

Banks on Sentence

Sentencing Alert No 194

18 July 2018

Alert material

Information in our alerts and other new sentencing material is collected in the update section on our website, www.banksr.com > Volumes 1 and 2 > '2018 updates' or [click here](#).

Burglary, Aggravated

Dwellings ***Victims seriously injured***

Att-Gen's Ref 2017 Re Adams and Others 2017 EWCA Crim 1353 D and W were convicted of conspiracy to murder [see below]. D and W pleaded to aggravated burglary and two GBHs with intent. At 9 pm, V1 and V2, a retired couple aged 66 and 64, were in their house watching television when D, W and a third man broke in wearing gloves and masks. They proceeded to bind the victims with cable ties and D punched V1 in the face 10-20 times. D asked V1 where he kept his money. Before V1 had a chance to reply, D poured a kettle of boiling water over him. V1 broke free and attacked D. D and W then produced knives and threatened to stab V1. V1 took them to a safe containing £5,000 but when they returned to the living room, D poured a second kettle over V2 causing her to scream in pain. Another £40,000 was obtained from a second safe. More boiling water was poured over V1. Threats were made to cut off fingers and ears. V2 was dragged into another room with D threatening to "dig" out her eyes. D said he knew that V1 used £50 notes at the local pub and that more notes must be in the house. D indicated family photographs and said, "We're going to get your grandchildren". The men also threatened to put a hot iron on V1. Finally, at around 11 pm, the men left. V1 eventually broke free and called 999. The police arrived and found V2 in severe shock with strips of skin hanging off her. In hospital V2 was assessed as having 20% total body surface area mixed-depth wounds. A few days later, owing to an acute deterioration attributed to sepsis, V2 was transferred to a London hospital and placed in intensive care. She remained there requiring renal, cardiac and ventilator support. She underwent six operations under general anaesthetic. A plastic surgeon explained to the Judge that the symptoms of renal failure, cardiac arrest and ventilator support were the result of the boiling water exacerbating some of V2's pre-existing conditions. V1 was also taken to hospital and was found to have first and second degree burns to 14% of his body surface. V2 has since been diagnosed with post-traumatic stress disorder and has seen a psychologist on many occasions for counselling. [The effect of the attack on V1 and V2 could be described as catastrophic and there is insufficient space to summarise it all.]

Police obtained a DNA profile from the scene that matched that of W. Police discovered that W had travelled to Dubai with D. They were arrested at Heathrow airport on their return. Their luggage was found to contain designer clothing worth nearly £19,000. Phone and cell-site records showed that D had conducted a reconnaissance of V1's property prior to the evening of the offences. D was now aged 34 and had a large number of previous convictions. When he was aged 17, he was sentenced to 8 years' detention for aggravated burglary and causing GBH with intent for breaking

into a public house and attacking the landlord in an attempt to get money. A sword was used to wound and boiling water was poured on the victim. D was sentenced for escape from an open prison and possession of ammunition without a certificate. He was also given sentences for robbery from a cash-in-transit van and attempted robbery of a jeweller's shop. W was now aged 33 and had previous convictions for aggravated burglary and false imprisonment. He was sentenced to 5 years' detention and also to 2 years' imprisonment for possessing prohibited ammunition. The Judge said that D and W were highly dangerous, ruthless, professional criminals who were prepared to use extreme violence to further their aims. He found the aggravating factors included the targeting of vulnerable victims in their homes at night, the use of torture, the seriousness of the injuries caused and the relevant previous convictions. For the aggravated burglary, the Judge started at the guideline figure of 15 years and moved up to 18 years. With the plea he moved back to 15 years. He imposed a life sentence for the conspiracy to murder (minimum term of 12½ years) and concurrent life for aggravated burglary and the two section 18s (minimum terms 7½ years). Held. The overall minimum term of 12½ years does not reflect the extreme gravity of the offending. The Judge failed to assess the notional determinate sentence for all the offences. The aggravated burglary was an exceptional case of its kind. It was Level 1 status by reference to every single factor identified as relevant to culpability and harm. The gratuitous violence was torture. There was: a) a high level of planning and premeditation, b) two relatively elderly victims, c) use of a weapon, d) who were attacked in their own home at night, e) a group attack by masked intruders which was prolonged, f) the house was ransacked, g) a large amount of money was stolen, h) a motive of pure greed, i) there was severe physical and psychological harm to both victims which was continuing, and j) relevant previous convictions. 22 years was appropriate, so with the plea discount 18 years and 8 months. For the conspiracy to murder, 34 years was appropriate, see above. Together the two sentences make 52 years 8 months. With totality we arrive at 46 years. That makes a **life sentence** for both defendants with a minimum term of **23 years**.

Murder, Attempted

Criminal gangs

Att-Gen's Ref 2017 Re Adams and Others 2017 EWCA Crim 1353 D and W were convicted of conspiracy to murder and pleaded to aggravated burglary and causing GBH with intent [see above]. In 2015, ED was the victim of a violent attack outside a nightclub, committed by V. He was attacked with machetes and his hand was partially severed. The conspiracy to murder was committed in revenge for that attack. It was organised by ED and it targeted V and his father. The plan was for W and D to shoot and kill V and the scene of the intended shooting was reconnoitred on three occasions. ED made sophisticated and extensive use of a number of unregistered pre-pay phones, which had been discarded and replaced as the planning went on. On the day of the shooting, D and W drove to the scene in a stolen Mercedes and waited for V. [There is no reference to any actions of ED on this day.] V stopped his van at traffic lights. The Mercedes drove alongside the van so that the passenger window was next to the van driver's window. The Mercedes passenger then shot V in the head through the window. The glass shattered and V slumped onto the passenger seat. The car then sped off. The Mercedes was recovered and a shotgun cartridge was found in the footwell. After the attack, V was assisted by various drivers who witnessed the incident. He suffered a massive wound to the right side of his face, including injury to his eye socket, cheek, jawline and surrounding muscle tissue. Some pellets also entered his lung. Remarkably, V survived, largely due to the skill of the surgeon who operated on him. V said he was in constant pain, had difficulty in sleeping and breathing and was unable to walk far. D's DNA was found. D was now aged 34 and had a large number of previous convictions. When he was aged 17 he was sentenced to 8 years' detention for aggravated burglary and causing GBH with intent for breaking into a public house and attacking the landlord in an attempt to get money. A sword was used to wound and boiling water was poured on the victim. D was sentenced for escape from an open prison and possession of ammunition without a certificate. He also had convictions for robbery from a cash-in-transit van and attempted robbery of a jeweller's shop. W was now aged 33 and had previous convictions for aggravated burglary and false imprisonment. He was sentenced to 5 years' detention and also to 2 years' imprisonment for possessing prohibited ammunition. ED was aged 25 at the time of the appeal and had previous convictions

for driving and public order offences. He was sentenced to 38 months' detention for possessing amphetamine with intent to supply and possessing ammunition without a certificate. The Judge said that D and W were highly dangerous, ruthless, professional criminals who were prepared to use extreme violence to further their aims. He said the aggravating factors included targeting of a vulnerable victim, an intention to kill,¹ careful planning and the use of a firearm. The Judge imposed a life sentence for both defendants with a minimum term of 12½ years.

Held. The overall minimum term of 12½ years does not reflect the extreme gravity of the offending. The Judge failed to assess the notional determinate sentence for all the offences. The conspiracy to murder should have attracted a starting point of 30 years for D and W. This was a premeditated revenge attack, carried out in public at a busy road junction. Members of the public were at risk. For the conspiracy to murder, we move to **34 years**. For the aggravated burglary, 18 years and 8 months was appropriate. Together the two sentences make 52 years 8 months. With totality we arrive at 46 years. That makes a **life sentence** with a minimum term of **23 years**. For ED, **life imprisonment** with a minimum term of **15 years**, not a determinate sentence of 16 years.

1. Both the Judge and the Court of Appeal considered that an intention to kill was an aggravating factor. It is in fact an element of the offence of conspiracy to murder.

Perverting the course of justice

Judicial guidance

R v Walker 2018 EWCA Crim 1018 D pleaded to perverting. Held. There will normally be two main factors to determine the sentence: a) the nature and seriousness of the main offence for which liability was sought to be evaded, and b) the nature and culpability of the defendant's actions.

Trying to incriminate innocent people ***Rape claims***

Att-Gen's Ref 2018 Re Costin 2018 EWCA Crim 1381 D pleaded to seven counts of perverting the course of justice. During a three-month period, D made seven false allegations against four men, namely four rapes, two sexual assaults and one assault. D provided details of the offences saying in one how one victim had pushed her onto the carpet in her home and vaginally raped her. She accused another man of forcing his way into her house and 'thumping' her in the face. Police found a kitchen knife in the garden and D said that the man had brought it with him. The allegations were all thoroughly investigated and some of the men were arrested multiple times and medically examined. Strong alibis and the use of CCTV footage proved all the allegations to be false. CCTV footage also showed D dropping the kitchen knife in her garden right before she called the police to make the assault allegation. Over a number of interviews, D eventually admitted to fabricating the allegations. She said that she reported one of the men because she wanted to get back at him because he owed her money. She also admitted to dropping the knife in her garden because she felt like it. D said that she suffered from autism, stress and post-traumatic stress disorder as a result of being raped at the age of 10. Three of the victims made impact statements about the devastating effect the false allegations had upon them, particularly for one of the victims who had learning disabilities. A community mental health nurse said that D had been diagnosed with autism, pathological avoidance demand syndrome and emotional unstable personality disorder. A psychiatric report detailed the significant progress that D had made over the last few years. It noted that previously D had telephoned the emergency services or visited A & E or her doctor on almost a daily basis, but now that conduct had significantly reduced. D had 16 previous convictions on seven occasions, mostly relating to offences contrary to Protection from Harassment Act 1997. D had had restraining orders, fines, conditional discharges and community orders, which she had frequently breached. In October 2016, she breached a Restraining Order by persistently ringing emergency services unnecessarily. D was on bail for the present offences when she committed an offence that led to a conviction for harassment in April 2017. In a letter to the Judge, D said she would kill herself if sent to prison. The Judge concluded that prison would be inappropriate because of the risk of self-harm or suicide. He also considered that she had done well recently. After sentence the prosecution relisted the case to show that three months before her plea she made a false rape allegation and in the same month as her sentence she had made a false allegation of sexual assault. Also, D's

behaviour had become so bad that she was the only person to be banned from her mental health unit. Held. The Judge placed too much emphasis on the offender's problems and insufficient emphasis on the impact of her offences on the victims and for the criminal justice system as a whole. We start at 6½-7 years. We acknowledge the extent of D's difficulties and the considerable care and support that professionals have offered her over the years. With her mitigation and the plea, **4 years**, not a community order.

book@banksr.com

www.banksr.com

To sign up a friend to receive the Sentencing Alert emails, please [click here](#).

To unsubscribe from future newsletter and promotional mailings, simply click on the following link:
[Unsubscribe Now](#)

[CLICK HERE TO GO BACK](#)