

Banks on Sentence

Sentencing Alert No 110

20 July 2015

ABH

Unprovoked/No reason

R v Stevenson 2015 EWCA Crim 1140 D pleaded to ABH at the Magistrates' Court. D, who had been drinking, talked to V in a petrol station kiosk amicably. V then thought D had been rude to the cashier and D took exception to this and head-butted and punched V. D then left. V lost one of his teeth and had a small cut to his eyebrow. D was 27, with seven sentencing hearings for 21 offences. Between 2005 and 2007, there was a violent behaviour and an assault. There were other violent offences but there was no offending since he was released from prison in 2009. He had been using cocaine and was drinking up to a bottle of spirits a day. The pre-sentence report assessed he posed a high risk of harm to the public. The Judge said it was a Category 1 case, because D had hit V twice, making the offence one of higher culpability. She thought the head-butt was, in effect, the use of a weapon. Held. The Judge made no mention of the mitigation which was: a) D had been in full-time employment since two months after his release, b) he was now a team leader at his local factory, c) D was the sole breadwinner, d) his children were aged 3 years and 8 months, e) his wife was very ill with a perforated ulcer with complications and f) D had to support her and look after the children. The offence was Category 1. The aggravating factors did not warrant an extra year's imprisonment. We start at 2 years, not 30 months, so with plea, **16 months** not 20 months.

Criminal Damage

R v Moses 2015 EWCA Crim 1010 D pleaded early to criminal damage and squatting (no penalty). The criminal damage value was limited to £20,000. Neighbours heard noise coming from a flat and saw floorboards, radiators and kitchen units being thrown out of the windows. Police attended and were abused by D. He said he was the owner and issued more threats. At the police station he said he was squatting and was renovating the property. D was bailed and continued squatting in the property. He breached his bail twice and was re-interviewed when it was clear he was convinced the property was his. D was now aged 47. He had been before the courts on 36 occasions for 126 offences in 20 years. Most of the offences were burglary, theft and other dishonesty offences. He was on licence for an attempted burglary offence for which he had received 12 months. The pre-sentence report said the offending was linked to extensive alcohol and amphetamine use. Further D did not intend to address those problems. Held. We start at 2 years. With plea, **16 months**.

Offences against the Person Act 1861 s 18

Relationship attacks

R v Halliwell 2015 EWCA Crim 1134 D pleaded (25% credit) to section 18 and ABH. D went to a pub to celebrate a windfall with his daughter, V1 and her boyfriend, V2. D and V2 became drunk. The three returned home and D carried on drinking. V2 was put to bed. Later, [D went in the room], seized V2 by the throat and punched V2 repeatedly in the face. This was the ABH. V2 and another tried to pull D off V2 but couldn't. D threatened to kill both of them. D left the room and returned with a pair of scissors. D told V1 she should not have tried to help V2. D then stabbed V1 in the shoulder area and punched her to the face and body. V1 bent forward and D stabbed her again in the back. V1 fled outside and V2 jumped out of the first floor window to seek help. V1 had a penetrating wound to her back, a collapsed lung and a superficial wound to the front of her chest. V2 had facial bruising, particularly to an eye, and cuts. D was now aged 45 and between 1982 and 2005 he had 13 sentencing hearings for 29 offences. He had two section 47 offences in 1984 (a fine and 21 days' detention). In 1987, he had a section 20 wounding (community order). He also had a long history of alcohol abuse. The pre-sentence report said D posed a high risk of causing serious harm to those closest to him. The Judge assessed the section 18 as a Category 2 offence with a starting point of 10 years. Held. The 1984 and 1987 offences were historic and [could not be used] to assess dangerousness. The Judge was right to consider the underlying history of domestic violence. The section 18 offence was very close to or within Category 1, so the penalty was 10-11 years, making 8 years with the plea. The ABH was a Category 2 not 1 case, so 1 year not 1 ½. It should be concurrent not consecutive, so 8 years determinate in all and not 12 ½ years extended (9 years custody and 2 ½ years extended licence).

Preventive Orders

Child contact prohibitions Appropriate form of words, The

R v H 2015 EWCA Crim 947 D was convicted of two sexual assaults on a younger male relative. He was given a SOPO which prohibited him from a) using any social networking site including Facebook and b) having or using any device which had a webcam facility. Held. The condition would make it difficult for D to use any computer or other technical device. We substitute:

'2 Using any device capable of accessing the internet unless (a) it has the capacity to retain and display the history of use and (b) the offender makes the device available on request for inspection by a police officer.

3 Using any device fitted with a camera to communicate via the internet with any person unless (a) it has the capacity to retain and display the history of use and (b) the offender makes the device available on a request for inspection by a police officer.

4 Deleting the history referred to in either restriction 2 or 3 without the written permission of the Chief Constable of the police force for the area in which he is residing at the time.

5 Using any device by means of the internet or otherwise to knowingly communicate with children under the age of 16 years by any means whatsoever.

6 Visiting any internet site, including internet chat rooms, specifically intended to be for the use of children under the age of 16 years.

7 Possessing any device capable of storing digital images unless he makes it available for inspection by a police officer and subject to a condition that it has the capacity to retain and display a history of its use.

Rape

Defendant aged 15-17

See also: *R v W* 2015 EWCA Crim 1021 (Convicted. W and victim, V, both aged 16. W took down her jeans and knickers when V was asleep. V found wet ejaculate between her legs. W apologised. Relationship continued, then broke up. V reported it. Starting point 5 years. With W's age and his good character, **2 ½ years**, not 3 ½.)

Restraining Orders: Harassment: Breach of

Approaching victim/Verbal threats to victim

R v Freestone 2015 EWCA Crim 1033 D pleaded to breaching his Restraining Order. D and V had known each other for 36 years. For some of that time they had been married. They had four children. In 1997, D was convicted of common assault and destruction of property. In February 2012, there were similar offences and D was given a Restraining Order. In November 2014, after drinking with his son, D followed the son back to V's house. D went upstairs and entered V's bedroom where she was. D was carrying a bat or a truncheon and walked towards her. V asked D what he was doing and he said, "I've come to give you some reality". He brandished the bat but V managed to dial 999. D left the room. His son went to calm him down and D left the property. Held. The offence was aggravated by: a) the presence of a weapon, b) V was particularly vulnerable, c) D had a history of violence against V, d) it was at night, e) it was in V's bedroom and home, and f) D was under the influence of alcohol. However this was the first incident in the 2 ½ years the order had existed. We start at 2 years, so with plea **18 months** not 33 months.

Sex Offences: Assault

Intruders, By

Att-Gen's Ref No 37 of 2015 2015 EWCA Crim 1210 D pleaded (full credit) to sexual assault and burglary. D, after drinking, asked a friend to go to a club with him and the friend refused. D left. About four hours later, he smashed a lower floor window with a spade and entered a dwelling. He stole some relatively insignificant articles and then went to V's room. V woke up, saw D and without her glasses was unable to recognise the person and screamed. She was absolutely terrified. D stood over the bed and said, "You are not going to make any noise are you?" V said she would not. She tried to keep D talking and thought D had a weapon. D pulled the duvet from V's legs, touched her bottom with his hand, and moved it up to her upper thigh area over her clothing. Next he pulled her legs apart and cupped her vagina over her pyjama bottoms. D then moved his hand to the back of her waist band

and began to pull at it. At this point another resident came into the bedroom. She directed D out of the house and he left. Shortly after he was seen by a police officer who considered D was smelling slightly of alcohol. The stolen articles were found in his pockets. D lied then and in interview. D was aged 19 with no convictions. He continued with the lies when seen by a probation officer who checked his account that he was a victim of sex abuse and found it was true. V described her feelings of vulnerability and how she now never felt safe. Held. Forced entry was indicative of greater harm in every case. The offence was committed at night and under the influence of alcohol. The victim exemplifies the feelings of distress, invasion and future fear as to their safety in their own home. We start at 4 years so with plea and 2 months off as he now goes into custody, **2 ½ years** not a community order.

Suspended Sentence Orders

Suspended sentence order nearly over

R v Carmody 2015 EWCA Crim 1029 D pleaded to ABH and was in breach of an 18-months Suspended Sentence Order. The victim in each was the same. The Suspended Sentence Order had only 6 weeks left and he had complied fully with the requirements, including a 250-hours unpaid work requirement. Held. 4 months not 8 months activated consecutively, making **20 months** not 24.

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