

Banks on Sentence

Sentencing Alert No 115

9 September 2015

Burglary

Dwelling

R v Glover 2015 EWCA Crim 1333 D pleaded to 11 burglaries, theft and four charges of fraud at the Magistrates' Court. The offending was subject to two committals. She was a carer for frail and elderly individuals. She was given keys to some of their homes and the burglar alarm codes in others. D stole a ring given to V1, aged 79, by her husband 60 years earlier. The ring was pawned. Three burglaries related to V2, aged 76, where jewellery and crystal items were stolen. Another three related to V3, aged 85, who was bedbound and lost jewellery. Access was gained by the deactivating the alarm when V3 was asleep. Two related to V4, aged 86, who was in a wheelchair and lost a handbag with £200 in it, a bank book and some jewellery. Another two related to V5, aged 92, who believed rightly that someone was entering her house at night. She was not believed and so refused to go to bed to try to catch the culprit. This adversely affected her health. She lost money and jewellery. One burglary and another offence related to V6, who was receiving end of life care. He lost a chain and gold bangles. D was arrested and made admissions. She said she used the money for amphetamine and gambling addictions. She was aged 43 with only a motoring conviction. She cared for two young children. The Judge started at 3 ½ years, gave full credit and then made the two groups of offences consecutive making **56 months**. Held. With the good character and remorse, starting at the equivalent of about 7 years was clearly a stern sentence, but it was justified.

Dangerous Driving

Overtaking

R v Baublys 2015 EWCA Crim 1411 D pleaded to dangerous driving. He was working as a delivery driver. He drove on a notoriously twisting and dangerous stretch of road. The speed limit was 50 mph and he was in a queue of traffic travelling at about 40 mph. On a blind bend and when there were central double white lines he tried to overtake two vehicles in the queue. A witness described it as a total gamble. As he was almost passed the second vehicle, his van hit an oncoming car and the car behind that car hit that car. In the first car was a driver, who suffered whiplash injuries, an adult, who suffered severe bruising, and a child. In the car behind, the driver sustained injuries to the neck and abdomen, trauma to her breast and a suspected broken rib. The injured persons suffered significant mental trauma and one could not work which affected her finances. D remained behind the wheel until arrested. He lost his job. D had no convictions and a clean licence. The Judge said it was an astonishing

piece of driving with a high likelihood of a head-on collision. Held. It was a short aberration, but the danger was plain. The court should impose only the minimum term so we start at 9 months making **6 months** with the plea.

Immigration offences

Large-scale organisations

R v Hussain 2015 EWCA Crim 1352 K, D, N and G were convicted of conspiracy to defraud. D pleaded to two benefit fraud counts (3 months consecutive). D and G were K's sons. N was K's nephew. Two others were convicted of the conspiracy (K's wife (a suspended) and the other (7 years). No appeal). K was the originator and organiser of the conspiracy. He recruited the others. From January 2006 to September 2012, the team produced and sold false documents for 107 travel visas to the UK. Employment letters, wage slips and property particulars were forged. 81 had false solicitor's stamps. Some of the applicants were duped and deprived of making a legitimate application. The group obtained £175,000. K was now aged 62 and had a serious medical condition. In 1994 he had a conviction for dishonesty which increased the seriousness of the offence. He was the primary carer for his 82-year old mother who has medical problems. D was aged 31 with no relevant previous. N joined the conspiracy in 2010 when aged 20. He was of good character. G was now aged 26. The Judge said it was a highly sophisticated, wholesale assault on the immigration procedures and solicitors and estate agents had their reputations put at risk. Held. Financial harm is not at the heart nor the gravamen of a conspiracy to defraud. He found D, G and N played a significant and important part with full knowledge of what was occurring. Held. The guidelines are not an adequate way of dealing with this case. Deterrent sentences are called for. The time the conspiracy lasted and the sophistication were aggravating factors. **9 years** for K and **7 years** for the others were not manifestly excessive.

Murder

Relationship killings

R v S 2015 EWCA Crim 1359 D pleaded (full credit) to murder and two counts of GBH with intent. D was known to be a very jealous man. He lived with V and in 2014 there were strains within the relationship. At about 9.30 pm, after both had been drinking and taking amphetamine, D found a text message on V's phone. He falsely accused her of being unfaithful. D lost his temper and there was an argument and D repeatedly thrust a glass into V's face. Next D stabbed V, who was pregnant, 81 times. V's two boys, V2 and V3 aged 11 and 9 heard V's screams. V2 was stabbed numerous times. D pushed V3 to the floor, stamped on his head and stabbed him numerous times. V's 6-year-old son starting screaming as V3 was stabbed. D said he would not be stabbing him. V2 escaped and the police attended. All the children were very distressed. D kicked and struggled with the officers. A Taser had to be used. V1 had very extensive injuries, including three deep stab wounds to the chest, 10 deep stab wounds to the back and a deep stab wound to the neck. A piece of glass was removed from her eye. V2 and V3 had multiple wounds to the upper part of their bodies and heads. D was aged 40 with no previous convictions. The Judge found there was no premeditation as the motivation was anger in a possessive rage. He started at 15 years for the murder. This was increased with the aggravating factors to 24 years making 20 years with plea. For the GHB counts he assessed D as dangerous and added 8 years after plea discount making a 28-year global term. The defence said that meant the starting point for the GBH counts would have been 24 years. Held. The murder was aggravated by a)

the brutality of attack, b) the use of a broken glass and knife, c) the duration and persistence of the attack and d) the presence of young children. The attack on the children was horrifying. Although their injuries were not life threatening it was little short of torture. They will have significant psychological damage. Four children have lost their mother. The baby in the womb perished. A minimum term before plea of 24 years was firm but not excessive. There should have been a consecutive element for the GBH counts. For them we start at 18 years which, after the plea discount and the division, would be a minimum term of 6 years. With a discount for totality, that would be 25 years (**20 years** and 5 years). If we had started at the particularly high seriousness starting point, the starting point would have been 30 years and with plea, 25 years. That confirms our conclusion. So **25 years** with a [concurrent] 6 year minimum term for each of the GBH counts.

Rape

Victim(s) aged under 10 Defendant aged under 18

R v Smith 2015 EWCA Crim 722 D was convicted of rape of a child aged under 13 and pleaded to various sex assault charges on children^[1]. When aged 14 he became a volunteer at a deaf club. His job was to look after young children of people who were deaf. When he was aged about 17, he put the penises of boys aged between 5 and 8 in his mouth on various occasions. He put his penis in a boy's mouth who was aged 6. It did not go in far and was out in seconds. This was the rape. When his computer was searched it was discovered D had searched for images of 'oral sex with 7-year-old boy' and 'naked children'. There was a modest number of images of children on his computer. The pre-sentence report said D had major deficits in his thinking and behaviour. He himself had been sexually abused and bullied because of his Tourettes Syndrome over a number of years and he suffered from social isolation and low-self-esteem. The Judge considered the starting point for an adult was 14 years, because of the grooming and the child's vulnerability. He reduced the sentence by one-third because of D's age. Held. This was not a sustained incident and it was very short lived. [All victims for this offence would be vulnerable.] D had significant features over and above his age. He was emotionally damaged and immature. **7 years detention** not 9 years 4 months with the rest of the counts remaining concurrent.

Robbery

Street etc. robbery

R v Abdallah and Others 2015 EWCA Crim 730 D, R and E were convicted of robbery. V, aged 49, was cycling and he was set upon by four or five youths. V tried to keep hold of his bicycle and a holdall containing his laptop. V was hit severely on the back of his head and he continued to struggle. V saw one of them draw a knife which was used to stab him in the back causing injury to his kidney. It was a 4 cm laceration. The group managed to steal the bicycle and the laptop. The Judge found the venue of the robbery was selected because there were no CCTV cameras, unlike the neighbouring streets. D was aged 19 and had a conviction for robbery in 2010 when a knife was used to threaten the victim. He was in breach of a conditional discharge for assaulting a PC. R was aged 19 and had no convictions. He did, however, have a caution for possession of an offensive weapon. D and R had positive references. E was aged just 17 and had a conviction for attempted robbery when he was aged 16. V continues to have long-term problems including bladder control connected with his kidney injury. The Judge found that the defendants knew that a knife was in existence and might be used. Held. The

Judge was entitled to conclude it was a level 3 injury. Bearing in mind the knife was small, the Judge was not able to conclude so he was sure that the defendants knew about the knife. A sentence at the top of Level 2 was appropriate. For D **6 ½ years** YOI not 8. For R **6 years** YOI not 7. For E **5 years 9 months** YOI not 8.

Sexual Offences: Images etc.

Persistent offenders/Previous image convictions

R v Kerry 2015 EWCA Crim 827 D pleaded guilty to three counts of making indecent photographs of a child and three counts of distribution of such photographs. He sold his phone and the new owner found it had five indecent images of children on it. One photo was Category B and four were Category C. D told the police he liked young boys and had requested images of young boys from other men. In recent years he had taken M-CAT which had increased his sexual arousal. D was aged 52, and between 1982 and 2005, he had nine court appearances for 51 offences, including four buggeries, two gross indecencies, 14 indecent assaults on boys under 16 with 63 TICs, five indecent assaults on girls aged under 13 and a conspiracy to commit gross indecency (given 8 years). He breached his licence and was not released until March 2013. The pre-sentence report said there was a very high risk of him committing 'further offences of this nature'. The psychiatrist said his risk of sexual offending had reduced in recent years. The Judge departed from the guideline and gave D an extended sentence with a global 4-year custodial term and a 6-year extended licence. Held. D is a prolific sex offender and throughout his life has failed to abide by his licence conditions. The court should always have a note of the guidelines. The Judge was entitled to conclude that D satisfied the dangerousness criteria, but applying the guideline, **2 ½ years**, with little discount for the plea because of the weight [of evidence] against him.

[1] What D pleaded to and was convicted of is not completely clear. Ed.

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