

Sentencing Alert No 101

18 March 2015

Benefit fraud

£20,000-£40,000

Post-guideline case

R v Siracusa 2015 EWCA Crim 268 D pleaded (full credit) to benefit offences. D started claiming income support in 1995 and council tax benefit in 2002, both legitimately. She then inherited substantial sums of money in 2009 and 2010, totalling £155,000. D did not declare this and instead used it to buy properties. D's excuse was that the money did not stay in her account for very long. The total overpayment to D was £33,500 over a four-year period. The Judge described D's level of dishonesty as 'extraordinary' as there was no excuse for continuing to claim benefits. D, aged 58 on appeal, was the main carer for her 21-year-old daughter, who required help with almost all daily functions. D presented a 'remarkably low risk of reoffending'. Held. Immediate custody was appropriate. This fell into Category 4 with Category B culpability. **6 months** concurrent, not 18.

Fraud

Work done incompetently by builder with inflated price

R v Hamilton 2015 EWCA Crim 278 D pleaded (full credit) to engaging in a commercial practice contravening the requirement of due diligence contrary to Consumer Protection from Unfair Trading Regulations 2008 2008/1277. V1 and V2, a couple aged 84 and 68 respectively, wanted a dividing wall in their house. D, describing himself as a builder and competent bricklayer, quoted them £800, a figure that was subsequently raised to £2,000. He asked for £500 on account and then a further £800, on top of the £2,000, and all was paid. A surveyor, asked by V2 to inspect D's work, concluded that two lintels were inadequate and badly inserted and that D's bricklaying was poor. The estimated cost of properly done work was £1,200 but it would cost £2,600 to put D's mistakes right. D was aged 28 on appeal with low-level public order convictions but he asserted he had done a good job. Held. Although a custodial sentence was justified, it would have been appropriate to suspend it. **12 weeks suspended for 1 year**, not immediate.

Handling

Robbery, Proceeds of

R v Urbanski 2015 EWCA Crim 233 D pleaded (full credit) to handling stolen goods. During a vicious night-time aggravated burglary, an 81-year-old occupier was tied to a chair and repeatedly beaten. The house was ransacked. £200,000 of V's items were taken by seven men. A day later, D was seen on CCTV getting out of the passenger seat of a van which was then unloaded into a storage unit with D supervising. Those doing the unloading bore resemblances to the men who had committed the burglary. Phone evidence showed D had been in contact with those who had carried out the burglary. Police recovered less than one-third of the value of V's items. Police also found clothing stolen from charity shops and fake ID documents at the premises where the storage unit was. D was aged 26 on appeal and had one conviction for drugs possession with intent to supply (12 months). Held. Applying *R v Webbe* 2001 EWCA Crim 1217, 2002 1 Cr App R (S) 22 (p 82), the fact that there are five aggravating factors and that D played his part in a professional handling organisation justifies a starting point of 6 years. **4 years**, not 5.

Money laundering

Criminal conduct money

Post-guideline case

R v Haygreen 2015 EWCA Crim 292 D pleaded very late to attempting to acquire criminal property. V, a vulnerable 68-year-old man, was defrauded out of around £100,000 over three months. D was to be paid £500 out of a sum of £7,000 which was part of the overall defrauded sum. D had no idea that the money was from a fraud but admitted his role. He was aged 28 on appeal and of effective good character. The Judge gave a *Goodyear* indication of 9 months, suspended for 2 years, with 'any condition'. The pre-sentence report reflected D's remorse and concluded that unpaid work would be suitable. Held. Under the system before the guideline and under the guideline, given D's limited role in the circumstances, a **community order with unpaid work**, not 5 months suspended with unpaid work.

Offences Against the Person Act 1861 s 20

Victim seriously injured Unexpected

See also: *R v Robson* 2015 EWCA Crim 223 (Plea. D, drunk, pushed V who pushed back and moved away. D punched V unconscious. V's head hit ground. On floor, D punched V twice more and left. Catastrophic injuries including bleeding on brain. Part of skull missing. D, aged 20, handed himself in the next day. Dishonest account, but remorseful and of positive good character. Category 2. **2 years 4 months'** YOI.)

Robbery

Cash-in-transit vehicle with imitation handgun

R v Anwar 2015 EWCA Crim 294 D pleaded (20% credit) to conspiracy to rob and having an imitation firearm with intent to commit an indictable offence. He had earlier pleaded to dwelling burglary. Whilst on bail, D and another planned to rob a cash-in-transit vehicle using a 20-inch machete, an axe and an imitation handgun (a BB gun). They also had face coverings, a balaclava and gloves but D was the driver. Earlier D, on bail, went into an unoccupied flat. Following a messy search, D stole around £9,500 of jewellery, £200 cash, a passport, bank statements and financial documents but left behind a fingerprint. D was aged 20 on appeal, was of good character and was described as 'intelligent'. His motivation was to repay his drug dealer. Held. Despite significant aggravating features of planning, the taking of disguises and weapons, emphasis is placed upon the lack of true professionalism, the robbery was not carried out, D's good character and his age. Had the conspiracy been carried out, the starting point would have been in the region of 10 years. Starting at 8 years, **6 years 3 months' YOI**, not 8 years. 6 months' YOI consecutive for the burglary (unappealed).

Sex Offences: Children, with

Physical contact under clothing

See also: *R v Jones* 2015 EWCA Crim 31 (Plea (25% credit) to sexual activity with a child (x6), causing or inciting a child to engage in sexual activity (x3) and attempting to engage in sexual activity with a child. V1 and V2, aged 13, twin sisters. D knew this. Flirted, kissed and touched both

girls over a month-long period. D rubbed V1's thigh, breast and vaginal area in a sexual manner over clothing and placed her hand on his erect penis. Also massaged and touched V2's vagina over clothing twice. Category 3A case. D revealed his clothed erect penis. Aged 29 with no relevant convictions. **2 years 8 months** overall, not 5 years.)

Theft

Shop theft Persistent offenders

R v Fletcher 2015 EWCA Crim 243 D pleaded (full credit) to theft (×3), attempted theft and fraud (×8) with 13 more frauds TIC'd. D took a body warmer from a shop and then, appearing upset and crying, pretended to staff that she had bought the item as a gift for her father, who had since died. Consequently, she could not produce a receipt so they gave her £40 worth of store vouchers. In interview, D admitted theft, saying that she needed money for rent arrears. A week later, and on bail, D took items worth £47 and, having cut the tags off, simply walked out of the shop. Four days later, she returned but was arrested. A corkscrew and secateurs were found in D's bag and clothes with their tags removed were found in the shop's changing rooms. Seven weeks later, also on bail, D stole a £70 baby monitor. During D's theft spree, she also knocked on the doors of at least eight houses and told false heart-rending stories to get people to give her cash but there were only one or two victims and they parted with very little cash. D, aged 34 on appeal, was a persistent, prolific offender and was well-known in the area. She had 145 dishonesty convictions since 1998 and breached a recent community order. Her offending was linked to an entrenched drug addiction and there were concerns about her mental health as she had emotionally unstable personality disorder and self-harmed. Held. A significant sentence of imprisonment was appropriate but regard had to be had to totality. **18 months**, not 28.