

Banks on Sentence

Sentencing Alert No 157

15 May 2017

Arson

Reckless arson Domestic premises Danger to occupants

R v Keates 2017 EWCA Crim 309 D pleaded to arson being reckless as to whether life was endangered. D was planning to move to a different part of the country after breaking up with V. V had a new partner, S. On D's last night in the area and after consuming a lot of alcohol, he bumped into V and S in a bar. An argument ensued with D claiming V owed him money. V and S went home. At about 1am, S looked out of his window and saw D approaching the house and a spark as if a lighter was being lit. D had found some receipts and tickets he had on his person, set them alight and threw them inside an unsecured door at S and V's property. S and V's brother, who also lived at the property were able to run downstairs and extinguish the flames but £1,200 damage was done to the laminate flooring. S and V's brother went after D and punched him several times, but D managed to escape. He was arrested the next day. D accepted his motive was to scare V, as an act of revenge. V said D was never violent to her. The Judge started at 6 years and found the aggravating factors to be: a) D was drunk, b) three people were in the house, and c) it happened at night when people would most likely be asleep. Held. There was a notable absence of some of the aggravating factors commonly found in cases of reckless arson. The fact more damage was not done was just good fortune. D's remorse was entirely genuine. Because the Judge failed to take into account D's youth, his good character, the lack of planning and that V said this behaviour was entirely out of character, we start at 4 1/2 years, so with plea, **3 years** not 4.

Fraud

Charging for work that is not necessary or not done

R v Jackson 2017 EWCA Crim 78 LCJ LCJ D pleaded to 15 counts of fraud and consumer protection offences etc. D cold-called potential customers offering simple roofing work like gutter cleaning. Once on site, he would suggest that more work needed doing when it didn't. D grossly overcharged the customers, offering no invoices or receipts. On one occasion, D managed to extract £100 from a homeowner to go and 'purchase materials'. D left and never returned. On another occasion, he charged a 97-year-old £350 for work that was of no value. Another victim was aged 91. D also snatched £20 from an 82-year-old woman who he was trying to deceive when the police arrived. They had been called by a neighbour who was suspicious of D. The total amount taken was over £1,200. D had no formal training as a roofer and had a number of previous convictions relating to the funding of his chronic drug habit. The Judge started at Category 4 because of the impact on the vulnerable victims, despite the sum involved being less

than £5,000. Held. It was a Category 4 case. We start at 4 years in total, not 6. So, with full plea credit, **32 months**, not 48.

Offences against the Person Act 1861 s 20

After drinking

R v Margaron 2017 EWCA Crim 241 D was convicted of GBH. A scuffle broke out in a pub in the early hours of the morning and D and another man were ejected. They went to a nearby taxi rank and were soon joined by V who had also left the pub. D was seen to punch V who fell to the ground. D ran off. V spent 19 days in intensive care recovering from a traumatic brain injury involving a subdural haemorrhage and was told full recovery could take 2 years. D had previous convictions for assault and disorderly behaviour. The aggravating features were a) the offence was in a public area, b) it was in the early hours when public were leaving the pub, c) V requiring long-term treatment and d) D running from the scene. The Judge said only the profound skill of the medics prevented V's death. Judge placed offence in higher culpability category. Held. V suffered tragic and lasting consequences. It was a Category 4 case. The Judge was wrong to consider that a fist was 'a weapon equivalent'. It was lower not higher culpability with greater harm. We start at 18 months' custody. With the aggravating factors, **3 years** not 4.

Perverting the course of justice

Witness interference

R v Jones 2017 EWCA Crim 345 D pleaded to perverting the course of justice. In 2015, he received 23 weeks for harassment of his former partner, P. A Restraining Order was made forbidding contact with P. Whilst in custody D phoned his mother to tell his sister to tell P not to attend court.¹ This request was repeated. Held. This was an unsophisticated attempt and the offence [that was sought to be avoided] was not the most serious offence. There was no threat of violence. **8 months** not 14, consecutive to 3 months for the breach and 1 month concurrent for breach of bail.

1. The report is very short and it seems there must have been a breach of the order which D did not want V to give live evidence about.

Robbery

Shops

R v Lueshing 2017 EWCA Crim 321 D pleaded to robbery. D entered a convenience store at 7pm and attempted to buy a drink and some cigarettes. The shop owner, V, was suspicious because D looked like he didn't have any money. When D was told he'd have to pay first before V would place the goods in a bag, D pushed behind the counter, knocked V to the floor, and took two bottles of vodka, each worth £30. D then left and got into a white van. He handed himself into the police 5 months later. At the time of the offence, D was on bail for using violence against a supermarket security guard and the store manager. For this he received 14 weeks' imprisonment. V declined to make a personal statement. D, aged 30, had appeared in court 39 times previously for 69 offences. He had a troubled childhood and a long-standing drug problem. The Judge started at 4 years due to assumed psychological effect on V which was at the top of the category range. On appeal, there was a treatment package available, because it was considered with his recent abstinence it was the right time to act. Held. The Judge was wrong to assume psychological impact. We wish to address the addiction problem. We start at 1 year, with the aggravation by a) the previous convictions and b) the fact the offence was committed on bail and with the remorse, we reach 2 years. With full plea credit, **16 months** (suspended for 18 months) not 32 months. We add drug-related requirements.

Sex Offences: Children, With

Seeking sexual activity with children Child aged under 13

R v Carr 2017 EWCA Crim 74 D pleaded to inciting a child to engage in sexual activity, inciting child pornography, causing a child to watch a sex act and facilitating the commission of a child sex act. D was a committee member of a dance club at a community centre where V, a 12-year-old girl attended. D contacted V on Facebook and suggested V was 'dirty-minded' and that they meet for a 'dangerous kiss.' He also said V was a sexy beast and he was desperate for her. D sent pictures of his penis to V and asked for pictures in return. V was vulnerable because she was bullied at school. V said she felt pressurized and sent pictures of herself in her underwear and D then suggested meeting at a remote nature reserve. V started to feel sick about the attention she was receiving and deliberately left her phone around for her mother to see, which she did and the police were informed after some delay. D was aged 32 and of good character. Held. There were elements of grooming here and the activity lasted eight weeks. Bearing in the mind the activity suggested was a 'dangerous kiss' and D's good character, we start at 3 years. With plea credit, **2 years** not 3 years, 4 months.

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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