

# Banks on Sentence

## Sentencing Alert No 112

13 August 2015

### ABH

#### *Relationship offences*

*R v Gulas* 2015 EWCA Crim 1200 D pleaded to ABH (full credit). D had had a relationship with V for over a year. They had a six-month old child and V had two older children with another father. D and V argued for most of a day, mostly about money. The older children went to bed and the baby was downstairs with D and V. The arguments escalated and D punched V in the eye three times causing it to bleed. V tried to protect herself with her arms and he punched them and [pushed] them out the way. D went to the kitchen and came back with a rolling pin. He hit V with it around her hip. She again tried to protect herself with her arms and he used a cigarette to burn her so she would move her arms. The noise woke up the children and the eldest took the baby upstairs. D wanted a drink so he went to a shop. He came back, threatened V and punched her in the eye again. Police arrived. V's temple was swollen and bleeding. There were cuts and bruising to V's arms and an injury to her hip. There was a burn and other marks. In interview D lied. He was aged 35 with no convictions in this country. D told the pre-sentence writer that he lost control and V deserved it. The Judge said it was a most dreadful and sustained attack on a most vulnerable victim. Held. The injuries were significant. The Judge was able to go to the top of the range of Category 1. A fist, rolling pin and a cigarette were used. We start at 3 years 4 months, so with plea, **27 months** not 32.

### Burglary

#### *Persistent dwelling burglar*

*R v O'Neill* 2015 EWCA Crim 1181 D pleaded to burglary (25% credit). At 10.30 pm, D entered a house through an unlocked patio door. He stole car keys, an iPhone, and another mobile. D went to a shop to try and unlock the iPhone. Staff were suspicious and called the police. D left, leaving his wallet with his details behind. D was now aged 34 with over 20 burglary and attempted burglary convictions between 1996 and 2012. He received 3 years detention in 2002, 3 years in 2004, 1 year in 2007, 32 months in 2008, 30 months in 2010 and 34 months in 2012 all for burglaries. He was a drug addict. Held. We start at 5 years not 6 so **3 years 9 months** not 4.

## **Defendant**

### ***Confession evidence, Case based only on***

*R v Green* 2015 EWCA Crim 1218 D pleaded (full credit) to two burglaries (one dwelling, one not). He accepted ten dwelling-burglary TICs. Police saw a bicycle leaning against a car and D coming out of a driveway. D ran off. Police caught him. A handbag he had discarded was found. It was discovered that the bicycle was stolen from a shed and the handbag from a house. D took part in a police 'Clean-slate' operation where he pointed out burglaries he had done where there was no other evidence. Police considered D's motivation was remorse and spoke well of D's realistic assessment of himself. D was aged 28 with an extensive criminal record. There were three appearances for more than one dwelling burglary with TICs. In 2006, D was sentenced to 18 months YOI. In 2009, D was sentenced to 3 years. In 2010, he was sentenced to 47 months. There were problems with the health of his young son. Held. D was a prolific burglar who steals to feed his cocaine addiction. Considering the police assessment of him we can be more lenient [than usual]. We start at 5 years not 7½, so with plea, **3 years 4 months** not 5. For the shed burglary, we substitute 2 years concurrent for 3.

## **Manslaughter**

### ***Judicial guidance***

*Att-Gen's Ref No 36 of 2015* 2015 EWCA Crim 1174 D was convicted of manslaughter. Held. para 16 *Att-Gen's Ref Nos 60, 62 and 63 of 2009* (see above) signals a clear change to the approach to sentence in unlawful act manslaughter cases. There is to be an upward movement in sentences to reflect the new focus on harm under Criminal Justice Act 2003 s 143, the sentencing regime for offences of murder contained in Schedule 21, and the sterner approach in cases involving the carrying of knives and other weapons, see *R v Povey* 2008 EWCA Crim 1261, 2009] 1 Cr App R (S) 42 (p 228). para 25 There is now a much greater focus on the fact a death has been caused.

### ***Knife, With***

*Att-Gen's Ref No 36 of 2015* 2015 EWCA Crim 1174 D was convicted of manslaughter as an alternative to murder (based on lack of intent). D and V had known each other for some time and there was no animosity. They both went to a funeral and after the service they encountered each other. A fight broke out and D called V a grass which was denied. There was evidence D used this term for people he did not like. D punched V to the head and both men fell to the ground. D then kicked V and a knife with a 6" blade fell out of D's pocket. Both men reached for the knife but D picked it up and stabbed V in the neck. D drove off. D later called 999 but the information given was too little for the service to act on it. When found, V was taken to hospital but he was dead on arrival. V had a 4" deep stab wound to the neck, which severed his jugular vein causing severe haemorrhaging. There were further knife injuries to V's chin and upper chest. D disposed of his blood soaked clothing and tried to clean the blood from his shoes. D was aged 53. He had many previous convictions over a significant period. There was a section 18 in 1982 and possession of an offensive weapon in 1982, 1989, 1990 and 2013, just a year before this offence. In 1997 he received 9 years for conspiracy to rob, possession of a firearm with intent and two possessions of prohibited weapons. There was no remorse. Held. Sentences have moved upwards (see 284.3). The principle aggravating feature was that D took a knife to the scene. D did not expect a confrontation but he chose to pick the knife up and he knew V was unarmed. The case was of high culpability. The offence was aggravated by D being the aggressor in the initial

confrontation, the offence was witnessed in a public place, D made off and D disposed of the evidence. The least sentence is **14 years** not 9.

## **Robbery**

### ***Betting shops***

*R v Baboukhan* 2015 EWCA Crim 863 D pleaded to three attempted robberies (full credit). In the early evening, he entered a betting shop and went to the counter. He said to a female cashier, C, "Do me a favour put £500 on the counter. If you don't I'll pull something on these guys," indicating a man on a gambling machine. C asked what he was going to pull and D said, "A knife." C went to a staff area and D followed her. There was a brief struggle between the two and D said, "Do you think I am scared of the police." D then walked off. About a half an hour later he entered another betting shop nearby and D told the manager to go behind the counter and get £500. He appeared to be rambling and the manager, M, didn't take it seriously. D then offered to fight for the money, put his hand in his waistband and said it was a weapon. M thought he was about to be attacked. D left. 20 minutes later, at another betting shop nearby, D again asked for £500. The female staff member thought he was joking even when D said he had a knife. Putting his hands through a gap in the counter, D tried to grab some coins. Then he pushed two machines off the counter, hit the fire alarm and left. D was 24 now and had six sentencing appearances. They were mostly when he was a juvenile. In 2008, he received 42 months detention for attempted robbery and possession of an imitation firearm. D told probation that on the day he had been drinking and taking Class A drugs. A psychiatric report said he exhibited traits of an anti-social personality disorder and other disorders, but he was not mentally unwell. Held. The range was up to three years after a trial. We start at 6 years not 9, so with plea **4 years** not 6. The sentences to be concurrent not consecutive.

## **Sex Offences: Historical**

### ***Indecent assault***

*R v Kerr* 2015 EWCA Crim 1234 D, a teacher, was convicted of three indecent assaults committed between 1999 and 2002 or 2003. Two were against his pupils. D was highly regarded and popular. He was an enthusiastic supporter of extracurricular activity. In 1999, following an allegation of sexual misconduct which was not sustained, D was warned not to invite pupils unaccompanied to his home. He developed a particularly close relationship with V1 who had personal difficulties at home. They would share a shower together naked. V1 found this uncomfortable. When V1 was aged 15 or 16 he complained of some muscle pain. D took V1 to his home and put V1 on a bed and massaged his back. Next he pulled down his lower clothing and massaged his naked buttocks and touched his anus for about five seconds without penetrating it. V1 said he did not want to be touched there and D stopped. On the pretext of helping him with a bad exam mark, D invited V2, aged 17, to his home. They played squash and showered naked afterwards. Next, D took him to a pub and bought him two pints and drove V2 to his home. V2 complained of pain from the squash game, and D said he would give V2 a massage. D rubbed V2's back with oil for five minutes and then pulled D's trunks down exposing his bottom. D told V2 to close his eyes and turned him over and massaged his penis for 30 seconds. V2 then left. V2 complained and D resigned as a teacher. Other pupils disapproved because they had lost a popular teacher. V3, aged 17 was openly gay and was not a pupil of D. He declined to shower with D. D called him to his office to ask why. Later he asked V3 to have a coffee in his house. There he

tried to kiss V3. V3 said he was not going to kiss D. D said it was acceptable and tried to hug and kiss him. V3 resisted. D was aged 53, with no convictions. V1 and V2's victim impact statements focused on the stress of the trial. Held. There was obviously a clear breach of trust. For V2, there had been planning and the supply of alcohol. There was high culpability. V1 and V2's offences were Category 2A. V3 offence was Category 3. The Judge was entitled to make the sentences consecutive. For V1, 2 ½ years, for V2, 2 years, and V3 6 months, making **5 years** in all not 7.

## **Supply**

### ***Street dealing***

*R v Mellor* 2015 EWCA Crim 1243 D pleaded to supplying heroin. Police saw him meet a female, have a short conversation and walk off. The female was stopped and found to have three wraps of heroin. The weight was 0.9 grams. D was searched and found to have £25 in notes. D was aged 43 and had a significant criminal record but no convictions for supply. For 10 years he had a serious crack and heroin problem. In a *Newton* hearing the Judge determined that D was caught in a single supply for gain to feed his own addiction. He placed D at the bottom of Category 3 at a significant role, making 3 ½ years and with plea, 28 months. Held. We need not decide whether this was a significant or lesser role. The only aggravating factor was the previous. As it was an isolated incident we start at 2 ½ years making with plea, **20 months**.

Follow us on Twitter [@BanksonSentence](https://twitter.com/BanksonSentence)

[book@banksr.com](mailto:book@banksr.com)

[www.banksr.com](http://www.banksr.com)

To sign up to receive the Sentencing Alert emails, please [click here](#).