Banks on Sentence

Sentencing Alert No 167

15 Sept 2017

Offences against the Person Act 1861 s 20

Glassing

R v James 2017 EWCA Crim 827 D was convicted of unlawful wounding in a retrial. D had been in a bar with his girlfriend. V was there with her boyfriend and the two couples did not know each other and were in separate groups of people. An argument occurred between D and V's boyfriend, the latter being accused of going through the coats of D's group. V joined the argument as did D's girlfriend and the defence claimed that, at one point, V had a hold of D's girlfriend's hair. D then pushed V's face with his hand which either contained a champagne flute or a bottle of prosecco. V sustained very serious facial injuries including a 6 cm wound to her right eyelid and a 3.5 cm incision over the bridge of her nose. In a victim personal statement, V complained of a complete loss of confidence. She was left with a degree of permanent scarring. D was aged 25 at the time of the offence and had no previous convictions. The Judge noted the aggravating factors as: a) the offence happened on licenced premises, b) there were ongoing effects upon the victim and c) others were present. The Judge said there were no reasonable grounds for D to suppose his girlfriend was under attack and that in reacting as he did, D must have misread the situation. Therefore, the culpability is less than it would have been had there been a deliberate intention to cause these levels of injuries. The mitigation was that it was a single blow and that D was a man of positive good character who had shown remorse. Held. Category 2 was correct but bearing in mind the mitigation, it was not appropriate to place the case at the upper end of that category. **2** 1/2 **years** not 3 years.

Rape

Historical case Children aged 11-14

Att-Gen's Ref 2017 Re Blake, 2017 EWCA Crim 878 D was convicted of a number of counts of buggery and indecent assaults. Between 1985 and 1991, D had been the deputy principal of a children's home in Leeds, a council run home for vulnerable children. During that period, D subjected four boys in his care, aged between 11 and 14, to a catalogue of sexual abuse which involved sexual touching, oral rape and anal rape. The offences were committed when each boy was alone and were often repeated on multiple occasions. The boys suffered great pain, bleeding and significant psychological harm as a result of the abuse. This led to self-harming and some of the boys turning to drink and drugs. D was arrested in 2014 after the victims had come forward and his house was searched. Police found a memory stick containing seven cartoon images of children engaged in penetrative sexual activity with adults and over 400 images of penetrative activity between women and animals. The images relate to counts 30 to 41, to which D had at an early stage pleaded guilty. D denied all other allegations made against him. D was aged 71 at the

time of sentence and had no previous convictions. The Judge said it was impossible to imagine a worse scenario of abusing one's power for sexual gratifications. He noted the repeat occasions, the vulnerability of the children and the fact that D had been in a senior management position at the home. The Judge placed the offending in Category 2A of the sentencing guidelines and said that he had had regard to the principle of totality and that he had to try and equate the existing offences with those offences that were in place at the time of D's offending. Held. The prosecution argued for an uplift to Category 1 due to the extreme nature of, or extreme impact caused by, one or more category 2 factors. There is no doubt the victims suffered significant psychological harm but the judge also indicated the other aspects of the victims lives that may, in causative terms, have had an impact upon them. Whilst some judges might have thought this an appropriate case to categorise the offending at Category 1A, this Judge was not disentitled from categorising this as Category 2A offending. We reject the prosecution's submission. The principle guideline applicable is the rape and rape of a child under 13 guideline. The Judge does not make clear in his final sentencing remarks which guideline he was applying. We consider the number of victims and the number of offences. It was akin to a campaign of rape which, the modern guideline says, may justify a sentence of 20 years custody and upwards. Because of the scale and frequency of the abuse, 22 years' extended sentence (**21 years**' custody, 1 years' license) not 16 years custody under an Offender of Particular Concern Order.

Sex Offences: Children, With

Physical contact over clothing ***Three victims*** ***One aged 14***

R v Strickson 2017 EWCA Crim 698 D pleaded to three offences of sexual assault. The offences took place on different days and involved different victims. V1 was aged 16 and travelled on a bus. D sat behind V, reached between the seats and touched her hip and bottom over her clothing. When V looked at him, D quickly removed his hand. CCTV footage showed D moving his hand between the gap in the seats. He admitted the offence in interview and said he suffered from Asperger's Syndrome and autism. He admitted obtaining sexual gratification from what he did. Two months later, D was travelling on a train whilst on bail for the previous offence. During the journey, he touched V2's bottom over her clothing. V2 was aged 14. Another passenger intervened and told D to move. One month later, D boarded a train and sat next to V3, aged 22, despite many empty seats being available. V3 felt D rubbing her thigh and he moved his hand quickly away when she looked at him. V2's victim personal statement spoke of her shock about what had happened and that it was the first time she had travelled alone by train. D was aged 22 at the time of sentence and had one previous conviction for sexual assault, for which he received a conditional discharge. The pre-sentence report says that D had a clear understanding of what he had done and accepted responsibility for his actions. He talked of the difficulty he had in forming relationships due to his mental health problems. The report recommended a community order. The Judge said D targeted lone females on public transport, two of whom were children and so were particularly vulnerable. He said it was a serious aggravating feature that D already had an identical offence recorded against him. The Judge disagreed with a suggestion that D should not receive a custodial sentence because of his mental health problems. With full credit for the pleas, the Judge gave 2 years' custody for each offence and, as an act of mercy, made them concurrent. Held. The offences were placed in category 2A of the *Sex Offences Guideline 2014* which deals with the touching of naked genitalia and the victims being particularly vulnerable. Whilst it is true the women were vulnerable, as they were travelling on their own on public transport, that doesn't amount to 'particular vulnerability' as stated in the Guideline. The fact the offences were committed on public transport is a seriously aggravating factor but not enough to put it into Category 2. We can see no features that put the offences into Category A. We would start at Category 3B. The aggravating factors are a) the previous conviction, b) there were three offences, c) two were committed on bail d) the age of two of the victims and e) the location. These factors raise the matter into 2B. The fact D suffers from Asperger's Syndrome is a significant mitigating factor. **Community order with treatment** not 2 years custody.

Supply of drugs

Cuckooing/Running country lines ***Judicial guidance***

Definition *R v Ajayi* 2017 EWCA Crim 1011 Cuckooing refers to retail drug dealers from large metropolitan centres who travel to a smaller provincial community to sell drugs and who set themselves up in premises locally from which they will operate. Very frequently, they will latch onto a local dealer and take over his network, or onto a local user, and take over his address as a base for operations. Sometimes it is a combination of the two. Often large supplies of the drug will not be maintained in the provincial centre, but will be the subject of a re-supply operation from the metropolitan base. Sometimes a manager will be placed in the local area to run operations.

R v Ajayi 2017 EWCA Crim 1011 Cuckooing may involve a number of variants in its operation, but ought to be recognisable by practitioners and judges. The attraction for those who move in is not merely the potential consumer base, but also reduced opposition from local dealers, who find themselves supplanted by incomers who take over local premises from which to operate, often occupied by a vulnerable, low-level user or dealer. An additional benefit is the perception of increased anonymity since such offenders will be operating away from their home areas. The practice of cuckooing is commonly achieved by exploiting local drug users, either by paying them in drugs, or by building up drug debt, or by the use of threats and/or violence to coerce. The exploitation and use of young people as couriers of drugs or money, or as minders of drugs and money, as well as salespeople, is not uncommon. It may be, that a person who does not operate at that level, but who operates as a local manager or enforcer of a drug supply operation of this sort, will also fall within a leading role within the guideline. Where there is evidence of involvement of others in the operation by pressure, influence, intimidation or reward, that should be given particular weight in the assessment of culpability and in determining whether a move upward from the starting point is appropriate. This particular type of offending carries with it the hallmarks of professional crime above and beyond that in ordinary street dealing, so that judges should pay particularly close attention to the assessment of role and the offender's place within a category range. None of these observations should be construed as tolerating or downgrading an approach to traditional forms of local street dealing. That remains a pernicious crime, seriously damaging individuals and society, and should continue to be recognised as such. However, the added sophistication of cuckooing operations reflects a further degree of criminality, which judges should be astute to recognise. para 9 None of this is to encourage a departure from the guideline. What is required is a careful focus on the evidence and on the terms of the guideline so that an appropriate categorisation of an offence or offences is achieved. If the offence before the court clearly establishes a cuckooing operation, the court should reflect that, where appropriate, in the assessment of role or by treating it as an aggravating feature at step 2 of the guideline. If the evidence supports such a conclusion, that would operate so as to mitigate the position of a vulnerable recruit who has clearly been exploited. The co-accused, Prior, in this case is an example. The court should be alive to the dangers of double counting and the sentence should remain just and proportionate. For Ajayi, there is the cuckooing element, so there can be no possible complaint about a sentence at the upper end of the range.