

Banks on Sentence

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Immigration offences

Driving illegal immigrants etc. No reward

R v Abdollahpour 2017 EWCA Crim 357 D was convicted of assisting unlawful immigration. He arrived in the UK by the Channel Tunnel with his car. He had driven the car with K in the front seat. K pleaded guilty and received 2 years' suspended. D and K had valid UK passports. In the back was L, D's daughter, who produced a Romanian ID card for another person. L said she had received this from an agent. In interview D said L was his girlfriend. D was aged 27 with no convictions. He had a caution for theft in 2008. Held. The overwhelming likelihood was that L would have been able to apply to live here. We reduce the 2-year sentence because, a) D was motivated by compassion not money, b) L could have claimed to live here, c) it was an unsophisticated attempt and d) D had led a blameless and fruitful life, having been in the UK for 10 years. **18 months** was appropriate.

Murder

Relationship killings Men killing wives

R v Cooper and Cooper 2017 EWCA Crim 419 LCJ R and D were convicted of murder. R lived with his long-term partner. He worked for a large company in one of its warehouses in Coventry where he was the manager. The company discouraged personal relationships between employees, particularly when one supervised the other. Failure to disclose relationships could lead to dismissal. R began a sexual relationship with V. She was a temporary marketing manager but not R's manager. She saw R in connection with her work. R also began a relationship with someone else and R was their line manager. Probably by 4 December 2014, R and D decided to kill V. The two purchased chloroform on the Internet. There were two failed attempts (no details given). On 24 December 2014, V left one of the company stores in Coventry. R met her and took her to D's house. In interview D admitted killing V at his home and V's body was excavated from D's allotment. He had doused a tea towel with chloroform and placed it over her mouth. A plastic bag

was placed over her head. The allotment had been prepared for a burial before the killing. V had died from chloroform. There was an attempt to dispose of V's car. R sent a message from V's phone after she had been killed. The prosecution said R's motive was that he did not want his relationship with V to be revealed and risk his employment and a very significant financial loss. D's motive was to help his brother. R and D were of good character.¹ The Judge found there was a) a carefully planned murder, b) an intent to kill and c) concealment of the body. He said there was an element of gain and the culpability was exceptionally high so he started at 30 years. He also thought the weapon, the chloroform, was bought to the scene so if he started at 25 years it would be raised to 30 years. Held: Gain was an element of the murder. **28 years** not 30. The same term should apply to D.

1. A news report says R was aged 39 and D 41.

Perverting the course of justice

Witness intimidation

R v Burrows 2017 EWCA Crim 278 LCJ D pleaded to witness intimidation and TDA (3 months concurrent) and was convicted of theft (shoplifting, 3 months concurrent) and battery (on girlfriend, 3 months consecutive). D was released on bail for hitting his girlfriend, G, in the face and arm. There was a condition not to contact G. D met her by chance in their town and D said, "If you don't withdraw [your] statement, I will bang you out". D was also in breach of a suspended sentence which was activated (GBH, 9 months consecutive). Held. It was a chance meeting. We start at 18 months, so with plea, 12 months not 18. The sentence for the TDA should be consecutive as it was for separate criminality. The total becomes **27 months**, not 30.

Possession of drugs

Class A

R v Mortimer 2017 EWCA Crim 46 LCJ D pleaded early to four possession counts. He was acquitted of four associated supply counts. Police watched D in the street and it looked as if he was waiting for someone. F approached and the two went into a hotel, where they were arrested. D had an Asda bag which had 40 wraps of coke and heroin, each weighing about 4 grams. They were worth about £400. Police visited D's home and found four wraps of heroin and two wraps of cocaine, worth about £60. F pleaded to supply. D's explanation was that F had previously given him too much and he was returning the excess. D was aged 46 and had 130 previous convictions on 38 occasions. He had a chronic drug habit. In 1997 he received 4 years for class A supply. D received 1 year after a remand in custody. Held. There was no mitigation and the aggravating factor was the previous convictions. The guideline range was a fine to 51 weeks. Before the full credit discount the Judge's starting point would have been 18 months, which was quite unjustified. Without a report, we can't substitute a **community order** so the most pragmatic solution is to pass 7 days' imprisonment.

Road rage

ABH

R v Hussain 2017 EWCA Crim 144 D pleaded to ABH. He had difficulty in passing parked cars and argued with another motorist, V, about who had right of way. V and D got out of their cars and they continued to argue. D punched V four times in the face, mouth and head, swearing all the time. V had swelling and bruising and a fracture to a tooth. In 1998, D received 5 years for 'a very serious incident' but had no convictions after 2002. He was hard working and had responsibilities for eight children. Held. It was Category 2. We start at 12 months not 18, so with plea **10 months**, not 15.

Sex Offences: Children, with

Female defendants

Att-Gen's Ref 2017 Re Spragg 2017 EWCA Crim 263 D was convicted of seven counts of sexual activity with a child. V's son was the same age as D's son and they were friends. D was a single mother and was aged 35. V was aged 14. V's parents entrusted V to D over a six-week period. D and V became close. A sexual game turned into full sex. On four occasions after they had both drunk alcohol, in a period of 20 days, V had vaginal, anal and oral sex with D. On the last two occasions, V ejaculated. It was V's first sexual experience. The two professed love for each other and V agreed not to tell anyone about the activity. The sex stopped because no further opportunity developed for it. They continued to send affectionate messages to each other. When D heard that V was seeing a girl of his own age, D became jealous and started to self-harm. V's sister became suspicious and looked at V's phone. She then informed her parents, who informed the police. D was cautioned and given a warning notice. Despite this she continued to communicate with V. V was judged to be confused, which had caused him anxiety and depression. D was effectively of good character and had four children aged 1 to 16. She denied the offences and took no responsibility for them. If D was given a custodial sentence, the children would be split up with different foster parents. The Judge was influenced by the effect a prison sentence would have on the children. Held. There was a breach of trust, so it was Category 1A not 1B. The disparity in age and the abuse of trust means notwithstanding the effect on the children, we have to pass an immediate prison sentence. With the aggravating features and the 5-year starting point, a sentence of more than 5 years [is required before the mitigation is considered]. We balance the factors. **3 years** not 15 months suspended.

Sex Offences: Images

Category A Penetration images

R v Forrest-Jameson 2017 EWCA Crim 93 D pleaded to possessing and making indecent images, and possessing a prohibited image. D's hard drive was examined and the following were found: a) a moving image (Category B), b) an image of a young boy anally penetrating an even younger boy (Category A), c) five cartoons of sexual activity involving young girls, d) a created image of an injured vagina, and e) an image of sexual activity between a woman and a dog. D was aged 53. He was of positive good character and worked for a conservation charity. The pre-sentence report said D had co-operated fully and he was suitable for one-to-one intervention. With full credit, **6 months suspended** with requirements, not 9 months immediate.

Theft

Credit card offences

R v Crawley 2017 EWCA Crim 362 D pleaded guilty to two frauds and possession of a false ID document. D went to Bond Street and obtained a £8,950 Rolex watch with a false card. The watch was not recovered. Two months later D returned to the same store and tried to obtain a similar watch with a stolen card. The card's account had £2,500 removed from it previously. D had another person's passport (the ID count, 12 months concurrent). D was recognised, followed and arrested. D was aged 45 with 51 court appearances for 177 offences between 1986 and October 2014, when he received 2 years for five theft offences. He was on licence for these offences. The Judge said D was a public menace and he had a genuine desire to address his drug addiction. Held. D was a persistent offender in an organised group. With his early plea, **3 years** not 5.

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