

Banks on Sentence

Sentencing Alert No 114

26 August 2015

Bomb hoax

R v Perera 2015 EWCA Crim 1303 D pleaded to communicating false information with intent. He called Norwich airport and said a bomb would go off at 6. The airport was searched and nothing was found. By coincidence no flights were due to leave that day. The call was traced to a phone box and D was identified by CCTV. About a year later after the call, he pleaded guilty. D was aged 47, with a very low IQ of 60. He had a very limited understanding of what he had done and had mental difficulties. The pre-sentence report said he was now showing an insight into what he had done. A prison report said D was well-behaved and had good discipline, but there was little they could do for him. The **6-month** sentence should be **suspended** with a supervision requirement.

Burglary

Persistent burglar (dwelling)

R v Jones 2015 EWCA Crim 1258 D pleaded to burglary early. When on licence he broke into a home by breaking the glass in a rear door. He took a laptop, a notebook computer and about £105. D had 53 convictions on 18 occasions of which 25 were burglaries or attempted burglaries. There were many burglary TICs. For burglaries he received 4 years in 2009 and 57 months in 2012. The defence said an 8-year starting point was wrong. Held. When offenders persist in such offending, then ever-increasing sentences are to be expected. But an invariable exponential increase on each succeeding occasion cannot be allowed to give rise to an end result which ultimately bears no true relationship to the actual offence. We start at 6 years, so with plea, **4 years**.

Criminal Behaviour Order

Commencement

Note: Where criminal proceedings began before the commencement day (20 October 2014), the order should be an ASBOs and not a Criminal Behaviour Order, Anti-social Behaviour, Crime and Policing Act 2014 s 33(1). As the case below shows 'criminal proceedings' is given a wide meaning. Ed.

R v Simsek 2015 EWCA Crim 1268 In September 2014, D pleaded to drug offences and in October 2014, he was given a Suspended Sentence Order and an ASBO. In November 2014, the Judge substituted a Criminal Behaviour Order for the ASBO under the slip rule. The terms of both orders were the same. In February 2015, D appeared in court for three ASBO breaches in January 2015. Held. The criminal proceedings began before 20 October 2014, so the order should have been an ASBO. There was no power to impose a Criminal Behaviour Order.

Note: It appears the breaches were breaches of an ASBO which didn't exist when the breaches occurred. If that was a slip of the tongue then it was for breaches of a Criminal Behaviour Order which was an order the Judge was unable to lawfully make. Ed.

Cruelty to children

Violence to a child

R v MA 2015 EWCA Crim 1209 D pleaded (15% credit) to cruelty. He was looking after his 3-year old son, V, who was eating an ice lolly. Some of the lolly and the wrapper fell on the floor and D got angry. He slapped V three to four times on his legs, arms and buttocks. The smacks were not hard. This caused reddening and bruising to the buttock area. D had references. Held. It was an isolated incident. Held. There were three aggravating factors. First, when V's mother attended, D showed no contrition. He placed his face 30 cms from V and said, "Yes, I did hit you and you know why. It is because you do not listen." Second, the assault had taken place in front of other children. Third, the incident happened only days after a 15-month Child Protection Plan had expired. **12 months** was severe but not manifestly excessive.

Robbery

Shops

R v Rickett 2015 EWCA Crim 1179 D pleaded to robbery and possession of a bladed article. At 11 pm, as a convenience store was closing, D barged in. He was wearing a hooded jacket and a home-made balaclava. At the counter, he waved a small knife and shouted at C, who was behind the till, "Where's the fucking money?" He demanded the till be opened. He took about £119 from the till and demanded to know where the safe was. Staff told him they did not have access to it. One of the staff, J, used a shopping trolley to try to stop D fleeing. Unfortunately, J fell and cracked two of his ribs and suffered bruising. C was physically sick and became nervous and fearful of late shifts. D was aged 48 with a long record mostly for dishonesty. In 2009, he received an extended sentence for robbery (with a 6-year custodial term). It was a robbery of a convenience store when D wore a balaclava and was armed with a knife. D punched a member of staff. D had a drug and alcohol problem. The Judge started at 12 years because the offence was aggravated by a) pre-planning, b) the disguise, c) it was committed at night, d) the staff were vulnerable, e) the use of the knife, f) that D was under the influence of alcohol and drugs and g) the similar previous conviction. Held. It should be an extended sentence. We start at in the order of 10 years, so with full credit, **7 years**. 3 ½ years extended licence not 5.

Sex Offences: Children, With

Digital/oral penetration

R v BA 2015 EWCA Crim 1295 D pleaded on the third day of his trial to five counts of sexual activity with a child. D, now aged 24, in 2013, created a false Facebook page claiming to be an 18-year-old. He made contact with V, a 15-year-old who soon claimed to be in love with D. Four days after the first contact the two arranged to meet at a station. They did so and they went to a park. D brought alcohol with him and encouraged V to drink it, who he knew did not normally drink. D took V into some bushes and removed her clothes. He [encouraged] her to give him oral sex. His penis went in so far she 'gagged'. D videoed this on his phone. D also digitally penetrated her, which was rough making her bleed. During the activity D pulled her hair, spat at her and spanked her. V dressed and still believed they were in a relationship. A short time later there was more oral sex and D ejaculated over her face. D then left. A week later he dumped her. These events were three of the counts. Three months later, D contacted V again. He asked for a meeting and she refused. D said if she did not her he would put the video of the sex on the Internet. They agreed to meet. D told V to shave her pubic hairs and send him a photograph of her naked vagina or he would publish the video. They met at a hotel and D demanded oral sex or he would publish the video. V complied and D ejaculated in her mouth. A short time later this was repeated. D left and she reported the events. D had in 2006, sex convictions against five separate victims, one the same age as V (12 months DTO). The Judge found D was a dangerous offender. She found V was particularly vulnerable. Held. There were many aggravating features. Consecutive extended sentence (making a total custodial term of **9 years and 9 months** not 11 and a total 10-year extended licence) so he will be released at two-thirds of his sentence as the Judge intended.

Note: The 10-year extended licence is unlawful as the maximum (whether on its own or as a consecutive term) is 8 years. Taking into account what the Judge thought was the release date was contrary to the rules about when the judge gives the wrong release date.

Sex Offences: Historical

Buggery/anal rape

Att-Gen's Ref No 44 of 2015 2015 EWCA Crim 1330 D was convicted of four specimen counts of buggery, four rapes, seven indecent assaults/indecency counts/sexual assaults and ABH. D had a relationship with W since she was aged 15. He married her and W said he had a violent temper and was excessively controlling. She was afraid of him. Between 1982 and 1985, when he was 15-18, he encouraged his nephew, N, to masturbate him. This led to touching of N's penis, oral sex and after gifts, anal rape of N. N was then aged between 9 and 12. N treated D like an uncle. D made threats that if N told anyone, D would kill him. N didn't report the abuse because he thought D was a violent man. In about 2004, when his daughter, M, was aged about 9, D demanded she took an ash tray to his bedroom. When she did, he got out of bed naked and seized her. He forced her to suck his penis and then undressed her. Next he forced her onto his bed and raped her. M was told not to tell anyone. When M was between 10 and 13, D would touch her breasts, which was dealt by one specimen count. When S, another daughter, was aged between 13 and 15, he touched her breasts and genitals. It happened about once a month. On an unknown date, he raped W. She cried during the rape and it lasted 25 minutes. In 2014, he anally raped W. Also in 2014, S intervened in an argument and D hit her with his fist or hand. It caused bruising over a large area of S's cheek. That led her school to report the matter to the police. In interview, D made denials of all matters. He was now aged 48 with one

trifling conviction. He had had a heart attack and there were indications he had been abused as a child. The pre-sentence report said D had a complete lack of insight into what he had done and was preoccupied with his sexual gratification. The risk of serious harm to family members and others was high. N had experienced significant psychological harm. He had attempted suicide and had become an alcoholic and drug user. The police considered the victims as part of a travelling community who found it difficult to talk to the authorities. The Judge was misled into believing the maximum for the historic buggery counts was only one year. Held. Bearing in mind his age when N was abused, the least sentence that can be imposed is **20 years** not 16.

Supply

Cannabis

R v Trotter 2015 EWCA Crim 1298 D pleaded to five counts of supplying small quantities of cannabis and amphetamine. Police had made test purchases. D was aged 37 and was treated as being of good character. The Judge started at 2 years and because the case was overwhelming gave 25% credit. Held. **12 months** in all not 18.

Steroids

R v Pearce 2015 EWCA Crim 1291 LCJ D pleaded to possession with intent to supply and importing steroids. He was interested in bodybuilding. He imported steroids from China and sold them. The amount was agreed to be in Category 3. The steroids had a street value of about £58,000 and D made about £20,000 profit. D was aged 35. He had some serious offences on his record but had no serious convictions in the last 15 years. Held. It is important to remember that possession of steroids is lawful. However it is a serious criminal offence to import them and sell them on. The evil of steroids is well known. D's role was somewhere between leading and significant. **20 months** concurrent not 30 months in all.

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