

Banks on Sentence

Sentencing Alert No 151

17 February 2017

Affray

Domestic premises

R v Stopa 2016 EWCA Crim 1244 D pleaded (25% credit) to affray and criminal damage (no penalty). Some time before 8 pm, D visited his sister, V, at her flat. She, her mother and her two sons aged 9 and 12 were there. D and V argued and D began an aggressive, jealous rage. He threw and smashed items in the kitchen. Someone in a takeaway below called the police, who entered the flat. D picked up a large kitchen knife and lunged at the officers. The police retreated. On their return, D had a significant cut on one arm. Blood was smeared over the walls. All the kitchen windows were smashed. Cupboards were pulled off the walls. A tap was damaged causing the floor to flood. D threatened the officers with electrocution if they entered, by putting some electric wires in the water. D continued to be aggressive and abusive to the officers. Three or four times he picked up the knife and swung it in the air while challenging the police. At one point D exposed his genitals to the police. V took her boys onto some scaffolding outside a window. The boys were crying and shaking. One vomited. V and her mother remained but eventually they were escorted out. Police sprayed D with an incapacitant and he was arrested. The police part of the incident had lasted 15 minutes. D caused £3,000 worth of damage. In interview D admitted he was drunk. He was aged 35 and had no recorded convictions in the UK. D volunteered he had car theft, burglary and harassment, (against a prisoner), convictions in Poland. The Judge found the offence was aggravated by, a) the consumption of alcohol and drugs, b) the harm to the boys, V and her mother, c) duration of the affray, d) the use of the knife and e) the threats to the officers. Held. This was a serious affray. The sentence had to reflect the criminal damage. However D had no previous for violence and the offence was completely out of character. The Judge must have started at the statutory maximum, and this case was not in that band. We start at 2 years, so with plea, **18 months**, not 24.

Cruelty to children

Punishments to children

R v SB 2016 EWCA Crim 2005 D pleaded to three specimen counts of cruelty. Her partner, P, pleaded to six cruelty offences. Four of his offences were sample offences. D had two boys, V1 and V2, and then in 2007, broke up with their father. She then lived with P and they had children. D focused on the younger children and V1 and V2's behaviour started to deteriorate. Over 18 months, when the boys were aged from 11 and 7, P hosed V1 and V2 in the garden and put washing up liquid in their mouths and faces. They were made to face a wall for periods of up to two hours in the dark, without adequate clothing. They never had shoes and were sometimes barefoot. On occasions this happened in the rain and wind. D's counts were making V1 face the wall and two counts of failing to protect the boys from P making them face the wall. V1 and V2 were confused, upset and nervous all the time. D was aged 32 and of good character with a

positive reference from her manager at Tesco. The pre-sentence report said D left the care of the boys to P. Her children had now all been taken into care and D had depression and anxiety. The Judge considered the offending was on the cusp of Categories 1 and 2. He moved to 18 months and reduced that with the plea to 15 months. Held. D had a significantly lesser role than the overbearing P. D did not use physical violence and was struggling to cope. With her plea, her recognition of her wrong doing and her efforts to rehabilitate herself, **8 months**.

Murder

Whole life orders Article 3

Hutchinson v UK 2017 No 57592/08 ECtHR Grand Chamber (14-3) para 51 The High Court would have the power to directly order the release of the prisoner, if it considered this to be necessary in order to comply with Article 3. para 70 The *Att-Gen's Ref No 69 of 2013* 2014 EWCA Crim 188, 2014 2 Cr App R (S) 40 (p 321) decision has dispelled the lack of clarity identified in *Vinter and Others v UK* 2013 No 66069/09, [see the 11th edition of this book], arising out of the discrepancy within the domestic system between the applicable law and the published official policy. In addition, the Court of Appeal has brought clarification as regards the scope and grounds of the review by the Secretary of State, the manner in which it should be conducted, as well as the duty of the Secretary of State to release a whole life prisoner where continued detention can no longer be justified on legitimate penological grounds. In this way, the domestic system, based on statute (the 1997 Act and the Human Rights Act 1998), case-law (of the domestic courts and this Court) and published official policy (the Lifer Manual) no longer displays the contrast that the Court identified in *Vinter*. Further specification of the circumstances in which a whole life prisoner may seek release, with reference to the legitimate penological grounds for detention, may come through domestic practice. The statutory obligation on national courts to take into account the Article 3 case-law as it may develop in future provides an additional important safeguard. para 72 The whole life sentence can now be regarded as reducible, in keeping with Article 3 of the Convention.

Offences against the Person Act 1861 s 18

Aggravated burglary, And

See also: *R v Tuffy and Others* 2016 EWCA Crim 1147 (Pleas at different stages to aggravated burglary and two section 18s. Five men, (one not in appeal), travelled from Merseyside to near Hull. They had poor inside information. After midnight, four men entered home and took knives from kitchen. Two male occupiers, V1-2, were seized, kicked to head, tied up and then terrorised with threats of extreme violence, hoping to force V1-2 to reveal whereabouts of safe, which they didn't have. Stabs wounds to head, leg. Face cut. Threats to kill dog, which was stabbed. Attempts to cut off fingers. Deep cut to leg. V1-2 told they would be tortured all night. V1 lost 1 ½ ears. Rings, watches, Range Rover etc. taken. Incident lasted 1 hour 20 minutes. Profound psychological impact. All defendants had significant previous. Held. The dangerousness provisions should have been properly addressed. For the three inside, we start at 25-26 years, not 30. So with plea, 3 x **19 years** not 22. Lookout, **11 years**, not 13.)

Note: Much seems to have gone wrong in this case, but not the 30-year starting point, as this prolonged gang torture on two defenceless men at night was worse than many/most murders. Ed.

Rape

Digital penetration

R v Petrauskas 2016 EWCA Crim 956 D was convicted of assault by penetration. After drinking, at about 2 am, D, V, aged 18, and others went to V's house which she shared with other Lithuanians. There was more drinking and V retired to her bedroom and fell asleep. D entered the room, pulled her leggings down and digitally penetrated her vagina. V woke up and D held his arm over her. V

felt D's penis against her and told D to stop. D left the room. The Judge put the case in Category 2B because D had entered V's room uninvited. Held. 'Forced/uninvited entry' in the guidelines [does not] include a defendant staying in one room of a house and coming into the unlocked bedroom of another in the same building in the hope perhaps of some consensual sexual activity. There needs to be a deliberate intrusion against the will and probably the protest of the occupant. So it was Category 3B with the aggravating factors being the location of the offence, a bedroom, the time of the offence, at night and perhaps the targeting of a vulnerable victim, a sleeping 18-year-old. These cases should not be determined by tenancy agreements, or locks on the door. The seriousness is that D took advantage of D sleeping where he was not invited. **3 years** not 4.

Restraining Orders: Breach

Persistent offenders

R v Rashid 2016 EWCA Crim 1811 D was convicted in his absence of breaching his Restraining Order. He was in a relationship with P for about 2 years. It broke up in 2012 and since then he repeatedly harassed P and her adult daughter V. Most but not all of the offending was on the telephone. In December 2011, for battery and abusive behaviour, D was conditionally discharged. In February 2014, for threatening words etc. directed at other family members, D was fined. In September 2014, for a course of conduct between February and August 2014, D was given 20 weeks and a Restraining Order. D was released in November 2014. In January 2015, D followed V and shouted abuse at her from his car. He made 11 phone calls and sent two texts to her. One referred to her boyfriend, although V did not understand the text. In April 2015, there were further calls to V. D was arrested. Just before the trial he told V he wasn't going to turn up. D was convicted in his absence and arrested as he tried to flee the country. D was now 56 and had angina. The pre-sentence report for the earlier offence said the offending was premeditated and predatory, motivated by revenge. Further, D made derogatory remarks about V and expressed misogynistic views. Held. Importantly the breaches did not involve physical contact, although they caused significant anxiety and distress. The offending was just two months after his release. The new offending was exactly the same as before. We strike a balance between the nature of the breaches and the fact these were the first breaches and the fact D was offending again. We think **6 months** not 14, and 6 months consecutive for the bail offence as before.

Sex Offences: Historical

Oral penetration Victim(s) aged 11+

R v AO 2016 EWCA Crim 1319) D was convicted of four incident assaults. D was 11 years older than V, his step-nephew. The counts involved oral sex when V was aged 11, 12 (2 incidents), aged 13 and aged 14 or 15 (2 incidents). In the 1990s, V stayed with his aunt and D was trusted to look after him. V said D plied him with alcohol and drugs. In 1994, D went to police and admitted mutual masturbation when V was aged 13. V did not assist the police. D was cautioned. D was now aged 48 with no convictions. He had been the primary carer for his mother until her recent death and carer for his father. The Judge considered it was a Category 1A case. He said the conviction meant D would lose his liberty, his good name, his employment and his home. Held. We adjust for the different maximum penalties then and now. The guideline is not a mathematical exercise. **6 years** not 7 ½.

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