 'take the matter outside'. Bystanders subsequently intervened and escorted D to her car, which she got into. V then approached D and there was a verbal altercation. D refused to get out of her car and instead tried to drive out of her parking space. She manoeuvred two to four times to try and get out, but on the last occasion D crushed V against a parked car. V had a fractured femur but suffered no continuing disability. During sentencing, D interrupted the Judge as he described the dangerous driving as involving "three reversing manoeuvres" and shouted, "It didn't". The Judge immediately decided to hold a Newton hearing. The matter was adjourned and about two months later at the intended hearing two witnesses turned up. D accepted the facts and a hearing was no longer needed. Subsequently, the Judge only awarded D 10% credit. Held. It was unnecessary to adjourn for a Newton hearing as the matter could have been clarified then. D should therefore receive a full one third credit.

Robbery

Street robbery

Defendant has a significant record Less than 5 years

R v Abraha and Another 2014 EWCA Crim 1889 D and F pleaded (full credit) to robbery. Due to large numbers of robberies of high value items, undercover police were deployed. Two men approached V, who had been drinking, outside a nightclub in the small hours. V then sat down with both defendants and another man joining him. V was concerned he was about to be robbed and stood up to leave. D then grabbed V tightly around the body, restraining him. F then violently pulled V's wrist, removing V's fake Rolex (although thought to be genuine). Undercover police saw the robbery and stopped D and F. F was seen to throw the watch onto the floor. D was aged 23 on appeal and had convictions for ABH and theft from the person, also committed with F in similar circumstances. F was aged 24 on appeal and had a poor record, including robbery, two further thefts from the person and various other thefts. The only remorse expressed by D or F was that they were caught. Held. The Judge was entitled to sentence outside the range of level 1. This offence was serious and was prevalent in the area so the Judge was correct to have regard to deterrence. For D1, the appropriate starting point was 31/2 years. Therefore 28 months, not 3 years. For F, a starting point of 41/2 years, with plea **3 years**, unaltered.

Sex offences: Children, With

Post-guideline case

R v DE 2014 EWCA Crim 1960 D convicted of sexual activity with a child family member, his granddaughter. V was aged 13 and visited D's home to be congratulated on her school report. When V's mother and D's wife were out of the way, D showed V some holiday pictures on a computer, also intended for V's mother. D, sitting on the computer chair, put his arm around V and moved it under her skirt. He squeezed V's bottom which was bare, her knickers having ridden up. D denied the offence throughout. He was aged 71 on appeal and of positive good character with flattering references. The episode caused huge family upset. D became suicidal but showed no empathy and was arrogant. He was assessed as suitable for a sexual offenders treatment programme and a three-year community order was also recommended. The Judge concluded the offending straddled categories 2 and 3. Held. It is hard to see how this offence is other than a straightforward category 3 offence. It is to be distinguished from touching naked genitalia or naked breasts. The single culpability factor of age disparity certainly does not take the matter into category 3A, but the Judge was required to bear in mind there was only the single factor operating to do so. **8 months**, not 12.

Sex offences

Need for sentence to address the behaviour as well as to punish

Att-Gen's Ref No 61 of 2014 2014 EWCA Crim 1933 D was convicted of seven indecent assaults. One count was a specimen count against V2. In the late 1980s D was 15 or 16 and he would lie naked on top of V1, his step-brother, make him remove his clothing in bed and rub up and down until D ejaculated. He told V1 not to tell anyone and this occurred over a 12-month period. This was similarly perpetrated against V2, D's step-sister, but over an 18-month period. In addition, D had touched V2's vagina and had rubbed his groin against V2's under the pretence of playing a game. The offences took

place when their parents were out of the house and D was left in charge. V1 was five and V2 six or seven at the time. The abuse ended when the V1 told his mother, coinciding with D leaving for the Army at 16. D admitted the offences to his parents who then sought advice from a vicar. V1 and V2 received counselling and the Judge found the offences to have had a profound effect. D was now aged 42 and had a conviction for other sexual offences from 2010 (taking a child, who was 15, without authority and meeting her following grooming when he was a teacher). D was made subject to a SOPO which he breached three years later by still being in contact with that victim. It was then varied when she became an adult, to permit contact between the two. He was currently engaged in a Sexual Offender Treatment Programme (SOTP), and had continued on the community order imposed then, but now breached. The PSR noted that custody would be of insufficient length to enable work to occur with D to reduce his risk of harm. Research showed that non or partial completion can increase the risk of re-offending. There was some acceptance of guilt. Held. D's conviction shows that, many years after the [instant] offending, he was prepared to indulge his proclivities at the expense of his responsibilities. To bring the SOTP to an end by imposing immediate custody would not only frustrate such work, but might exacerbate the situation. This is a difficult and unusual case. We conclude that the interruption of the SOTP, with concomitant exacerbation of the situation, is an exceptional circumstance justifying the suspension of the sentence. **18 months, suspended for 2 years** unaltered.

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