

Banks on Sentence

Sentencing Alert No 166

8 Sept 2017

ABH

Relationship offences

R v Leach 2016 EWCA Crim 1025 D pleaded early to two offences of ABH (counts 1 and 3). D and V were in a relationship. They got into an argument whilst drinking in a pub and D punched V hard on the chin, causing her to fall to the ground unconscious. D left the pub and V was helped by staff and customers, who called the police. V had sustained a bruise to her chin but declined medical assistance. D went to a police station when asked. Those were the facts for count 3. V said that D had been violent to her on previous occasions including an incident in a taxi when D had punched her numerous times. Those were the facts for count 1. D had 11 previous convictions, mostly for motoring offences but also for wounding and resisting arrest. D acted as a carer for his mother. The Judge said that D's record was so serious that, taken with the combination of offences, only a custodial sentence was justified. The Judge said that count 1 fell within Category 2 of the guidelines and count 3 fell in Category 1. The aggravated factors were a) D's record of violence, b) the offence was committed against a female, and c) count 3 involved the same female complainant. Credit was given for the early plea and personal mitigation. Held. The Judge was entitled to move the count 3 offence to Category 1 because of the previous convictions. We see no justification for increasing the sentence for count 3 well beyond the range for a Category 1 offence. It might have been preferable that the sentences were 16 months for count 3 and 8 months consecutive for count 1. However, we substitute **2 years**, not 3, for count 3. Both counts remain concurrent.

Burglary

Persistent burglar

R v Harrison 2017 EWCA Crim 888 D pleaded (full credit) to burglary of a dwelling house. He burgled an unoccupied house in the middle of the day. He took cash, jewellery and various documents, including passports and the deeds to the house. He also removed a safe from the property, which had been screwed to the floor. The total loss was around £15,000. A victim personal statement spoke of the trauma to the burgled family and especially to a five-year-old child. D was aged 43 at sentence and had 22 previous convictions on 15 occasions. He had convictions for burglary in 2005, 2006, 2012 and 2016. The Judge noted that D was a professional dwelling-house burglar, targeting Chinese and Indian homes. He said there was greater harm due to the trauma suffered and that culpability was increased because the burglars had been equipped for burglary and were working as a team. The Judge said, "You are a professional and you will receive a professional's sentence." Held. This was a Category 1 offence and the gravity of the offence and previous convictions justified moving upwards from the 3-year starting point. However, the issue of totality arises because the sentence was in effect consecutive to the previous 876-day sentence. A degree of proportionality was required as it was a single

offence of daytime burglary of non-occupied premises, albeit very serious. With the plea, **4 years** not 6.

Rape

Fathers, By

Att-Gen's Ref 2017 Re KJ 2017 EWCA Crim 714 D pleaded (full credit) to four counts of assault of a child aged under 13, three other counts of sexual activity with children and five indecent photographic offences. D, who was aged 31 when sentenced,¹ began a sexual relationship with V1 when she was aged 14. D pretended he was aged 19 and the sex had the 'blessing' of V1's parents. V1 became pregnant in August 2012 and V2 was born. D and V1 set up home together. V1's sister, V3, revealed that when she was aged 13, she stayed the night with V1 and D. While V1 was asleep, D touched her vagina. V3 pushed him away. In September 2014, the relationship between D and V1 broke down and the two remained on civil terms with D having sole care of V2 one night a week and at weekends. D then formed a sexual relationship with J, when she was aged 16. They moved in together. When V2 was aged 3, D sexually abused her on a regular basis. He digitally penetrated her vagina and anus and made her masturbate him. J recorded this on her phone and transferred the pictures to D's phone. A friend of J informed the police. J co-operated with the police and the phone material and the WhatsApp material were seen. D's computer showed the vaginal and anal abuse and a) D pushing V2's legs apart and putting his thumbs between V2's labia, b) D masturbating near V2's face when she was clearly upset, and c) V2 screaming and inconsolable as D rubs her vagina with extreme force. Also on the computer were: a) 2,111 indecent photos or videos with 520 in Category A, b) 200 images of female children aged 2-10. On D's phone were 261 indecent images with 38 in Category A. On his camera was more indecent material of penile, digital and vibratory penetration of V2's vagina. D had no previous convictions. The Judge found the penetration offences involving V2 were Category 1A, with a starting point of 16 years for a single offence. Held. The exploitation of the contact arrangements was a gross breach of trust. There was a significant degree of planning. The abuse was recorded. D acted with another. There were offences against two other children. There were multiple offences. There was a wide disparity in ages. D had lied about his age to V1. V1 became pregnant. The only mitigating factor was the plea. Because the offending spanned 5-6 years, the lack of previous convictions had limited, if any, weight. The 5-year uplift, from 16 years to 21 years (before plea discount) failed to reflect all the factors. It should have been 11, making 27 years, which with plea means a 26-year extended sentence (**18 years'** custody 8 years' extended licence).

1. The judgment does not refer to D's age. A news report of the sentencing hearing says he was aged 31.

Victim aged under 10

Att-Gen's Ref 2017 Re Ablorh 2017 EWCA Crim 1122 D was convicted of the rape of a child and two counts of assault by penetration of a child. The offences were committed against the same girl when she was aged between 5 and 8. D befriended V's mother, M, when V was aged 5. D was connected to the local church and would send M religious text messages and visit M's house once or twice a week where he would help with household tasks. D would play with V and sometimes take her to the park with M's permission. When V was aged 5 or 6, D took her to his house without M's consent. He removed V's clothing and inserted his finger into her vagina (count 1) and then his penis (count 3). He told V that a member of her family would die if she told anyone. Count 5 was another occasion when D was at M's house whilst she was in the bath. D took the opportunity to again insert his fingers into V's vagina. V eventually told M about the offending and D was arrested. He denied the offences and maintained that position throughout his trial. A victim personal statement from M reported that V has been diagnosed with post-traumatic stress disorder, serious depression and multiple anxiety disorders. V would require long-term counselling. D was aged 41 at the time of sentencing and had one previous conviction for theft. Held. The Judge was remiss not to have ordered a pre-sentence report to assess D's dangerousness. The first two offences were in Category 2A. From that there would need to be an uplift. The sentence did not reflect the three offences. The gravity of the offence and the way D ingratiated himself with M nullified the mitigation that D had no relevant convictions. 19 years'

extended sentence (**18 years' custody** 1 year's extended licence) not 14 years' extended sentence (13 years' custody 1 year's extended licence).

Theft

Persistent offenders

R v Lordan 2017 EWCA Crim 905 D pleaded to two thefts, committed a week apart. Both offences involved the stealing of a handbag from a customer eating in a café. The first offence involved an accomplice. D was aged 44 and was a prolific offender with 35 separate court appearances for 60 offences, including 36 for theft or similar offences. He was on licence at the time of the offence. After the offence, D was sentenced to 32 months for stealing bags, briefcases etc., mostly from pubs. The Judge said it was unrealistic to think D could be deterred and he saw his job as protecting the public for as long as he could. He thought 2 years on each consecutive was appropriate. D had pleaded at the first opportunity. The Judge thought the case was overwhelming and limited the plea credit to 6 months, making 3½ years. He also ordered the sentence to be consecutive to the sentence recently imposed that D was currently serving. Held. Consecutive sentences for the two offences were not justified. There should have been full credit for the plea. Making the sentences consecutive to the previous sentence did not take totality into account. We move to 2 years for each theft, so with plea, **16 months**, but consecutive to the term being served.

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