

Banks on Sentence

Sentencing Alert No 138

19 October 2016

Arson

Reckless arson Relationship offences

Att-Gen's Ref No 39 of 2016, 2016 EWCA Crim 794 D pleaded late to arson being reckless as to whether life was endangered and arson. D was in a relationship with V and they had a son together. After 26 years the relationship ended and D moved out of the family home. V started a relationship with another man which D was unhappy with. D assaulted V and was sentenced to a community order and was given a Restraining Order. D then breached the order by uttering threats to kill V and her new partner. Over the next two months D made various threatening telephone calls to V and her partner and was charged with three offences of breaching the Restraining Order. Whilst V was on holiday, D set fire to her car which was parked on her drive behind electric gates. He then got a taxi and directed the driver past the burning car and then on to his destination. When arrested, D said "What do you expect me to do when my wife of 20 something years has an affair with a lodger? I'm not taking this from them." D then denied the arson and said the taxi-driver must have mistaken him for someone else. V found that the electric gates had been damaged so as not to work and her car was left a burnt out shell. She moved away with plans to sell the house as she no longer felt safe there. D was sentenced to 12 weeks' imprisonment suspended for breaching the Restraining Order. About a month later, neighbours noticed D leaving V's house and soon after an alarm sounded and smoke was seen coming from the property. The fire service responded quickly to the fire and discovered it had been started at the foot of the stairs in a pile of combustible materials. The fire, although quickly extinguished, caused around £20,000 worth of damage. When the police tried to arrest D he climbed on to the roof of a bay window and threatened to jump, although he was eventually talked down. D denied starting the fire, saying he was elsewhere on the evening in question. D, aged 51 at the time of the offences, had ten court appearances for 22 offences, some of which were for violence but there had been a period of 21 years where no offences had been committed. He was in breach of three Suspended Sentence Orders which had been imposed for breaches of his Restraining Order. The pre-sentence report said D's exhibited 'minimization or denial of his true responsibility.' The report also said D indicated he only pleaded to the arson because 'the prosecution offered me a deal; they would drop other charges if I pleaded guilty to it.' When asked to clarify D said 'I definitely didn't do it.' V was devastated by the fire and still planned to move away to where D could not find her. The Judge noted D's lack of remorse and that he still saw himself as the victim. We start at 8 years, so with plea, **6 years**. 6 months for the other arson consecutive, so **6 ½ years** in all.

Burglary

Dwelling, Occupied

R v Hyde and Others Re W 2016 EWCA Crim 1031 at para 78 W was convicted of fraud and burglary. W was a salesman for a home improvement company and visited V, a widow in her sixties, at her home. W took an order for new windows from V and received a £2,000 deposit in cash from her. W falsified the deposit form to indicate a total deposit of £1,050 taken. W retained the balance for himself. This was the fraud. A month later, W called V pretending to be the Post Office and told her she needed to collect a parcel. V left the house to do so. While she was absent, W entered her house by smashing a window and stole around £20,000 in cash, family heirlooms and items of sentimental value. W, aged 46, had some old minor convictions of no relevance. Held. The starting point was at the very top of the range for a Category 5A case. 3 months, not 1 year, for the fraud and **4 years 3 months**, not 5 years for the burglary, making 4 ½ years, not 6.

Criminal Damage

Threatening to destroy or damage property

R v Amin 2016 EWCA Crim 775 D pleaded to threatening to cause criminal damage, criminal damage, possession of a bladed article and possession of a Class A drug. D threw a brick at his sister's car outside the family home, whilst she was in it. Later on the same day, D had a phone conversation with another sister and learned that his clothes had been thrown out of a house due to an earlier domestic incident. D responded by saying "Watch what I do now. I'm going to the petrol station now, then your house, I'm going to petrol bomb your house." The police were called. D was arrested the next day and was carrying a meat cleaver (8 months not 20 concurrent) and a small amount of heroin (8 months which was unlawful so 6 months concurrent). D was aged 32 and had 13 convictions mainly for drug offences but none for violence or weapons. The pre-sentence report recorded D saying he was "off [his] head" on drugs at the time of the offending. Held. It must have been terrifying for D's sister who went on to call the police but the threat was made verbally over the phone and no further action was taken by D towards his sister. For the threatening count, we start at 24 months, so with plea, **16 months** not 32 with 2 months' consecutive for the criminal damage as before.

Dangerous driving causing injury

Inattention

R v Harding 2016 EWCA Crim 769 D pleaded to dangerous driving causing serious injury. He was driving on a northbound dual carriageway at 10am on a Sunday. There had been a serious road traffic accident on the southbound side of the carriageway which caused one of the drivers on the northbound side to slow down dramatically to have a look. This had a knock-on effect on the cars behind as they all had to break suddenly. D was travelling at around 44 mph in the slow lane of the northbound carriageway but did not apply his brakes until after he collided with a Ford Ka driven by V who was transporting her son and daughter-in-law. V's car in turn collided with the car in front of her, a Mini, which caused the Ka to flip onto its roof. V suffered extremely serious injuries and was in danger of losing her life had it not been for the care of the paramedics that were already attending the southbound accident. V was now a tetraplegic and needed constant care. Her son and daughter-in-law were also injured and suffered post-traumatic stress disorder but their injuries were nowhere near as serious as V's. D had an unblemished driving record and expressed extreme and genuine remorse. Held. The accident can only be put down to a momentary lapse of concentration when distracted by the accident. The case fell at the very bottom end of Level 3 in the *Causing Death by Driving Guideline 2008* Dangerous driving section. The action of the first driver slowing down was a very important factor. We start at 15 months, so with full credit, **10 months** not 16. Disqualification for 2 years, 5 months not 2 years 8 months (both sentences reflected the 8 then 5 months' custodial period).

Offences against the Person Act 1861 s 18

Drug gangs using violence

Att-Gen's Ref No 20 of 2016 2016 EWCA Crim 723 D was convicted of wounding with intent and he pleaded to violent disorder and aggravated burglary. The offences relate to two separate incidents that both related to drugs and gangs. The first involved D attempting to collect a drug payment of £20 from V at V's home. £40 was handed over. V's partner and three children were present. The verbal dispute escalated into a physical altercation (presumably the violent disorder). D left and returned with a number of armed men, one of whom chased V out of the house and aimed a machete at V's head. V lifted his arm and deflected the blow causing significant injuries to V's arm including a bone fracture, (the wounding with intent). This injury caused serious and long-term physical effects. V and his family were in fear and had to move home. The second incident happened ten days later when D and others broke into a house at night they mistakenly believed to contain cannabis. V2 and his wife were in bed and they were confronted by the attackers in front of their 'very young child'. One of the men carried a hammer (the aggravated burglary matter). They demanded the 'weed' and V's wife started screaming causing the child to scream. The intruders searched the flat and then apologized when they realized their mistake but threatened to return if the couple went to the police. D was aged 32 with a number of 'relevant previous'. Held. The aggravating factors for the first matter were: a) planned group activity, b) weapons carried, c) forced entry and d) children were present The aggravating factors for the second matter included: a) planned group activity, b) victim was at home and violence threatened. These extremely serious offences have had a significant and long-lasting effect on the victims. For the section 18 offence it was Category 1 case and we start at 14 years. The aggravated burglary was Category 1 and we give 25% for the plea making 7 ½ years (making a starting point of 11 ¼ years). With totality this makes **16 years** for the s 18 offence not 6 ½ years, and 7 ½ years, not 3 ½ years, for the aggravated burglary. We quash the 3-year sentence for the violent disorder (without saying what the new sentence was if there was one).

Rape

Victim initially consents to sex

Att-Gen's Ref 2016 Re Hay 2016 EWCA Crim 7969 D was convicted of rape. When D was aged 17 and V was 'somewhat older' they began a relationship. It was D's first sexual relationship. D was interested in anal sex and had tried it on two occasions with V but it was painful for her and she had said she would not do it again. The relationship ended amicably after 16 months. About a week after the break up, D called round to pick up a parcel from V's house. They had consensual sex but D then tried to put his penis in V's anus and she told him "If you do that again, I'm stopping completely." D ignored her and forced his penis into her anus. V shouted for him to stop. The duration of the incident and how it stopped was disputed. V says she dug her nails into D's face which made him stop. D says he took a few thrusts and then stopped when he realised V did not want it. Afterwards he sent V numerous texts apologizing. When arrested, D said "She said not to go near her arse but I did for a few seconds and then pulled it out as she said 'no'." D was aged 18 at the time of the offence. D had excellent educational and employment references and no previous convictions. His probation report said D showed a lack of emotional maturity. D was very remorseful and the judge noted his youth, the fact that this was his first sexual relationship and that V had taken the lead in certain aspects of it. Held. The Judge was entitled to sentence below the range in the guideline. 3 years would have been proper. **2 years' detention** was very lenient but we uphold it.

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