

Banks on Sentence

Sentencing Alert No 180

29 Jan 2018

Custody: Time on remand

Whole period served on remand

R v Sutherland 2017 EWCA Crim 2259 D was acquitted of GBH with intent after spending 4 months 20 days in custody. He pleaded to racially aggravated harassment, for which he had been remanded into custody. He was abusive to an Asian police officer. The Judge considered that the offence did not pass the custodial threshold and considered any custodial sentence to be wrong in principle. He was asked to pass a conditional discharge. Held. The only sentencing options were a conditional discharge or a community order with unpaid work. We apply *R v Rakib* 2011 EWCA Crim 870, 2012 1 Cr App R (S) 1 (p 1). The time spent on remand was taken into account when the Judge ordered 40 hours' unpaid work, which was the minimum that could be ordered.

Note: *R v Rakib* 2011 was a case where the community order was said to be helping rehabilitation and protecting the public. Those issues did not apply here as D was said to be remorseful and posed a low-risk of re-conviction. The other difference was that in *R v Rakib* 2011, there was no unpaid work requirement, which is a real punishment. The rule used to be that if you had served more punishment in prison than the offence warranted, any further punishment was wrong in principle. This rule would make both a community order with unpaid work and a conditional discharge (where the defendant could be re-punished if the order was breached) wrong in principle. The only order that would be just is a fine or 1 day's custody, which still appears to be available. Ed.

Dangerous Driving: Causing Serious Injury

Speeding

R v Perera 2017 EWCA Crim 2238 D pleaded (25% credit) to dangerous driving causing serious injury. He drove across a junction without looking or stopping at 49 mph in a 30 mph area. His visibility was effectively nil. His car crashed into V1's car and crushed V2, a pedestrian, into a wall. V2 had multiple serious life-changing injuries, including severe scalp lacerations, lumbar spine fractures, a spleen laceration, complex pelvic fractures and an open limb fracture. There were other injuries. V2 was in hospital for five months. At present V2 can't dress himself and has problems with co-ordination and vision. D was a junior doctor and had an excellent character with no convictions or motoring offences. Held. It was a truly dreadful piece of driving. V2 might easily have died. D was a dedicated young professional, with real promise. There was real remorse. The 32-month starting point was appropriate. **2 years** was severe but not manifestly excessive. It was about half of what it would have been had V2 died. The failure to suspend it was not wrong.

Disqualification How long?

R v Perera 2017 EWCA Crim 2238 (Junior doctor drove across junction without looking or stopping at 49 mph in a 30 mph area. His visibility was effectively nil. Crashed into V1's car and crushed V2 into a wall. V2 had multiple serious life-changing injuries. At present V2 can't dress himself and has problems with co-ordination and vision. D had an excellent character and no convictions. The 32-month starting point was appropriate. 2 years' imprisonment was severe but upheld. The minimum disqualification is 2 years. The minimum extension is 12 months. 5 years was excessive because of the impact on D's future, so 3 years' disqualification.)

Defendant

Deaf defendants

R v GD 2017 EWCA Crim 1762 D was convicted of rape and sexual abuse of three members of his family. He was now aged 51. No complaint was made of the 23-year extended sentence (20 years' custody 3 years' extended licence) other than the Judge indicated that there should be no discount to take account of his profound deafness. A report indicated that there were major restrictions on his communication with prison staff and prisoners. Held. It is important to have reports. The prison staff are making arrangements to meet D's disability. The focus of the court should be on the extent to which a custodial sentence for the offender would be more onerous compared with a younger, fitter defendant. There should be some reduction for D's deafness, so 21 years' extended sentence (18 years' custody 3 years' extended licence).

Manslaughter

Causing the death of a child

R v Regis 2017 EWCA Crim 2017 D pleaded to causing or allowing the death of a child. M, aged 28, pleaded to murder and received life with a minimum term of 21 years. D asked a neighbour to call an ambulance. The crew found V, D's son, aged 2 years 9 months, in a collapsed state. He was not M's child. He was not breathing and had no pulse. He died soon afterwards. The cause of death was peritonitis resulting from a duodenal rupture caused by a blunt force to the abdomen. That happened after 'one significant or heavy blows',¹ which burst V's bowel. V also had a skull fracture, traumatic brain injury, rib fractures and multiple areas of bruising and abrasions. Some injuries were a few hours old and some months old. Some were consistent with an object like a belt. There were marks consistent with a bite. The prosecution suggested that M had caused all the injuries and D none of them. Before the death, friends noticed that D had little to do with anyone other than M and had become isolated. In D's accepted basis of plea, D said she ought to have been aware of the risk of serious harm to V and she failed to take steps to protect her child. M could be caring but he had bursts of anger which scared everyone. M would hit D and she felt she could not hold V. On the day of the incident M had become angry with V and took him into a bedroom. D heard noises consistent with violence and from mid-morning D had looked drowsy. M did not want an ambulance to be called. By late evening V had deteriorated and had stopped breathing. D left the flat to ask a neighbour to call 999. D wrote a statement for the police and was prepared to give evidence against M. D was aged 26 and of good character. There were some features of depression and symptoms consistent with battered woman syndrome. On remand, D tried to kill herself. The Judge held that D felt unable to end the relationship and expressed genuine remorse. Held. V was very vulnerable. The failure to respond must be seen in the light of M's violent behaviour to D. With the harm and culpability, we start at 5 years. With the good character, remorse and assistance to the police, we move to 3½ years. With the plea credit, **2 years 4 months**.

1. It may be that the judgment should have read 'one significant or heavy blow'.

Offences against the Person Act 1861 s 18

Kicking victim on ground

Att-Gen's Ref 2017 Re Truskowski, 2017 EWCA Crim 1869 D was convicted of GBH with intent. There were five separate incidents. D was V's landlord and lived upstairs with his aunt and uncle whilst V slept in the living room downstairs. V had only been in the country for a short time and had no friends or family. About midday on a Sunday, D returned home very drunk. Earlier V had joked about D's T-shirt. When D saw V sitting in the shared kitchen he reacted violently and punched V in the face. When he fell to the floor D kicked him repeatedly. V managed to get to a downstairs cloakroom to clean himself up but D burst in and continued the attack with ten more punches and two kicks. By then V had suffered serious nasal and facial injuries. When V went back into the kitchen, D had calmed down and even helped V clean himself up. D told V that he had to move out by the following Friday. For no known reason, D then became angry and started punching V in the face. V said: "Leave me, or else you'll kill me." A further assault took place 20 minutes later when V was sitting in the living room. D punched and kicked V whilst he was curled up on the floor. In the fifth and final attack, D lifted V off the ground and threw him back down onto the floor where he continued to punch and kick V. V escaped from the house and called the police, whereafter he was taken to hospital. His injuries included fractures of the nasal bones and the left eye socket, bruising to the forehead, severe haemorrhagic swelling to the nose with active bleeding from the nostrils, a deep laceration along the length of the nose and tenderness in the lower back. V was advised not to blow his nose for three weeks and to follow a soft diet. When V returned home to gather his things he started to feel unwell and experienced dizziness and disturbed vision and felt faint. Staff at the local hospital were so concerned about his head injuries that they sent him to Stoke Mandeville hospital, where he stayed for several hours. He was discharged and advised not to work for three weeks and to take pain-relieving medication. His symptoms continued for three to four weeks. D was now aged 30 and had no previous convictions. A victim impact statement set out the severe impact the offence had had on V's life. Held. The assault was sustained and therefore the offence was one of greater harm. The offender used a shod foot as a weapon and repeatedly kicked a man on the ground. He therefore fell into the category of higher culpability so it was Category 1 (starting point 12 years) not Category 2. After a downward adjustment to reflect the Judge's assessment of the seriousness of the offence and then a further downward adjustment to reflect the limited mitigation available to the offender, **9 years** not 6 years.

Sending cases to the Crown Court/Committals

Charges based on being related to main matter/Bail offences

R v Osman 2017 EWCA Crim 2178 D was charged with affray and possession of a bladed article and was released on bail. He failed to attend court as required. He was then charged with two bail offences. He indicated that he would be pleading not guilty. The Magistrates declined jurisdiction on the other charges and D was committed for trial. The bail matters were purportedly committed under Crime and Disorder Act 1998 s 51(3). At the Crown Court, D pleaded to breach of bail. [It looks as if the alternative bail count was dropped.] Held. Bail offences under Bail Act 1976 s 6(1) and (2) are not strictly speaking 'summary' offences. They are only triable at the court where the bail [in question] had been granted. The bail offences were not related to the other offences. The committal was a nullity. Had D pleaded or been found guilty, the Magistrates could have committed the bail matters if they thought it appropriate. (The Court then reconvened itself as a Magistrates' Court and D pleaded to breach of bail. The Court passed a concurrent rather than a consecutive sentence for the bail offence.)

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