

# Banks on Sentence

## Sentencing Alert No 137

20 September 2016

### Firearms

#### ***Minimum sentences Are these exceptional circumstances? Stun guns***

*R v Zhao* 2016 EWCA Crim 1210 D pleaded to possessing a stun gun, possessing ammunition and three counts of possessing stun guns disguised as Tasers. D was a taxi driver and when a female colleague said she was anxious about attacks he gave her a stun gun. She reported it to her employer and D was dismissed. The employers reported it to the licencing authority and they reported it to the police. The police searched D's home and D was fully cooperative. Police found two shotguns (which had licenses), a stun gun and three stun guns disguised as torches. In interview D said he did not think the stun guns were illegal and he thought his shotgun licence would cover the stun guns. Further the stun guns were for his self-defence against burglars. D was aged 38 with no convictions. He had excellent personal references and a good employment record and prison report. On appeal the defence said, a) the stun guns were not capable of delivering a fatal injury, b) they were non-lethal self-defence weapons, c) they had not been used, d) except for the one given to a colleague they had not left his home, e) there was no intention for using them for crime, f) D was co-operative, g) his age and good character told in his favour and h) his wife was expecting their first child after three unsuccessful fertility treatments. Held. As D was aware of the reporting to the licences authority and the police, there is weight to D's contention that he thought the items were legal, as otherwise he would have disposed of them. The defence factors made a powerful case for finding exceptional circumstances. **2 ½ years** not 5.

### Guilty Plea

#### ***Defendant could have admitted matter earlier***

*R v G* 2016 EWCA Crim 541, 2 Cr App R (S) 17 (p 152) D pleaded to three historic rapes and other sex offences committed against his daughter, V. With a full discount the Judge gave him 16 years. Later the Judge varied the sentence to 18 years by reducing the discount for the guilty plea because D could have admitted the matter earlier. V had made complaints against D in 1987 (D denied it, no proceedings), in 1996 (plea to lesser sex offence than rape) and in 1999 (when she tried to make D admit it). Held. The Judge was not entitled to increase the sentence because D had refused to admit his offending earlier. Original sentence restored.

### Importation of Drugs

#### ***Cocaine/Heroin Quantities significantly higher than Category 1***

*R v Sanghera* 2016 EWCA Crim 94, 2 Cr App R (S) 15 (p 135) S, D, O and B pleaded to conspiracy to import cocaine. S also pleaded to importing 100 rounds of 9mm ammunition. The group imported almost 40 kilos of cocaine in two consignments about three months apart. The imports were by air using corrupt British Airways officials. D was close to the original source of the

cocaine. D was his trusted lieutenant and organised the couriers through O and B. The Judge found the organisation was very sophisticated, well organised and determined. S and D had leading roles. O and B had operational and management functions, arranging couriers and collecting money. They were ascribed significant roles. Held. It was a relatively sophisticated international smuggling operation extending over several months with the corruption of airport staff. For S we start at 27 years, so with plea, **22 ½ years**, not 25, with 3 ½ years, not 5, for the ammunition, making 26 years not 30 in total. For D we start at 24 years so with plea **19 years** not 21. For O and B, we start at 14 years, so with plea, **11 years** not 13.

## **Public Order Act 1986 s 4**

### ***Demonstrations***

*R v Pursell* 2016 EWCA Crim 828 D pleaded to section 4. There was a demonstration in Dover protesting about immigration. D was in a counter demonstration. The activity became a major public disorder with very serious violence. The rival groups wanted to confront each other. D was caught on CCTV and was not shown to be acting violently unlike others. The opposing group attacked his group. He managed to escape but he had a scarf covering his face for some of the time which suggested preparation for violence. D had previous convictions for obstructing the police (twice), aggravated trespass and failing to comply with conditions imposed at a public procession. He had character witnesses. Held. Participation in unlawful violence of this kind, even where the personal criminal involvement is quite limited, does pass the custody threshold. This is especially so where there are relevant convictions as in this case. However once custody is found to be appropriate it is important to calibrate the sentence to what the defendant had actually done. With the full plea discount, **3 months** would have sufficed and here that should be **suspended**. 4 months' imprisonment quashed.

## **Restraining Orders: etc. Breach of**

### ***Approaching victim No threats***

*R v Todd* 2016 EWCA Crim 883 D pleaded early to two breaches of a Restraining Order. D had separated from V after 5 years of marriage in which D was abusive and violent towards her. D did not take the break-up well and harassed V with over 300 text messages and 25 visits. This caused a Restraining Order prohibiting D from contacting V and from going within 100ft of V's road to be made. D applied to have the 100ft limit removed and after the unsuccessful hearing, whilst still in the court building, D approached V and said "Thanks a lot Wendy, it's all over and done with now." This was the first breach. The second was when D stopped his van and reversed up to V and her son who were walking their dog. D shouted from the van, "Give me the fucking dog." D then drove off. When police officers tried to stop his van the following day he drove off, [presumably breach 3]. D surrendered himself at a police station three days later. The pre-sentence and psychiatric reports mention D's dependence on alcohol and cocaine and his behavioural disorders. V described herself as vulnerable and scared and said she believed all of D's threats. D was aged 40 and had 95 previous convictions on 35 occasions. Some were against his ex-partner. In 2004, there was threats to kill his then ex-partner (2 years 3 months'). The Judge gave 26 weeks for each, consecutive. He also activated a suspended sentence in full. Held. There was no threat of violence, but we do not underestimate the fear and vulnerability felt by V. Looking at the guideline, we impose no penalty on breach 1, 20 weeks on breach 2 and [a concurrent sentence on breach 3]. **20 weeks** not 68.

## **Retail offences**

### ***Copyright offences***

*R v Lin* 2016 EWCA Crim 862 D pleaded to making (count 1) and offering (count 3) for sale articles infringing copyright. D approached B, an off-duty police officer, in a café offering to sell him and others nearby, counterfeit DVDs. D was arrested and a search of his home revealed 2,389 counterfeit DVDs and a number of PC towers, CD drives and plastic wallets, some of which were

found behind a concealed entrance to the loft. D, aged 32, had three previous convictions (April, and twice in November in 2009) for counterfeiting and had served 9 weeks' imprisonment. The Judge started at 2 years. Held. There seemed to be no significant financial benefit to D as he and his family were struggling financially. **16 months** not 21.

## **Suspended Sentence Orders: Breach of**

### ***Part-compliance      Order without unpaid work requirement***

*R v Wolstenholme* 2016 EWCA Crim 638, 2 Cr App R (S) 19 (p 168) D was convicted of common assault and committed for sentence. He punched and knocked out his then partner. D was aged 33 and had 'a bad record for violence particularly for similar assaults'. In 2014, D was 14 months into an 18-month Suspended Sentence Order for affray. It included a Thinking Skills Programme and alcohol treatment. The Judge found the Thinking Skills Programme had not worked. The pre-sentence report said there was some motivation to change. Held. D had gone back to alcohol assuming he had ever left it. The new assault was significant. D demonstrated a total failure to have gained any benefit from the Suspended Sentence Order. Although D had attended the courses he had not put what he had learnt into practice. Full activation upheld.

*R v Ballard* 2016 EWCA Crim 1173 D was convicted of going equipped (12 months) and a 6-month Suspended Sentence Order was activated in full for theft and aggravated vehicle-taking offences. The order was with various programmes. He had 10 convictions mainly for theft and vehicle taking. D had completed 20 months of the 24-month order and had failed to attend on three occasions (2 written warnings and a fine). The Judge heard the supervision had gone well. Held. para 10 Compliance with an unpaid work requirement will normally justify a reduction, but dilatory and grudging compliance will not yield the same result. Similarly, if attendance on a course has not altered the defendant's thinking attitude, activation in full may be justified. We note the 20 months completed and the new similar offence to his previous offending. 4 months' activation not 6.

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