

Banks on Sentence

Sentencing Alert No 153

3 March 2017

Death by driving: Dangerous driving

Defendant has significant road traffic previous convictions

R v Gard 2017 EWCA Crim 21 D pleaded to causing death by dangerous driving. He was driving his van with his very young son at 60 mph or more on an A road. D must have seen a number of cyclists from a particular club on the road. He drove into one, V, who was thrown into the air and died. V was wearing bright clothing. D drove on for 100 metres with the cycle caught under his van. Tests showed D had nine seconds to see V before the crash. After the accident D deleted his texts but they were retrieved. In interview D claimed he was stroking his son's head and denied using his mobile phone. In fact he had received a text, accessed it, so read it, during the nine-second period. In the three minutes before the collision D had received a text and sent a 20 word text. D was aged 30 and between 2002 and 2011 he had previous convictions for violence and other offences. D was fined for using a mobile when driving in 2009, 2012 (given a retraining course), 2013, January 2014 (given another retraining course) and in August and October 2014. Just before the last conviction he committed another mobile phone offence. In 2015, D was tried for that offence. He lied and was convicted. In totting up proceedings, just 43 days before the collision, he gave evidence saying in future he would lock his phone in the boot before driving. D kept his licence. The Judge started at Level 2 and then with D's convictions and his disregard of warnings moved the case into Level 1. Held. In the critical period when driving at 60 mph, D cannot really have been looking at the road at all. The mobile phone convictions were a seriously aggravating feature. His unlawful texting about non-urgent matters was truly exceptional after his convictions and his broken promise on oath. We look at the whole course of driving and not just the 9 seconds. There were three aggravating features, a) V was vulnerable, b) there was a vulnerable and helpless child in the van and c) his perverting of the course of justice by the deletion of the text messages. The Judge's starting point of 10 years was at the top of the range. With the late plea, **9 years** upheld. The Judge's starting point of 10 years' disqualification, extended to 14 ½ years was not wrong either.

Immigration offences

Driving illegal immigrants through ports Reward to be paid

R v Roman 2017 EWCA Crim 6 D pleaded early to assisting unlawful immigration. She drove with her boyfriend, B, from Manchester to Dover by car. The two took the car to Calais on the ferry and were in France for about an hour before they were stopped by the UK border force entry point in France. B provided an officer with a Romanian ID card for a man, R, who was sitting in the car with them. R was led away and produced an Albanian passport. D and B were arrested and in interview she lied. D gave birth while on remand and was given a short period of bail to arrange her affairs when she absconded. She also had a 7-year-old child. The Judge started at 42 months and with plea credit (not full) and a further discount for her personal mitigation made the sentence 30 months. Held. This was a commercial enterprise. These offences not only threaten

the UK borders but also the security of people in the UK. There was nothing wrong with a 42 months starting point. The judge was wrong to consider her absconding as a factor in the plea credit as she was arrested before B had been tried. The discount should have been full, so we substitute **25 months**.

Money laundering

Criminal conduct money About £½ million

R v Sula 2017 EWCA Crim 27 D pleaded to converting criminal property. Police watched him wheel a suitcase to a minicab in Notting Hill. He spoke to the passenger, P, and D and P were arrested. The suitcase contained just under £495,000 in cash. D told police he was to receive £500 for delivering the suitcase. At P's premises police found a list recording transfers of £13m+. The Judge started at 30 months and added 3 months because D had in 2014, been convicted of possessing false ID documents with intent. D received 11 months for that. Held. The 30-month starting point would leave insufficient room for cases involving £600,000+. We start at 24 months, move to 27 months for the convictions, making with plea **18 months** not 22.

Sex Offences: Children, With

Oral penetration

R v Glover 2016 EWCA Crim 2176 D pleaded to nine indecent assaults. Between 1976 and 1978, T was aged between 14 and 16 and D was in his thirties. D was a popular scout leader and he employed one of the scouts, T, in his fruit and veg business. D taught T to drive and clean D's guns. D showed T porn and sex progressed quickly. They performed oral sex on each other. On one occasion, he tried to make T have sex with another man who T thought was horrible. T prevented them from having anal sex with him. When T was aged 16-19 the sex continued but it became less frequent. T suffered severe psychological harm. D was now aged 72 and of good character. He had had suffered a stroke. He had mobility problems and used a stair lift. He also had chronic obstructive pulmonary disease and asthma. D was also the sole carer for his partner of 47 years who suffers from severe arthritis and had severe mobility problems. D had to help her with her bedpan every night. The Judge found grooming, breach of trust and ejaculation. He also found it was consensual. He started at 8 years. Held. This was dreadful, wicked offending. Prospect of him re-offending is very small. It was Category 1A. (starting point 5 years). D's and his partner's health problems are important mitigating factors. We start at 6 ½ years, so with a full discount **52 months**, not 64.

Sex Offences: Historical

Physical non-penetrative contact

R v Hurst 2016 EWCA Crim 2172 D was convicted of five indecent assaults and a sexual assault on a child offence. Both victims, V1 and V2 were his nieces. In 1995-1997, V1 was aged 6-8. D lived with V's grandmother and when V visited he gave her sweets. The offending began with D lifting V1's top and touching and kissing her chest. This progressed to him touching her vagina and one occasion encouraging her to touch his penis. V1 then said she didn't want him to touch her. About 10 years later, D was still living in the same place. While V2, aged about 10, was asleep, he entered the room. V2 woke up and D talked to her while he squeezed her chest over her pyjamas. She pushed him away and left. There was a significant detrimental effect on V1 and V2. V1 reported the incident in 2012/2013. D had been employed all his life and lived on his own. He had some mental health problems, diabetes, arthritis and digestive problems. The Judge found it was Category 2A and passed consecutive sentencing. There were aspects of grooming and abuse of trust. The offending was repeated over a significant time. However, when asked he desisted. Taking D's circumstance into account, **5 years** not 8.

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