

# Banks on Sentence

## Sentencing Alert No 175

**27 Nov 2017**

### **Dangerous driving causing serious injury**

#### ***Failing to see victim***

*R v Abbassi* 2017 EWCA Crim 779 D was convicted of dangerous driving causing serious injury. D was separated from his wife and was returning their children to her. There had been some discussion about whether he should drive them or take public transport. He chose to drive them home and his mother, V, accompanied them. When he arrived, the children got out of the car and V went to the boot to remove some things. The parcel shelf was obstructing D's rear view and he reversed at speed, knocking V over and running over her. D then hit a parked car some 15 metres away and drove off at speed with the boot still open with V still under the car. Another vehicle had to take evasive action. D eventually drove to a police station and said that he had driven off because people in the street were behaving aggressively. V suffered broken ribs and cuts to her hands and face. She was in hospital for two weeks but made a full recovery. Despite her injuries, V has forgiven her son. D was now aged 33 and had no previous convictions. He worked as a taxi driver. A pre-sentence report mentioned accounts of him being vacant, isolated and frightened of others. There were signs that this was associated with the death of his father when D was only aged 12. People had been concerned about his mental health but D had been reluctant to seek help. The jury acquitted D of charges of attempted murder and GBH with intent and section 20. The Judge said the jury's verdicts meant that they were not satisfied that D knew his mother was behind the car. The Judge's aggravating factors were: a) the offence took place on a narrow road in a residential area, b) D didn't know where the children or V were, and c) D reversed at high speed. Held. We would add that the children must have seen their grandmother hurt. We see a decent man who lost control under pressure, possibly occasioned by annoyance about a minor domestic problem about returning the children and a mentally fragile man. **16 months** not 28 months.

### **Disqualification etc.**

#### ***Extending the periods      Time on remand***

*R v Abbassi* 2017 EWCA Crim 779 D was convicted of causing serious injury by dangerous driving. The Judge gave 28 months' custody and 5 years' disqualification, which he extended by 14 months. He reduced the 14 months to 10 months because of time on remand. Held. That was wrong. The adjustment should have been made to the 5-year term and not the extension period, under the general discretion under Road Traffic Offenders Act 1988 s 35B. We consider 16 months' custody and 2 years' disqualification is appropriate. We reduce the extension period to 8 months to take into account the time on remand.

Note: It appears the Court of Appeal made the same error as the sentencing Judge by purporting to reduce the extension period. However, the Judge's approach seems to be wrong as the

extension period before a reduction would be 8 months (being half of the 16-month custodial sentence), so it could not be 8 months after a reduction. The 2-year disqualification could not be reduced as that is the minimum term that can be imposed and there was no discretionary disqualification to be reduced. The case shows the injustice that can be caused by the poorly drafted 2015 Act to those with long periods of remand in custody facing obligatory disqualification. For more details of the case, see above. Ed.

To understand this case, it is necessary to consider the principals in *R v Needham and Others* 2016

*R v Needham and Others* 2016 EWCA Crim 455, 2 Cr App R (S) 26 (p 219)

**Credit for curfew or remand** para 32 Where someone is subject to a curfew prior to sentence there is no question of credit in respect of that. para 34 By removing the provisions that related to remand time by Criminal Justice and Courts Act 2015 s 30, it was the clear intention of Parliament that time spent on remand would not count. para 35 This has the potential to produce injustice. To avoid such injustice a court may take into account a significant remand period in determining the appropriate discretionary period under section 35A. Many of the offences to which section 35A applies involve obligatory minimum periods of disqualification. There can be no question of such a minimum period being reduced to take account of time spent on remand, but there may be scope for some reduction if the sentencer has in mind a longer period than the statutory minimum. para 38 *R v Harkins* 2011 EWCA Crim 2227 para 16 points to the correct approach to the question of time spent on remand under s 35A. If the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court has power in fixing the discretionary element to adjust that period to take account of time spent on remand. We do not envisage a precise arithmetical calculation taking place. The court should take a broad-brush approach to the question of adjustment.

## **False imprisonment**

### ***Relationship offences***

*Att-Gen's Ref 2017 Re Kilmartin*, 2017 EWCA Crim 759 D pleaded to ABH and was convicted of false imprisonment. D was in a relationship with V. After a night of drinking with friends, D and V returned to the flat they shared. D was very drunk and accused V of cheating on him. V tried to reassure D that this was not true but he became increasingly agitated. Over two hours, D refused to allow V to leave the flat and repeatedly assaulted and threatened her. D pinned her down on the bed, bit her nose, her ear and upper arm. V tried to escape out of the back door but found it was locked and D followed her and punched her. V then tried to escape from a window but could not get it open far enough to get through. D pulled her back into the room and continued to assault her. V tried to calm D but he remained angry and repeatedly threatened to kill her. Eventually, D suddenly opened the door of the flat and left. V escaped to her brother's house, who lived nearby, and he called the police. The police noticed blood on V's jeans and a bite mark on her arm. V was taken to hospital where she was treated for bruising to her face, nose, arm and hand. D was arrested and police noted blood on his trousers. He answered, "no comment" in interview. D was aged 38 at the time of sentence and had a number of previous convictions for violence, including highly relevant offending for domestic violence. His previous offences included affray, assault and rape (6 years' imprisonment). These offences were committed against his partners and often resulted from D accusing the partner of cheating. D's pre-sentence report said that D considerably minimised what he had done. He continued to deny that he had falsely imprisoned V and maintained that he had, in fact, been trying to get her to leave the flat. A probation report said that D showed no remorse and saw himself as the victim of false allegations. The report assessed the current offences as "indicative of a pattern of behaviour whereby D asserts control over his partner through the use of threats and violence. Excess use of alcohol is followed by accusations of infidelity and physical assault with a sadistic element of biting." A subsequent report said that D behaved well in prison, was polite and wished to start afresh. Held. This was a shocking case. D's record was a particularly troubling feature and he had committed the offence when on licence. The effect on the victim has been profound. She thought she might be killed. This terrible attack included punching and biting, and she was detained for

around two hours. 8 1/2 years' extended sentence (**5 1/2 years'** custody 3 years' extended licence) not 6 years' extended sentence (3 years' custody 3 years' extended licence).

## **Rape**

### **Stepfathers Multiple victims**

*R v LG* 2017 EWCA Crim 596 D pleaded to 21 child sex offences which included rape of a child under 13, sexual assault of a child under 13 and making indecent photographs of a child. D was the step-grandfather of the five victims. D carried out a campaign of rape and sexual abuse over a period of four years and filmed many of the offences. The children were: a) aged 7 when that child reported it, b) aged 9-12, c) aged 9-10, d) aged 5-7, e) aged 6, and f) for some of the offending (involving oral rape) aged 3-6. There were multiple instances of abuse, including: a) two counts of oral rape, b) D masturbating the victims, c) D making the victims masturbate him, and d) D forcing the victims to watch pornography. Police found an 'enormous amount' of computer equipment and storage devices. Encryption and security software was found and the computer equipment a) enabled browsing activity to be hidden, and b) blocked police access to sites on the 'dark web'. Police also discovered cameras in various locations in D's home, including his bedroom. There were recordings of D's abuse of the children including D orally raping two of the children while they were asleep. The aggravating factors were a) the breach of trust, b) the process of grooming and sexualisation to which each victim was subjected, c) the young age of the victims, d) the number of victims, and e) the filming of many of the offences. D was aged 72 at the time of sentence. The Judge said that D had no real insight into just how serious and damaging his offending was and that there was an abject lack of victim empathy, insight or understanding of his offending. The Judge also referred to D's early admissions and his advanced age. Held. This is a case of persistent and grave familial sexual abuse perpetrated on five young children. These offences were systematic and vile. The filming made them exceptionally grotesque. The Judge did not make sufficient allowance for totality. We start at 30 years, so with plea making the sentence a global sentence, 26 years' extended sentence (**20 years'** custody 6 years' extended licence, not 30 years' extended sentence (24 years' custody 6 years' extended licence).

## **Sex Offences: Children With**

### **Physical contact under clothing**

### **Child aged 5**

*Att-Gen's Ref 2017 Re Jansons* 2017 EWCA Crim 1459 D was convicted of three counts of sexual assault on a child under 13. D was V's great-uncle. V was aged 5 and lived near D, who often visited the house. He was fully trusted by V's parents and started to take opportunities to be alone with her. The offending was over a three-week period in 2012. On two separate occasions, D put his hand inside D's underwear and touched her vagina. D tried to repeat his actions on a third occasion when V was in bed reading a book. V's mother heard V calling out for D to stop and went to help. She found that the bedroom door had been obstructed but she eventually gained entry. Shortly after this occasion, V's mother asked her if D had ever done anything to her that she didn't like. V said "yes, massage" and indicated her vaginal area. On one occasion D gave V a £5 note. D asked that he met with V's parents before they contacted police to give him the opportunity to explain himself. V's parents agreed but D fled to Latvia, where he remained until 2017 when a European Arrest Warrant was executed. In a victim personal statement, V's father said that V was made anxious and frightened by what had happened and both parents experienced a loss of trust in others and moved house. D was aged 53 at the time of the offending and 58 at the time of sentence and was of previous good character. A letter from D's wife said that she suffered from a disability and was financially and physically dependent on D when he was in Latvia. A prison report showed good behaviour. The Judge passed a sentence at the bottom of the range (3 years) and said there were no aggravating factors in the case. Held. There was grooming and planning, so it was a Category 2A case. The aggravating factors were: a) the offences were committed on three separate occasions, b) the child was aged very much below 13, c) the family had to move home, and d) the offender fled the country and was not brought to

justice for nearly five years. The mitigating factors are significantly outweighed by the aggravating features so we move from 4 years to **4½ years**.

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