

Banks on Sentence

Sentencing Alert No 192

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Alert material

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Appeals: Court of Appeal

Removing frivolous etc cases from the list Summary dismissal

R v Ramchelowan 2018 EWCA Crim 1408. The Court of Appeal held the appeals against conviction and sentence were unmeritorious, frivolous and vexatious. They dismissed the appeal and referred the solicitor advocate to the Solicitor's Regulatory Authority.

Confiscation

Applying the assumptions The second assumption

R v Briggs 2018 EWCA Crim 1135 D pleaded to producing cannabis and abstracting electricity. The Judge made a confiscation order and the defence appealed the inclusion of D's net half share of the property where the police found 20 cannabis plants and 19 cannabis seedlings. Held. The second assumption applies no matter when that property was acquired, because it does not have a 'relevant day' limitation. It applies to a matrimonial home that has been acquired jointly many, many years before the offending in question. Appeal dismissed.

Benefit figure must be proportionate

R v Briggs 2018 EWCA Crim 1135 D pleaded to producing cannabis and abstracting electricity. The Judge made a confiscation order and the defence appealed the inclusion of D's net half share of the property where the police found 20 cannabis plants and 19 cannabis seedlings, in part, on the basis of proportionality. Held. para 17 This cannot be a complaint. Section 6(5)(b) does not relate to the assessment of the benefit. Proportionality applies only when the court has assessed a defendant's benefit and when considering the amount of the confiscation order to be made. It relates [only] to the recoverable amount. *R v Waya* 2012 paras 24 and 25 stated the concept of proportionality is not akin to the existence of a general discretion not to make, or to reduce, the confiscation order. Further, section 10(6)(b) providing [the issue of] serious risk of injustice means that it will only be in extremely unusual circumstances that the court will decline to make a confiscation order on grounds of proportionality, because the assumptions in section 10 will only be applied if they can be applied without serious risk of injustice. The Judge was able to conclude there was no serious risk of injustice under section 10(6)(b) in making the second assumption. Appeal dismissed.

Cruelty to children

Neglect

R v K 2018 EWCA Crim 922 D pleaded to cruelty to a child. She was aged 18. D took a baby, V, aged 1 year 10 months, to a birthday party having previously told another mother that V had recently fallen down the stairs. The other mothers at the party were shocked at V's appearance and took some photographs. One of the mothers was a nurse and said that she did not believe that all the injuries were from falling down some stairs. V had a patch of hair missing and D said that V had managed to get hold of a pair of scissors. The mothers noticed that V wanted to play on his own at the party and was unusually aggressive. Once D and V had left, the mothers decided to contact the NSPCC, who in turn contacted the police. D and her partner, P (who was not V's father), were initially hostile when the police attended their house but eventually allowed V to be taken to hospital. 19 separate sites of injury were found including bruises, scratches and missing hair. The doctors concluded that whilst some of the injuries might be accidental, at least four were consistent with slaps and at least one made with considerable force. D maintained that V had fallen down the stairs, but she refused to comment when shown the photographs. A text message conversation on her phone with P did mention a fall but D had been at work at the time. P denied providing V with care or having control of V. D had no previous convictions. The pre-sentence report pointed out that D was pregnant and recommended a Suspended Sentence Order. P pleaded to ABH (10 months). The Judge said D was very young and inexperienced with babies. The Judge said that D herself had not harmed the child and that it was P who had (D had now broken up with him). He was critical of D's deliberate and sustained neglect of the child and for trying to cover up D's injuries, and so refused to suspend the sentence. Held. We apply *Assaults on Children and Cruelty to a Child Guideline 2008* para 6 about the use of suspended sentences. It was a paradigm case for a suspended sentence. D had been in detention for 2 months by the time of the appeal, so **6 months suspended** not 9 months' YOI.

Note: This report is drafted applying the unusual reporting restrictions in this case.

Death by Driving

Disqualification For how long? 5+ years

R v Thompson 2018 EWCA Crim 60 (D pleaded early to causing death by dangerous driving and causing serious injury by dangerous driving. When she tried to plug in her mobile charger and send a text, she ran into the back of a car in the nearside lane. She killed a man, aged 84, in the car and caused serious fractures to his wife, aged 77, who was also in the car. There were immediate admissions at the scene. Good character. Two speeding offences on her licence. D needed the car for work. She was given 2 years 3 months' custody in all. Held. **6 years'** disqualification was appropriate not 10. With an extension, that is 7 years 6 weeks.)

Murder

Significant other offences

Att-Gen's Ref 2018 Re Davidson 2018 EWCA Crim 459 D pleaded to murder, two GBHs with intent (both 6 years), an attempted GBH with intent (8 years), two robberies (8 and 5 years), an attempted robbery (4 years), aggravated burglary (8 years), two burglaries (both 2 ½ years), aggravated vehicle taking (6 months), ABH (4 months) and possession of a bladed article (6 months). The murder was of a frail elderly male with many aggravating factors. The other offences had aggravating factors. The burglaries carried the 3-year minimum term. When interviewed D punched the interviewing officer. D had a string of similar convictions, was on licence and on bail. The Judge started at 25 years for the murder (applying the knife etc. provisions). He passed a 23-year minimum term with the other sentences concurrent. The prosecution said that that sentence would have been appropriate for the murder alone and the other offending wasn't punished. Held. We agree. Like the Judge we start at 28 years. The other offending was worth 16 years. We divide that in half, making 8 years. We add that to 28 making 36 years. With plea, that would indicate 31 years, but in our discretion, we make it **30 years**.

Rape

Uninvited entrant rape

R v Swift 2017 EWCA Crim EWCA Crim 2611 D was convicted of rape. He had known V and her partner for many years. In the early hours, D entered V's home while her partner had gone to the garage to buy some alcohol. V was with her 22-month son who was asleep. D got into V's bed and tried to engage in sexual activity with her. She pushed him away. D grabbed her hair and forced his erect penis into her mouth. V moved her head and D tried to insert his penis again. The two ended up on the floor and he simulated sex with her. He only stopped when her son woke up. V screamed at him to get out. Not long after, D was arrested in a drunken condition. D was aged 25 and had a relatively minor criminal record. V no longer felt safe in her home and the impact on her had been 'significant' and was likely to be long lasting. The Judge found: a) D had gone to the home for sex, knowing that V's partner would not be there, b) V was particularly vulnerable and c) the attack would have gone further had the son not woken up, because D had wet his penis with spit. Held. The attack lasted many minutes and was determined. D had used force. The offence was borderline Category 1 and 2 not 1. **10 years** not 12.

Theft

Persons in public places

Persistent offenders

R v Hadidi 2018 EWCA Crim 1392 D pleaded to 34 thefts. In October 2017, he was sentenced to 2 years for each. From June 2014 to March 2017, he stole principally lap tops from people in central London pubs and wine bars. The total value was at least £36,900. In interview he said he sold the laptops for £80 each to buy drugs. In July 2017, D was sentenced to 30 months for eight thefts and one attempted theft. The eight offences were identical to the 34 offences and committed between April 2015 and April 2017. The total for both sets of offences was at least £44,000. The two sentences were made consecutive making 4 ½ years which, before full plea discounts, would have been 6 years 9 months. D was aged 35 and was an illegal immigrant from Algeria. In 2011, he was convicted of shoplifting (community order). In 2013, he breached that. Held. The starting Category was 2A. Harm is assessed not only by reference to value but also the significant harm suffered by the victims, namely the loss of items of substantial value, the high level of inconvenience and the distress caused. That made it Category 1. Before the plea discount, we arrive at 5 years 3 months, so with plea discount **3 ½ years**.

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