

# Banks on Sentence

## Sentencing Alert No 141

**11 November 2016**

### **Arson with intent**

#### ***Domestic premises with occupants***

*R v Trickett* 2016 EWCA Crim 1604 D pleaded to arson with intent. In the middle of the night, he pushed a petrol-soaked rag through a letter box and set it alight. Asleep inside the house were Mrs V and her two sons, aged 19 and 2. Fortunately some neighbours were still awake. They raised the alarm. Mrs V heard their shouting and she roused her children and together they fled via the back door. The front door was destroyed. There was smoke damage to the interior of the property. D was found in an adjoining street. His car was parked outside the attacked premises. In the boot of his diesel-powered car was a petrol can. Mrs V said she was 'an emotional wreck'. In interview D put forward a ridiculous account. D was aged 32 with no previous convictions. The psychiatric report said that D had had a difficult upbringing and as an adult has been prone to drink too much. The report did not shed light on why D committed the offence. D expressed remorse. Held. The consequences could have been horrific but for the neighbours. The motivation appears to have been a relatively mild falling out between acquaintances. We start at 8 years not 12, so with the plea, **6 ½ years** not 8.

### **Burglary**

#### ***Persistent offenders (non-dwelling)***

*R v Brown* 2016 EWCA Crim 1437 D pleaded (full credit) to five burglaries. He was the leader of a professional team who burgled commercial premises for high value items. The gang used stolen vehicles and sophisticated planning. Significant damage, disruption and inconvenience was caused to the businesses concerned. The offences were as follows. No 1 Fire door smashed. Two internal doors forced open. A large ramp was erected and a large number of bricks were removed for a car to assist in the offence. Cisco switch cards worth £200,000-£300,000 were stolen. No 2 Internal doors forced. Items worth £240,000 were stolen from a computer room. No 3 An alarm was triggered and nothing was stolen. No 4 Doors were forced. 13 Cisco units worth over £50,000 were stolen. £11,000 worth of damaged was caused. No 5 External and internal damage was caused but the burglars were disturbed by security men. D was aged 35 and had 48 previous convictions. They included over 20 non-dwelling burglaries and convictions for dwelling burglaries and going equipped. He had served five prison terms. Held. D was a career criminal undeterred by his previous arrests and convictions. There were Category 1 burglaries. No 1 and 2 were worth about 4 years. The other three were worth 3 years. Starting at 12 years was severe but justified. With plea, 2 years on four of them consecutive, making **8 years** upheld.

## **Cruelty to Children**

### ***Violence to a child aged 10***

*R v SO* 2016 EWCA Crim 1600 D was convicted of child cruelty. He was acquitted of two other such counts. D lived with his partner P, their 10-year-old daughter V and her brother. V had some money which D was looking after. V took it back and when D discovered this he made V stand in his office in a stooped position for a long time and beat her repeatedly with a belt while shouting at her. The injuries were 'significant, visible and nasty'. A false account was sent to the school. V rang ChildLine on three occasions and the police was informed. D was aged 46 and treated as being of good character. He had character witnesses. The Judge considered D was an extremely obsessive and controlling individual and P was more concerned about D than V. Held. The case was category 3. It was a nasty beating. The aggravating features were breach of trust and V's youth. **12 months** not 21.

## **Rape**

### ***Victim aged about 10***

*R v IS* 2016 EWCA Crim 1443 D pleaded to rape and seven other lesser child sex offences. They were all sample counts. In 1999-2000, when he was aged about 35, he was in a relationship with V's mother. V was about 10. Approximately 2-3 times a week, he would abuse her by a) making her masturbate him, b) licking and digital penetration of her vagina, c) putting his penis in her mouth and d) multiple vaginal rapes. D ejaculated over her body, her face and her mouth. When V complained of pain, D would put his hand over her mouth to stop others hearing. V told her mother and the relationship between D and V's mother ended. In 2003, D began a relationship with V2's mother. V2 was aged 12. While the mother was away, D entered V2's bedroom and digitally penetrated her. This was repeated two weeks later. V2 told her mother and was not believed. V2 left home. In 2005, V2 returned home and D plied her with vodka and gave her cannabis. While V2 pretended to be asleep, D performed oral sex on her and groped her breasts, saying, "Someone needs to show you a good time". V2 disclosed the incident to a friend and the mother again disbelieved her. V2 left home again. D had 87 previous court appearances for largely acquisitive crime and some violence. He had no sexual convictions. The victim impact statements showed how he had emotionally shut them down after the incident. Held. It was a particularly grave Category 1A offence. We start at [22 ½ years] not 28 ½ years making with plea, **15 years** not 18 years 9 months.

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

### ***Approaching victim with threats***

*R v West* 2016 EWCA Crim 1586 W was convicted in his absence of breaching his Non-Molestation Order and pleaded to two further breaches later. His order forbade him from entering any property where his partner, P, was living or going within 100 metres of her home. It was made in May 2015. The failure to attend court was in breach of his bail. In September and November 2015, he banged on P's door. On the second incident he shouted abuse at P and said "Having another man round my kids, you'll see what happens to you." He held his fingers to depict a gun. On 23 December 2015, D was found in P's loft after P had invited him in to see his children at Christmas. D was aged 25. In 2008, there were two ABHs (12 weeks). In 2009, he was sentenced to 9 months YOI suspended (offence not revealed). In 2011, he received 2 years YOI for wounding with 5 months for the breach of the Suspended Sentence Order. In 2014, he was sentenced to 14 months suspended for supplying Class B drugs and other offences. In August 2015, he was sentenced to 12 weeks suspended for battery and offensive communications. He was in breach of both these orders. The pre-sentence report said there was no remorse, just self-pity. Held There should have been a larger reduction of the suspended sentence because of the partial compliance. **9 months** not 14 for breaches, 1 month for the bail offence, 7 months not 10 for the activated Suspended Sentence Order, 3 months for the other Suspended Sentence Order, all consecutive, making 20 months not 28.

## Supply of drugs

### ***Cocaine/Heroin Class A Significantly more than 5 kilos***

*R v Apostu* 2016 EWCA Crim 1150 D pleaded (late but with full credit) to supplying cocaine and heroin. There were two co-accused, M and W. M was observed collecting a VW Polo on a recovery truck and driving from Northamptonshire to Gravesend where he stopped and called W who was in a nearby pub. W left the pub, went to a Skoda parked in the car park, removed a suitcase and took it over to M's truck. They then both put the suitcase into the boot of the VW. M drove off and W returned to a nearby hotel. M was stopped and in the suitcase police found ten blocks of heroin each weighing approximately 1 kilo at 68% purity. They had an import value of £333,000 and a potential street value of around £1 million. W soon returned to the Skoda from his hotel and police arrested him. The car contained three more suitcases each containing numerous packages of class A drugs with a street value of just over £3 million, making over £4 million with the other drugs. V's hotel room was searched and it was discovered he was staying there with D who was also arrested. The records showed they had stayed there together on 14 occasions in the previous six months. W had on him a CMR bill (a document relating to the transport of goods by road) that detailed the transportation of 29 pallets or car parts from Holland to an industrial unit in Northfleet, Kent. Police searched the unit and found that drugs were being shipped into the UK and unpacked there for further distribution. Car batteries had been hollowed out and lined with lead. This allowed a kilogram block of drugs to be stored inside each pack with the lead foiling scanners and similar detection methods. The drugs were accessed by unscrewing the front panel of the battery. A full DNA match for W and D was found on cigarette butts at the unit. The basis of plea said, a) D played a very limited role, b) his only job was to re-package the batteries after the drugs had been removed, c) D was paid €600 per trip, d) he thought the drug was marijuana and e) some of the trips related to family visits. The prosecution chose not to contest this. D was aged 45 and had no previous convictions. The Judge found the role to be significant and started at 21 years. He reduced that to 13 years because of the mitigation and the plea. Held. With a significant role, **10 years**.

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