Banks on Sentence

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Alert material

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Burglary

Minimum 3 years' custody ***Judicial guidance***

R v Leonard 2018 EWCA Crim 870 D was convicted of a dwelling burglary and a theft. The 3-year minimum provisions were triggered. The Judge's approach to that was unclear. Held. The 3-year prescribed minimum is not the sentencing starting point. Courts should apply the *Burglary Offences Guideline 2009* in the usual way, then cross-check that the resulting sentence does not infringe the minimum 3-year provisions. If it does, they should consider whether there are any particular circumstances relating to any of the offences or the offender which would make the imposition of the minimum sentence unjust, see *R v Andrews* 2012 EWCA Crim 2332, 2013 2 Cr App R (S) 5 (p 26) and *R v Silvera* 2013 EWCA Crim 1764.

Manslaughter

Mentally disordered defendants ***Grave cases***

R v Edwards and Others 2018 EWCA Crim 595 D (presumably)[1] pleaded to manslaughter on the basis of diminished responsibility. She had a long history of mental illness and suffered from paranoid schizophrenia. D's mother, V, aged 78, suffered from dementia and was partly deaf. V was cared for mainly by D's sister and occasionally D would help out. On the day of the offence, D's sister went to V's house and found her dead. D admitted to the killing saying that V had looked like a witch and was cursed and that the killing had to be done. The cause of death was compression to the neck. At the sentencing hearing, it was agreed by experts that D suffered from a schizoaffective disorder, mixed type, and that she suffered from diminished responsibility. D's history showed that she posed a serious risk of harm to others. D had a conviction in 1995 for an offence of GBH which involved the stabbing and choking of her daughter, who had also been the subject of a choking attack by her in 1991. Prior to the offence, D had been under the care of a community mental health team. The taking of her medication was described as chaotic and there was the potential to relapse quickly if it was not taken. D's treating clinician said that D's mental disorder was very clearly a significant contributory factor. The Judge noted the clear evidence of a history of dangerous conduct which had been previously dealt with by an order. He said that the long term was difficult to predict but that there was a definite risk of serious harm in the future. Held. This was not a straightforward sentencing exercise. The main issue is whether there should have been a hospital order rather than an indeterminate sentence with a Mental

Health Act 1983 s 45A order in circumstances where the expert reports all proposed a hospital order. There are a number of reasons why the Judge's approach cannot be criticised. D had a record of violence and had been made subject to a Hospital Order with a Restriction Order before. At the time of the offence, D had been in contact with a very experienced psychiatrist and her serious problems had not been detected. She is at risk of rapid relapse if she does not take her medication. The protection of the public assumes an even greater significance in D's case as she is highly dangerous and likely to remain so for the foreseeable future. D committed an extremely serious offence and one that has had the most devastating consequences for her family. A penal element to the sentence was therefore required. D would not have killed but for her mental illness and her chaotic compliance with her medication was due in some measure to her illness. Life sentence with a minimum term of **5 years** not 10, and a hospital and limitation direction under section 45A.

1. The judgment does not refer to the offence or the plea, but they can be inferred.

Offences against the Person Act 1861 s 18

Knives, With

R v Ake 2018 EWCA Crim 392 D was convicted of three offences of wounding with intent. D was eating a takeaway with 12 others outside a pub in the evening. He had two knives in his bag. At about 9 pm, another group arrived and an argument broke out. D was punched in the face so he ran off and was pursued by V1, V2 and V3. D turned around and challenged his pursuers. He removed the two knives from his bag and ran at V1. D stabbed V1 beneath his left armpit and V1 collapsed. D then stabbed V2 in the groin and the back causing him to fall to his knees. V3 tried to swing on a tree and kick D but D managed to stab him in the thigh. D then ran to a friend's house and washed the blood off his body. The knives were not recovered although witnesses described them as large kitchen knives or small samurai swords. V1 and V2 both received life-threatening injuries. Each suffered a punctured lung. V2 was so convinced that he was dying, he called his girlfriend to say goodbye and asked her to give their son a kiss. V1 and V2 were in hospital for several days. The victim personal statements describe the very considerable impact on all three victims. They all suffered significant loss of confidence, isolation and other psychological and physical effects of the attacks. At trial, D's defence was that he was robbed of his rucksack and that he was not responsible for the attacks. D was aged 18 and had six previous convictions including for the supply of cocaine and heroin, and possession of an 8-inch kitchen knife (YHO). The pre-sentence report made clear that D was in breach of the terms of the order having failed to reside as directed and having missed several appointments. The Judge noted that D had caused terror and very serious injuries to two of the three young men who he stabbed deliberately. He said the previous conviction of possession of a knife was an aggravating factor and that he took into account D's age. The Judge started at 12 years. Held. These offences clearly fall within Category 1 of the guideline. There was greater harm in the cases of two of the three victims and there were repeated attacks. There was high culpability due to the fact that D deliberately armed himself with two knives, both of which he used to stab three separate victims. There was nothing wrong with a starting point at 16 years. However, the Judge gave insufficient weight to D's age and immaturity. So, 16 years' extended sentence (**13 years**' custody 3 years' extended licence) not 18 years' extended sentence (15 years' custody 3 years' extended licence).

Prison offences

Conveying drugs into prison

R v Borchert 2018 EWCA Crim 1230 D pleaded to conveying items into prison. On arrival at HMP Park to visit a prisoner, D was detained by staff and asked if she had any prohibited items on her person. D said that she did, and produced a cylindrical package from her vagina. The police were called and her mobile phone was examined. There were several messages about collecting 'subbies' from a male and taking them into prison. She also provided her bank details in the messages, so that she could be paid for doing so. The package seized contained 16.9 grams of tobacco, four SIM cards and 49.5 tablets which contained the class C substance buprenorphine (a heroin substitute). D admitted the offence in interview and said that she had visited the prison in

order to visit a close friend. She obtained the package via a third party and thought it contained Subutex and tobacco. She said she thought it was just for her friend's own use. The value of the drugs was between £1,470 and £2,450. The SIM cards were worth £200. The amount of drugs and number of SIM cards was an indication that other inmates were to be supplied. In her basis of plea, D said that she had feelings for her friend in prison and she had been at a very low point in her life. She felt that her friend took advantage of her vulnerability. He had asked D to bring items in a number of times and eventually she relented. D was now aged 32 and had one previous conviction for theft. A pre-sentence report detailed D's history of anxiety, depression and self-harm. She was on prescribed medication. D had three children, two of whom had been adopted and one of whom was in long-term foster care. D had been a drug user herself although she claimed to have become drug-free recently. The Judge took account of D's mental and physical health problems and the fact that she had had made full and frank admissions. The Judge also stated the seriousness of these offences and the possible consequences, not only for prisoners but also for those who were trying to run the prison on a day-to-day basis. He said D had been persuaded rather than pressurised into taking the articles and only an immediate custodial sentence would be appropriate. Held. We find she was paid for doing it. We start at 18 months, not 3 years, to reflect the mitigating factors, so with plea, **12 months** not 2 years.

Rape

Historical cases Victims then aged 8-13

See also: *R v Jones* 2018 EWCA Crim 1499 D was convicted of 11 buggery offences, two attempted buggeries[2] and 30 indecent assaults. He pleaded to seven indecent assaults. D was a football coach who abused 11 boys from aged 8 upwards between 1979 and 1991. There was buggery of four boys when aged 11-13 and attempted buggery on three boys aged 11+. One boy was buggered more than 100 times. Steps were taken to stop boys reporting incidents. D was now aged 64 and had suffered from cancer, which meant he had to be fed through a tube. In 1995, in the USA, D received '3 or 4 years' for indecent assault. In 1998, D received 9 years for indecent assaults and buggery of young boys. There was no reoffending since the US offences. An Offender of Particular Concern Order (**30 years'** custody 1 year's extended licence) was severe but not manifestly excessive.

2. The judgment, when dealing with the facts, refers to attempted buggery of three boys.

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