

# Banks on Sentence

## Sentencing Alert No 187

**22 May 2018**

### **Dangerous driving (Simple)**

#### ***Disqualification for how long? 3 years***

*R v Cook* 2018 EWCA Crim 124 D pleaded to dangerous driving, no insurance and driving without a licence. He was given 10 months' detention. Over ten minutes and while being chased by police, D drove in excess of 40 mph on occasions [presumably in a 30 mph area], went through red lights and on the wrong side of the carriageway. D's passenger was distressed. The chase ended when he drove into a car park and fled. D was aged 18 with six convictions, but none for driving offences. The pre-sentence report spoke of D's remorse, his suicide attempt and instances of self-harm. Held. The Judge was entitled to consider D was a danger to the public. Considering D's age, his employment prospects, the need to deter others and remembering long periods can [cause] further offending, **3 years** not 5. Both terms had a 5-month extension period.

### **Death by driving: Dangerous driving**

#### ***Death of own child***

*R v Edohasim* 2018 EWCA Crim 849 D was convicted of death by dangerous driving and causing serious injury by dangerous driving. At 10.50 am, D was driving his two daughters, V1, aged 9, and V2, aged 11, to a maths tutorial. All were wearing seat belts. There was a 30-mph limit and the weather was dry. D overtook two cars and a car coming the other way had to brake almost to a standstill. After that, D seemed to accelerate. For some distance he drove dangerously. He went through some red lights and struck two kerbs, one in the centre of the road and one on the footway and then hit a brick wall. For the four seconds before the collision the pressure on the accelerator was 100%. There was no application of the brakes in the six seconds before the collision. V1 died instantly. V2 and D had to be cut from the car. V2 suffered serious injuries to her abdomen. D maintained that his brakes failed but there was no evidence of any mechanical failure. D suffered multiple injuries including multiple rib fractures, multiple limb fractures and damage to his spleen. He was likely to develop avascular necrosis, known as bone death. The Judge found D pressed the accelerator in error and kept pressing it in [panic]. He put the case at the top of Level 3 because of the speeding and the overtaking. He moved upwards because of the two victims. The Judge identified the deceased was his own child, D's serious injuries, the 'ongoing physical and emotional symptoms', D's exemplary character, his references about his professional and family life, his good driving record and the fact he was a loving father as the mitigation. Held. This was a family tragedy. The one aggravating factor was V2's injuries. The Judge did not adjust the sentence enough for the mitigation including his exemplary family life and work in the medical profession.<sup>2</sup> **3 years** not 4.

2. News reports say that D was a doctor doing medical research.

## **Murder**

### ***Multiple murders***

*Att-Gen's Ref 2018 Re Johnson 2018 EWCA Crim 834* D pleaded to murder of V3. In May 1981, D killed his wife, V1. They had argued and fought and D struck V1 with an ashtray and a vase. The fight moved to the balcony and he pushed her off the balcony to her death.<sup>1</sup> D was acquitted of murder and convicted of manslaughter on the basis of provocation. He received 3 years. On his release he began a relationship with V2 and they had a child. In 1992, they argued and fought and D strangled her with a belt. He then made two suicide attempts. D was found to have a severe depressive illness and in 1993, he pleaded to manslaughter on the basis of diminished responsibility. A Hospital Order was made with a Restriction Order. In the mid-1990s, when on temporary leave, he met V3. In 1997, D was conditionally discharged from hospital. In breach of the conditions, he failed to tell the authorities about his relationship with V3. When asked about relationships, D lied. In 2016, V3 found another partner and D begged her to come back. There were warning signs that D was relapsing into depression. He made an appointment to see a doctor but the doctor was unwell and the visit was cancelled. V3 went to D's house to help him fill in a form. An argument developed. The Judge considered it was highly likely D was angry about V3's failure to return to him and jealous of V3's new partner. D struck her six blows to the head with a claw hammer. He then strangled her with a dressing gown cord. D left the house, called no one and threw himself in front of a train. One arm had to be amputated at the wrist, the other was amputated below the shoulder. V3's family was devastated by the murder. D was now aged 64. He suffered from diabetes and glaucoma. D pleaded to manslaughter based on diminished responsibility, which was not accepted. This was supported by the defence doctor. The prosecution doctor disagreed. D then said from the dock he would plead to murder in a large part to spare the family the ordeal of a trial. After seeing his counsel, he pleaded. The Judge found the following: a) it was a sustained, vicious and utterly brutal attack, b), this was the third time D had killed a partner, c) the repeated concealing of the relationship was an extremely serious aggravating factor, d) there was an intent to kill, and e) the mitigation was: i) his serious ill-health and disability, which would make reoffending 'unthinkable', ii) the absence of premeditation, and iii) his mental health. He noted that D had chosen not to defend the murder although there had been medical support for it. He decided he would give more than the 5% discount for the late plea. Held. D caused V3 terrible pain and suffering in her last moments. For the two earlier killings the ingredients of murder had been made out. Mental health issues were not involved in the first killing. The breach of D's discharge conditions was a gravely aggravating factor. It was reasonable for the Judge not to make a whole life order. The combination of the first manslaughter conviction and the circumstances of V3's killing made the case one of 'particularly high seriousness'. The starting point was 30 years. The Judge's three factors a) to c) increased that figure to 35 years. We give greater weight to the personal mitigation than the Judge. We too give more than the 5% reduction for the plea and arrive at **30 years** not 26.

1. The judgment says he pushed V1 to her death. A news report makes clear that V1 was pushed off the balcony.

## **Prison offences**

### ***Conveying articles into prison      Drugs      Judicial guidance***

*R v Akhar 2018 EWCA Crim 754* D pleaded to conveying miniature mobile phones, 54 grams of cannabis resin and 69 grams of spice. After his release from prison he started to supply articles into prison. Held. Drugs and drug substitutes are entirely inimical to the rule of law within prisons. Their supply within prison is a serious social evil. They are a currency of great value and an instrument of power, extortion and oppression. They enrich and give power to ruthless prisoners, who exploit others to create debts that are difficult to service without resorting to bullying and intimidation, and to the commission of further crime both inside and outside prisons. They have an inherently corrosive and corrupting influence. They fundamentally undermine discipline and good order and are capable of feeding the addiction of those who should be able to make use of their time in prison to become drug free. The psychoactive substance known as spice is rife in prison, has caused danger to members of staff and others who have to deal with those under its influence and, in some cases, the death of the prisoner from its effects. Viewed overall, the evil

done by drugs and drug substitutes in prison is even worse than the evil that they do in open society. Deterrence is an important aspect of sentencing these offences. Here an overall sentence of **3 years** was within the appropriate range.

### ***Mobiles/SIM cards etc.      Conveying articles into prison      Judicial guidance***

*R v Akhar* 2018 EWCA Crim 754 D pleaded to conveying miniature mobile phones, 54 grams of cannabis resin and 69 grams of spice. After his release from prison he started to supply articles into prison. Held. Illicit mobile phones are equally inimical to the rule of the law within prisons as drugs. They are a currency of great value and an instrument of power, extortion and oppression, with all the consequences that follow from that. They are also used by prisoners to communicate with criminal associates on the outside, thereby potentially undermining security in the prison as well as facilitating the furtherance of crime outside it. Deterrence is an important aspect of sentencing these offences.

### **Sex Offences: Children, With**

#### ***Seeking sexual activity      Child aged 13-15***

*R v Hurst* 2018 EWCA Crim 583 D pleaded to inciting a child to engage in sexual activity. Police set up a Facebook profile depicting a 14-year-old, where her age was made clear. D responded and sent her, G, a naked picture of himself and asked for naked pictures of her. D told her he wanted to spank her and he encouraged her to masturbate herself. In a telephone call, a police officer posing as G called D who encouraged her to skip school. He told her to have a change of clothes. In another call D talked about hiring a room in a B & B. D asked her if she wanted sex and a meeting was suggested. He discussed oral and anal sex. D was arrested for unconnected matters. D was aged 24 and had 54 convictions on 35 occasions. They were mostly for breaches of a Restraining Order, battery and criminal damage. Held. The case was in Category 3A. We start at 6 months and increase that to 9 months for the convictions. With plea, **6 months** with the unrelated matters consecutive.

### **Sex Offences: Historical**

#### ***School house master and boys aged 11 - 13 or 14***

*Att-Gen's Ref* 2018 *Re Burr* 2018 EWCA Crim 737 (D pleaded to nine counts of indecent assault. Some counts were multi-incident counts. Between 1969 and 1975, D was a house master at a boarding school and he touched four boys aged 11-13 or 14 on their bottoms and crotch area etc. Sometimes it was over clothing and sometimes under clothing. D was now aged 73, with a positive good character. The worst incidents were: a) undoing the breeches of a boy he had summoned to his room, and touching and rubbing his penis, and b) opening a 13- or 14-year-old boy's flies and masturbating him. Held. It was a gross breach of trust. We start at 10 years, so with plea **79 months** not 4 years.

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