Banks on Sentence

Sentencing Alert No 159

6 June 2017

ABH

Relationship offences

R v Langford 2017 EWCA Crim 498 D pleaded to ABH. At night, D and V were watching a DVD when the picture froze. D asked V to solve the problem and when she failed to unfreeze the picture, D lost his temper and punched a wardrobe. D then grabbed V's neck with his hands, locked his arms and squeezed. V screamed. D spat in her face. After he let go he squeezed her neck again so V was unable to speak. D swore and said, "I am going to kill you". D seized V's neck a third time and V managed to push him away and then escape by asking to use the toilet. V had bruising around the neck and described the event as the 'most scariest, most frightening thing that had ever happened to her'. D had two previous convictions for common assaults on previous partners. He was in breach of a suspended sentence (2 months consecutive imposed, with no appeal). The Judge concluded that D intended to commit more serious harm than had resulted and there had been a background of threats. Held. Placing hands around someone's neck is a very dangerous and a very frightening thing to do. The Judge was entitled to make the remark about a greater intention. It was a Category 1 offence. D's record justifies movement to the top of the range (3 years) but no more. So, with full plea credit, **2 years** not 34 months.

Court of Appeal

Litigants seeking non-qualified people to help them

R v Conaghan and Others 2017 EWCA Crim 597 Four cases were listed together because all had had someone who was not qualified assisting in the preparation of the appeal. Held. Those who wish to conduct legal activities are subject to stringent requirements. Exercising a right of audience is a reserved legal activity, as is conducting litigation. However, the court has an inherent jurisdiction to grant a right of audience on a case by case basis to any person who would not otherwise have a right of audience: see D v S (Rights of audience) 1997 1 FLR 724. It is a discretion that should be exercised only in 'exceptional' circumstances. To do otherwise would thwart Parliament's clear intention. para 16 Having considered these developments and the Registrar's Practice Note, it is our view that:

i) The term 'McKenzie friend' is not appropriate in the Court of Appeal Criminal Division. Terms such as 'applicant's friend' or 'applicant's helper' might well be more appropriate, but it would be wrong to express a concluded view pending the results of the consultation in the Civil and Family jurisdictions.

ii) The court will only allow a non-qualified third party to address the court in exceptional circumstances, and this will be decided on a case by case basis.

iii) If the Registrar has exceptionally granted permission for a non-qualified third party to act as a litigator, it does not follow that the court will also grant the third party a right of audience. It will

only do so in exceptional circumstances.

iv) The Registrar's Practice Note is generally consistent with the current law and best practice in this area.

However, we recommend a number improvements, including third parties should be put on clear notice that an application should not be advanced beyond the single judge stage, following a refusal, without the applicant being fully advised as to the possible consequences. All applications dismissed with trenchant comments and for some loss of time orders.

Escape

Running from the police

R v Dunn 2017 EWCA Crim 520 D pleaded to escape. He was granted bail for three theft offences. Three days later, D was arrested for suspicion of theft of property worth £200 from vehicles. He had a fractured jaw and was taken to hospital. D did not cooperate with the staff. On leaving the hospital when he was washing his mouth he fled the police. That day he failed to attend court and was at large for 17 days. D was apologetic and the vehicle theft charge was dropped. D was aged 27 and had a long-term drug problem. From 2004 and 2017, he had 48 appearances for sentencing for 88 offences, including 36 for theft and similar offences and 25 relating to the police and the courts. Ten of those related to failing to surrender and five for breaches of community orders. Since 2012 he had always received immediate or suspended custody up to a maximum of 22 weeks. Held. The offence was aggravated by D's record, the fact he was on bail at the time and that he was subject to a community order. There were 'green shoots visible of D getting his life back on track'. That all makes it 9 months so with the plea, **6 months** not 8.

Offences against the Person Act 1861 s 18

Defendant aged 15

Att-Gen's Ref 2017 Re Graze 2017 EWCA Crim 497 D was convicted of section 18. When D was aged 15, he was in a park and in a group with M and W. This group borrowed a rugby ball from another group which included V. V's group left. When V's group returned the ball was missing. V sent some text messages, one of which referred to M as a bitch, which V quickly apologised for. The two groups met up and someone in D's group kicked the ball into a field. V and two others from his group went to find it and W learnt V had been rude to M. W called V over and a scuffle developed. Heads clashed. D, who was nearby said, 'No one touches my best mate," and punched V to the ground. D then kicked V and stamped on his head a number of times with such force there was a trainer mark on V's head. V was dragged to his feet with blood pouring from his head and into his eyes. D then marched V over to where M was and D or one of friends made V apologise for the remark. V had a fracture to his cheekbone and his eye socket. A titanium mesh was inserted under his eye socket and a smaller plate inserted across his cheekbone. V was told he should not play contact sports so his mesh did not become dislodged. That put to an end to his hopes of playing professional rugby. The victim impact statement said V after his discharge from hospital had a very bad swelling to his eye and he couldn't close his eye properly. V also found reading more difficult. D was arrested and was distressed and in tears. He was asked to provide the clothing he was wearing and provided a different set of clothes. In interview D made denials. D had no criminal antecedents and had references. His presentence report said he expressed remorse and he said his mother was critically ill following complications from a virus. The writer thought in the 13 months since the attack, V had matured. D was assessed as having a low risk of re-offending. A YRO was recommended. The Judge considered D acted on the spur of the moment. Held. The terrible injuries had fundamentally changed V's life. For an adult, the sentence would be in the region of 12 years. That we halve because of D's relative youth. Unusually we consider the fact the defendant was being re-sentenced merits a reduction. We further reduce the sentence because of D's positive good character, the delay in being sentenced, the unpaid work that had been performed and D's anxiety awaiting our verdict. **4 years** not YRO.

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.

Sex Offences: Children, With

Sexual intercourse

Att-Gen's Ref 2017 Re Rudd 2017 EWCA Crim 492 D pleaded to four Sexual Offences Act 2003 s 9(1) offences and an indecent image count. V then aged 13 communicated with D when he was aged 17 on Facebook. D said he was aged 15. When they were aged 18 and 14, arrangement were made for them to meet. D learnt V was aged 14 and the two kissed and touched each other sexually. Later he sent messages like, 'I am looking forward to sex because I will be your first'. When V declined because of her age, D protested and texted her saying, 'That [don't matter] to you only to me' and 'I trust you not to get me into trouble'. V's mother, M, tried to supervise contact between the two. Regular sex took place and while V thought she was in a relationship, D became controlling and jealous. M banned any further contact and the two used different means to contact each other. M also discovered D had sent V pictures of his erect penis. Six months after the first sex, V discovered she was pregnant. D arranged a termination. M was informed and D sent M many messages trying to persuade her not to go to the police. D was interviewed and made no admissions so V's foetus had to be DNA tested. There was a positive match. D's phone had 20 images of V's genitals. When re-interviewed, he admitted sex with V on four occasions. D had no convictions. A pre-sentence report said there was a significant degree of offence minimisation by D. Further D was naïve and immature. The writer suggested a suspended sentence. The Judge found D had overcome V's objections for his own selfish purposes. Held. This was a Category 1A case not 1B. The sex had taken place repeatedly over a significant period. The age gap was 'important if not significant' and there was the termination. M's clear warnings had been ignored and there were attempts to stop M reporting D to the police. The mitigation was D's lack of convictions, his relative youth and indications of immaturity. The aggravating factors move the sentence significantly above the 5-year starting point. The mitigation moves the figure back to 5 years. With the plea, **40 months** not 8 months suspended YOI.

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