

Banks on Sentence

Sentencing Alert No 122

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Cruelty to children

Offences against the Person Act 1861 s 18

R v C 2015 EWCA Crim 1866 D was indicted with three incidents. For each there was a section 18 and 20 count. He was convicted of one section 18 (count 5) and two section 20 counts (counts 2 and 4). D lived apart from his partner, P, and son, V, aged 2, He would stay at their address and on occasions he would be left in charge of V. In July 2013, D was left in charge of V for 15 minutes. P found on her return V was crying and screaming. He had a bruise and a spot of blood on his lip. There was also a graze to V's elbow. D said he did not know how the injuries were caused. D knew P was going to her GP that afternoon with V but said nothing. That afternoon V was taken to her grandmother for the night. The following morning, V was holding his right leg tightly to his chest and was uncomfortable if his leg was not in that position. V was also unsettled and cried when his nappy was changed. Two days later, V was in pain and if anyone tried to move him he shrieked. V's leg caused the most distress. V was taken to the GP and he found it difficult to examine V because he was in pain if his leg was moved. V was agitated and screamed. The GP noticed a crusted legion on V's arm. In hospital it was discovered V had serious injuries in four separate sites. In interview, D was upset but lied. The Judge found the following facts: a) The injury to the leg (count 2) was caused by a twisting and pulling action by D. b) The injury to the ribs (count 4) was caused by D squeezing V's torso when he was violently shaking V. c) This caused the haemorrhaging to the brain (count 5). D was aged 22. In July 2014, D received 14 weeks for two offences of causing unnecessary suffering to an animal over Christmas. A psychiatric report said D thought V hated him. D told probation that he felt frustrated and D expressed regret and shame. Both the psychiatric report and the probation report said D posed a risk of causing serious harm to children in his care and he was unable to control his temper. Further he had a tendency to be violent and cruel when frustrated. The Judge relied on D's flagrant abuse of power and trust, his attempts to blame P and the grandmother, the extent and severity of the injuries and the delay in seeking medical help. She placed the offence in Category 1. Held. These cases are always difficult and sensitive. D's intent to cause serious harm was formed in an instant. D was comparatively young and immature. The case was either a lower end Category 1 or an upper end Category 2. **9 years** not 11 with the other concurrent sentences not altered.

Dangerous Driving causing serious injury

Overtaking

R v Smart 2015 EWCA Crim 1756 D pleaded early to dangerous driving causing serious injury. At dusk, D was overtaking slow moving vehicles and then sought to overtake two at once. He was slightly exceeding the speed limit. D had repeatedly claimed he did not see the oncoming motorbike which he hit. The rider, V, aged 54, suffered life changing injuries (which the Court chose not to list). They include a below the knee amputation and they have left him with very serious disadvantages. D was aged 71 with a clean driving record for over 50 years. His wife had

health issues. A police officer said V bears D no ill will. Held. D has been a safe and conscientious driver. It was a momentary albeit serious misjudgement. The accident has impacted on D very significantly. He has genuine remorse and finds it impossible not to relive the accident. This would be a level 3 offence in the *Causing Death by Driving Guideline 2008* (Dangerous driving section). 3 years was the starting point. The fact that V did not die and the very compelling mitigation means we start at 2 years not 3, making with plea **16 months** not 2 years.

Offences against the Person Act 1861 s 18

Defendant aged 16

R v Gardner 2015 EWCA Crim 1817 D pleaded to section 18. V, aged 15, was walking with his girlfriend and came across a group containing D and T. T called V by his name and 'asked him if he was who he was'. T punched V hard twice in the face knocking him to the ground. D and T then repeatedly kicked V in the face five or six times while V was on the ground. V's girlfriend intervened and pushed the two away. D laughed and said, "I don't know who he is". V had two fractures to his jaw which required a plate and screws. He also had a cracked cheekbone. D was interviewed and denied involvement. D had recently had his 16th birthday and only had a burglary previous conviction (Referral Order). The Judge said the attack was sustained and prolonged and put the case in Category 1. She considered the offence was aggravated by there being two against one and the fact that V was only 15. The Judge, in error, believed that D's offence was committed on bail. She distinguished between D and T because T started it and had a robbery conviction (12 months). For T, the Judge started at 10 years, gave a third off for his age and with a full plea discount, gave 4 years 5 months. For D, she started at 9 years, gave the same discounts and gave 4 years. On appeal the defence relied on remorse, lower culpability, subordinate role and lack of pre-meditation. D's prison report showed D was doing extremely well. Held. V must have been terrified. D was in a very different position to T. **30 months**

Sex Offences: Historical

Penetration Child under 10

R v P 2015 EWCA Crim 1320 D was convicted of six specimen indecent assaults. Between 1983 and 1986, D was a close friend of V's father and was a regular visitor. V was aged between 8 and 10. Once a week, while V's mother was preparing the evening meal, D and V would play fight and then D would push V against a sofa and touch and digitally penetrate her vagina under her clothes. This stopped when V went to secondary school. V was never threatened. She was however adversely affected and later had difficulties in forming relationships. D was now aged 70 and of good character. There were five character witnesses. The pre-sentence report said he presented a low risk of offending and recommended a non-custodial penalty. The Judge described him as an unofficial uncle. Held. There was devastating long term impact for V. The Judge should have given more weight to D's good character and that there was no offending for 30 years. **8 years** in all not 10.

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