

Banks on Sentence

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Burglary

Persistent offender* *One offence

R v Fitzgerald 2018 EWCA Crim 223 D pleaded to burglary and handling (no appeal and 6 months consecutive). In the early hours, when D was in his friend's room in an assisted living hostel, he climbed on to some scaffolding and entered the room next door. He stole £3,000 in cash, a laptop computer, a Home Office identity card, a bank card and some clothing. The items were not recovered. D was aged 34. His previous convictions included attempted robbery, theft and ABH in 2003 (community order). In 2006 he was convicted of robbery, ABH and having a bladed article (4 years). In 2013, he received 6 1/2 years for robbery. D was on licence when he committed the instant burglary. The Judge said, "You have sadly made a career choice as to how your drug addiction should be dealt with." Held. This was a Category 2 offence. It was particularly mean. The Judge was entitled to say that the offence involved greater harm, due to the significant loss to the victim. Unlike the Judge, we give a full plea discount. We start at 3 years not 4, making with plea **2 years** not 3.

Dangerous Driving Causing Serious Injury

Alcohol taken

R v Thompson 2018 EWCA Crim 78 LCJ D pleaded early to a) causing serious injury by dangerous driving and b) excess alcohol. He drank a third of a litre of vodka and then undertook a series of incidents of dangerous driving, including undertaking, using the hard shoulder and driving at 80-90 mph. Finally, when still speeding, he hit another car on a roundabout. The driver of the other car, V, suffered a spinal vertebrae fracture, orbital fractures, teeth fractures, other facial injuries, back pain, abdominal pain and bruising. Metal plates were inserted. His daughter, who was in the same car, was unhurt. There was a significant impact on V's family. D's alcohol level was 50%

over the limit. It would have been higher when the crash occurred. D accepted he was not concentrating. He was aged 38 and had a number of convictions, some involving drink. There was only one driving matter, excess alcohol in 1999. Held. This was dangerous driving over a prolonged period. There were a large number of aggravating factors including the intoxication. The injuries did not warrant a 4-year starting point. We start at 39 months, so with a full plea credit not 25%, **26 months** not 3 years.

Preventive Orders

Child contact ***Are requirements sufficient?***

R v Sokolowski and Another 2017 EWCA Crim 1903 D pleaded to making indecent photographs. Held. para 6(iii) Particular care must be taken when considering whether prohibitions on contact with children are really necessary; although such orders may be necessary to prevent the defendant from seeking out children for sexual purposes. Where a defendant is convicted of viewing child pornography, an SHPO should only contain provisions preventing contact, or permitting only supervised contact, with children where there is a real risk that the offending will progress to contact offences. It is not enough for the prosecution to assert, or for the court to assume, that such provisions are necessary on the safety-first principle, irrespective of how remote or fanciful the risk of such progression might be. Even when provisions are necessary, they must still be proportionate in their scope, see *R v Smith and Others* 2011 at para 22-24 and *R v Lewis* 2016 EWCA Crim 1020, 2017 1 Cr App R (S) 2 (p 5) at para 10.

(iv) A person subject to an SHPO is automatically subject to notification requirements. An SHPO must operate in tandem with the statutory notification scheme. It must not conflict with the notification requirements; and it is not normally a legitimate use of an SHPO to use it simply to extend the notification requirements.

Rape

Victim aged under 10 ***Defendant then aged 25+***

R v Holt 2018 EWCA Crim 148 D pleaded (full credit) to five rapes of a child aged under 13 and 14 other sex offences, all involving V. The counts were multi-incident counts. In 2005, he became a paying lodger in V's mother's house. The mother, M, had separated from V's father and was bringing up V, then aged 9, and her brother, aged 4, on her own. While M was working part-time, D offered to look after the children. Over 9 months, D raped (all forms) and abused V after grooming her and causing her to watch pornography. The abuse was almost on a daily basis. In 2010, D received 5 years and a SOPO for distributing indecent photos, some of which was of the very worst kind. There were 60,000 photos in all. D had other non-sexual previous convictions. In 2015, in breach of his SOPO, D contacted V and sought to apologise. V went to the police. V suffered severe psychological harm. She currently had post-traumatic stress disorder with panic attacks she could no longer control. V had been sectioned for her own protection. The pre-sentence report said D's account was part denial and part justification of his actions. The defence said there was no violence other than implicit in the offence and no recording of the incidents. The Judge said V was a defenceless child, left in D's care. Held. D's sexual offending was of the very worst kind.¹ The psychological impact on V was severe and continues to wreak havoc with her life. Where there are multiple offences, a much higher sentence than indicated in [the guideline] categories is justified. Because of the horror of the offence, the Judge could start at 30 years. 25 years' extended sentence (**20 years'** custody 5 years' extended licence) upheld.

1. The Judge declined to give details.

Restraining Order: Breach of

Persistent offenders

R v O'Hagan 2018 EWCA Crim 272 D pleaded to breaching a Restraining Order. D and V were former partners. In 2006, an indefinite Restraining Order was made prohibiting D from contacting

her. Since then D had breached the order eight times and had been given custody for the breaches. D had damaged V's car, threatened her with a knife and made threats over the phone. In 2016, D was released from prison and almost immediately went to V's place of work and said he loved her. Next, he went to her home and confronted V's new partner. D went back to the place of work three times in the next four days. V was extremely distressed about this. D was now aged 34 and had 39 previous convictions including robbery, threats to kill, ABH, malicious communications and the breaches. There were no non-breach offences against V for 10 years. The pre-sentence report said D posed a risk of serious harm to V. The Judge found V had suffered significant psychological harm. Held. We start at 18 months not 27, so with plea **12 months**.

Sex Offences: Children, With

Abuse of trust

Att-Gen's Ref 2018 Re Waqar 2018 EWCA Crim 265 D was convicted of eight sexual assaults on a child aged under 13 and one count of causing a child to watch pornography. D, aged 33, abused his 8- or 9-year-old niece, V, when she came for a sleep-over. D showed V 'dirty' videos and on three occasions touched the entrance to V's vagina. On other occasions, D rubbed V's naked chest, kissed her on the lips, pulled down her knickers, exposed his penis and asked her to touch his penis (which she did). It was over a 10-month period and all the contact was over V's clothing except one, when D rubbed V's chest. D was of good character, had lost his job and there was a serious impact on his family. D continued to deny the offence. The risk of serious harm was assessed as high. Held. The counts fell into Category 2 or 3A (starting point 3 years and 26 weeks). There were the following aggravating factors: deliberate isolation of the victim, and the offending was in the presence of other children.² As it was a global term, the sentence needed to reflect the child watching pornography offence as well. With the limited mitigation, the global term is at least **4 years**, which we impose.

2. There is very little information about this. It may be that it relates to V's cousins, who may have been present in the house but could not see what was going on.

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