

Banks on Sentence

Sentencing Alert No 96

19 January 2015

Exposure

Post-guideline case

See also: *R v Ketteridge* 2014 EWCA Crim 1962, 2015 1 Cr App R (S) 11 (p 89) (Two offences, one three days after being bailed for the other. D exposed his penis, masturbating and staring at: a) schoolgirls aged 17/18 and b) girls aged 13-16, whilst driving slowly or stationary. D was 45, given a caution for exposure shortly before first incident, no convictions and had supportive statements. Counsellor diagnosed 'disassociation', a symptom of PTSD. Obviously not a case for a community order. **9 months'** imprisonment in all and **1-year driving ban** upheld.)

Offences Against the Person Act 1861 s 18

Vehicle, After using (including road rage)

R v Wilkins 2014 EWCA Crim 2066 D pleaded (full credit) to section 18 and possessing an offensive weapon. D's bad driving caused V to flash his lights and V later turned into the road where he lived. D, reversing his car, followed V and there was an altercation. D, who had been drinking, punched V unprovoked and then took hold of a Stanley knife. D and V grappled on the ground with D continuing to punch V. In the course of the fracas the knife caused a 3½ inch slash to V's face and a cut lip. He needed stitches and had a permanent scar. D then drove away. The attack also left V with anxiety and sleeplessness. D was aged 25 on appeal and had several previous convictions for violence, including a section 20 assault on his ex-partner in 2011. There were supportive references. D received a suspended sentence which expired only four months prior to this attack. He was remorseful and admitted to anger problems. D was also in long-term employment and his partner had given birth whilst he was remanded. The Judge accepted D had armed himself with the intention of going out to harm others. Held. We agree D is dangerous, but this was not a Category 1 offence. There was in reality no sustained or repeated assault. **8 years'** extended sentence (**4 years'** custody not 6, and **4 years'** extended licence).

Prostitution offences

Brothel offences Post-guideline cases

R v A 2014 EWCA Crim 1882 D pleaded (20% credit) to conspiracy to act or assist in the management of brothels. D was a driver in a 'taxi-flat' brothel operation whereby clients visited Eastern-European woman working voluntarily from expensive Mayfair flats. Clients could only visit prostitutes by being driven to the brothels. They would be directed towards drivers by 'arrangers'. The drivers would then give prospective clients a sales pitch and would ring the brothels to let them know they were on their way. They would sometimes return to pick up clients later. Drivers obtained payment directly from brothels, according to how many customers they brought. They would also pay the 'arrangers'. D was one such driver for a year for two brothels. The set up was high end and included offering clients cocaine and receiving payment, often for thousands of pounds, but D had no part in these activities. D was aged 53 on appeal and had antecedents mostly relating to taxi service offences. He had an entrenched gambling problem and had been made bankrupt and lost his home following a failed business. D was remorseful and the pre-sentence report questioned his ability to deal with custody and recommended a community order. Held. Nothing justified moving from the starting point of 12 months (Category 2 harm and Category B culpability). Therefore, **9 months**, not 14½.

SOPO

Contact with children prohibitions

R v Jones 2014 EWCA Crim 1859 D pleaded (full credit) to making indecent photos of a child (×10) and possession of indecent photos of a child. On D's laptop there were around 30 videos at levels 1-4 and six cartoons and images at level 5. One level 4 video was of a girl of around 11 being penetrated anally to ejaculation. D was aged 64 at sentence. He had two previous convictions for similar offences, the last being in 2006 (custody). D was diagnosed with a "disorder of sexual preference" but did not meet the criteria for paedophilia. The pre-sentence report noted that D's behaviour was part of an emerging pattern and not an escalation of behaviour. It also mentioned that D had never engaged in sexual activity with a child and identified research indicating that child pornography-only offenders have low rates of future contact sexual offences. Therefore, D posed a low risk of carrying out contact sexual offences and he had also voluntarily removed his access to the Internet. The Judge imposed 2 years' imprisonment and a 10-year SOPO restricting D's internet usage and prohibiting D from having any unsupervised contact with children under 16 other than in the presence of their parent or guardian who knew about his sexual convictions. Held. In the absence of an identifiable risk of contact offences, a prohibition on unsupervised contact with children under 16 cannot be justified. That element of the SOPO quashed.