

# Banks on Sentence

## Sentencing Alert No 185

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### Conspiracy

#### ***Sentence should reflect the offence is a conspiracy***

*R v Ahmed* 2018 EWCA Crim 226 D pleaded to conspiracy to supply cocaine and heroin. The co-defendants received 8 years, 7½ years and 6½ years' imprisonment. Held. para 16 As it was conspiracy to supply drugs, it was necessary to determine the appropriate role played by each of the accused and the extent of their involvement in the operation. The Judge was entitled to take into account D's knowledge of the extent of the operation as a whole and the support which his own involvement had contributed to the running of the overall conspiracy. As Treacy LJ stated in *R v Khan and others* 2013 EWCA Crim 800, 2014 1 Cr App R (S) 10 (p 42) at para 35, "The court is entitled to reflect the fact that the offender has been part of a wider course of criminal activity. Involvement in a conspiracy is an aggravating feature since each conspirator playing his part gives comfort and assistance to others knowing that he is doing so, and the greater his or her awareness of the scale of the enterprise in which he is assisting, the greater his culpability."

### Disqualification

#### ***Disqualification orders may not be consecutive and cannot be postponed***

*R v Holmes* 2018 EWCA Crim 131 D pleaded to dangerous driving and other offences. The Judge sentenced him to 8 months in all and two concurrent periods of disqualification, which he made consecutive to the disqualification he was given on a previous occasion. Held. Disqualification under Road Traffic Offenders Act 1988 s 34 must take effect immediately and cannot be postponed. The order making them consecutive was unlawful, so that part is quashed. The Judge failed to apply the extension rules. There is nothing we can do about that.

### Immigration offences

#### ***Large-scale organisations***

*R v Ali and Others* 2018 EWCA Crim 405 G pleaded guilty to conspiracy to breach immigration law. M, N and U were convicted of the same offence. In April 2015, P, an undercover journalist, approached G claiming he was in trouble with the law and asked to be smuggled out of the country. £600 was agreed. G said he did this all the time. Eleven days later P met G with another journalist who claimed to be a would-be jihadist en route to Syria. G and P met T, who arranged taxis to take them and 18 south-Asian individuals to Purfleet in Essex. There a lorry driver drove them to Dover and at border controls in France [customs officers] detained the migrants.<sup>1</sup> One of the migrants was in regular phone contact with M. N and U were taxi drivers. The prosecution said the conspiracy had started earlier in the year. G was aged 44, N was aged 60 and U was aged 57. They had no convictions. M was aged 47 and had been convicted of 11 offences of possessing false etc. ID cards. The Judge made the following findings. The conspiracy was highly organised and the sole motive was financial gain. Those trafficked were vulnerable individuals. M organised the collection of the individuals, their travel south and a safe house. G and M were principals. N did 16 trips out of 20 and U did 20 out of 20. Held. We start at 10 years for the real organisers and not near the maximum. We start at 8 years for G and M. We move that up to 96 months for G in part for his indifference to the jihadist motivation. With plea, **7 years 1 month**. For M we move to **9 years** because of his convictions. For N and U **2½ years** not 4½ years.

1. Unfortunately the report does not say whether the lorry driver or the lorry went to France.

## **Offences against the Person Act 1861 s 18**

### ***Glassings***

*R v Banks* 2018 EWCA Crim 333 D was convicted of section 18. She was in a short relationship with V. They shared a flat and both were drinkers. In their flat, after a row, D struck V's head with a vodka bottle and the bottle broke. V fled and D pursued him. In the communal lift, D slashed out at V repeatedly with pieces of broken glass. V had a 4 cm cut on the lip, two wounds on the forehead, a wound behind the ear about 5 cm long and a wound to the hand. When cross-examined D said, "I can give as good [as] I get with partners. I was drunk at the time." D was aged 30 and had one previous conviction for battery (community order, which was in still in force on the date of the offence). D had punched her then partner several times on the face and back causing bleeding and bruising. D was not in work and spent most of her benefits on alcohol. A psychologist said she was vulnerable and had had a difficult childhood. The Judge said V had not touched D before the incident and V had no weapon. The injuries were nasty and the one to the neck was near major veins and arteries. He found six aggravating factors: a) V had been attacked in his own home, b) the assault in the lift was in a confined space, c) the ongoing effect on V, d) D had breached her community order, e) D had failed to [address] her drinking problem, and f) D was drunk at the time. Held. It was a Category 1 offence. The injuries could easily have been fatal. Her near learning disability and her sorry history of bad relationships were mitigation. **9 years** not 12.

Note: It is inconceivable that a male defendant who attacked his defenceless female partner twice, risking her life, with such a dangerous weapon and who had a relevant previous conviction would have had his sentence reduced to 9 years. Ed.

## **Possession of a firearm with intent to endanger life**

### ***Defendant aged under 18 years***

*R v H* 2018 EWCA Crim 689 D, aged 15, pleaded to possessing a firearm and ammunition with intent to endanger life and possessing a knife on school premises. After his parents had left home, D found the key to his father's gun cabinet. He took a shotgun, cartridges and a balaclava from the cabinet and took them to school. 10 minutes into a lesson he claimed he had a music lesson to attend. A few minutes later, D dialled 999 and said he had the shotgun and ammunition at school but he didn't know why he had them. He added, "I just felt so angry this morning." When asked who he was thinking of using the gun against, D said, "Someone else." When asked "Who?", D said, "Anyone." He also said he had 200 cartridges. D spoke of suicidal thoughts, bad mood swings and being 'just scared'. D was told to break the gun and put it outside the room,

which he did. Later he said he wanted to end his life. The deputy headmaster, B, entered the room and spoke to the operator on D's phone. B said the gun was outside the room, he did not feel in any danger and D was a polite and model student. When police arrived, they found the gun and cartridges with a lock knife and a balaclava. D later apologised for his actions. In interview D admitted intending to harm people at school but said he had changed his mind. D had a loving and caring family and references. A doctor said: a) D had social anxiety symptoms which had a significant impact on him and D could not deal with them, b) there was no history of violence, c) D had an insight into his depression and anxiety and wanted help, and d) a custodial sentence would have a severe detrimental effect upon D's mental health. The doctor outlined a programme to help D and assessed the offence as being an impulsive act and a cry for help. A member of the youth justice service assessed D as having a [risk] of 'high-level serious harm'. She recommended a robust community [package]. The Judge considered the depression was severe. After the sentence, a psychiatrist said D met the criteria for autism spectrum disorder (ASD). Further, D had a severe depressive disorder. She concluded that there was a low probability of D engaging in risky behaviour and that D was vulnerable and required supportive intervention. A manager from the secure children's home he was residing at said D's ASD, asthma and psoriasis had been exacerbated by his admission to the home. Further, his conduct had been exemplary, although D had found custody difficult. Held. D's conduct did have potentially fatal consequences. It was a dreadful decision he took but D came to his senses in time. The experts are unanimous. D's welfare and ultimately the interests of the public are best served by a sentence other than detention. D's condition is now worse than the Judge appreciated. We follow the recommendation for a robust **community package**, the details of which we will decide when all the arrangements are in place.

## **Sex offences Historical**

### ***Oral offences      Victim aged under 10      Defendant then aged 18-24***

*Att-Gen's Ref 2018 Re MB 2018 EWCA Crim 37* D was convicted of nine indecent assaults (maximum then 5 years) and three indecency with a child offences (maximum then 2 years). All were multi-incident counts and all involved V, then aged 6-12. D was her foster brother and was then aged 18-24. Between 1978 and 1984, D licked and touched V's vagina, V sucked D's penis, D rubbed his penis against V's body, V masturbated him and they each licked each other's anuses. All the activity occurred throughout the six-year period, which was mostly on Friday nights when D's mother went shopping. V was told if she told anyone she would not be believed. There was no violence, coercion or bribery. When V eventually told D to stop it, D did so. V continued to suffer flashbacks and panic attacks. In order to cope, V drank to excess and took drugs. D was now in his late 50s and was of positive good character. He had been married for over 30 years and had four children. Held. The modern offence would be oral rape of a child aged under 13. For a single offence in Category 3A the starting point would be 10 years and for Category 3B 8 years. Making the offences all concurrent was a serious error. Having regard to the particularly strong mitigation, the least term in total we can impose is 7½ years, not 4. This was made up of two concurrent 4-year Offender of Particular Concern Orders with a 1-year extended licence. [Presumably those should be consecutive to a 3½-year term.]

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