

Banks on Sentence

Sentencing Alert No 196

3 Aug 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](#).

Children and Young Offenders

The Youth Court ***Those who turn 18***

Procedure

Appeal Court judges sitting as Crown Court judges and District judges

Procedural irregularities

R v Ford 2018 EWCA Crim 1751 D was charged with section 18 and appeared at the Youth Court aged 17. The case was adjourned so the defence could read the papers. On the next appearance D was aged 18. D pleaded to section 18 and possession of an offensive weapon. D was committed for sentence under Powers of Criminal Courts (Sentencing) Act 2000 s 3. At the Crown Court, D received 6½ years in all. Held. We assume the magistrates purported to commit D under section 3B because that is the section for those who require additional sentencing powers. To use Magistrates' Court Act 1980 s 24 (which enables those who turn 18 to be dealt with in the Youth Court) the defendant must be aged 17 when the court determines mode of trial, see *R v Islington North Juvenile Court ex parte Daley* 1982 75 Cr App R 280 (House of Lords). So, there was no power to take D's plea or commit him to the Crown Court. Everything after that was invalid, so we quash D's sentence, acting as Judges of the Divisional Court. One of the judges then sat as a District Judge at the Youth Court and committed the matter for trial. The same Judge sat as a Crown Court Judge, took the pleas, heard the case opened, listened to the mitigation, sentenced D to 4 years 8 months and passed some ancillary orders.

Custody

Legitimate expectation that a non-custodial sentence will be given

R v CD 2018 EWCA Crim 571 D pleaded to sexually assaulting a child. A psychiatrist recommended a sex offender treatment programme. The Judge asked the probation officer whether there was any reason why he should not pass a community order. The officer asked for an adjournment to liaise with the sex offender programme providers and the Judge agreed saying, "I am minded to think that the case could be dealt with without a loss of liberty. I will adjourn without promises for a pre-sentence report." D co-operated with probation and their report recommended a community order or a suspended sentence with a community sex offender

programme. At the next hearing, D received 2 years. Held. The remarks were conveying mixed messages. Although the Judge said, "no promises" it was clear he was minded to give a non-custodial sentence. At the last hearing there was no new information. D could reasonably believe that if a suitable course was proposed, he would not receive immediate custody. There was a legitimate sense of injustice aroused, so we suspend the 2-year sentence with a condition of an attendance on a sex offender programme.

Extended sentences

Significant risk Is the relevant time the date of sentence or the date of the offence?

R v Atkinson 2018 EWCA Crim 1612 D pleaded to attempted robbery and having a bladed article. In November 2017, D entered a newsagent's brandishing a knife and demanded money. In interview he made full admissions. In early 2017, D's alcohol consumption had escalated and he was abusing drugs. That had led to D resigning from his job the week before the robbery. The pre-sentence report said, 'D had accumulated debts and had been subject to various personal crises. D's personal circumstances were very different at the date of the sentence. There was less stress and he was capable of acting and thinking rationally.' The Judge passed an 8½-year extended sentence (4½ years' custody 4 years' extended licence). Held. The time to assess dangerousness is at the date of sentence, not the date of the offence. We quash the extended sentence as there was no basis for such a finding at the date of sentence.

Intimidatory Offences

Guideline

The Sentencing Council has issued an Intimidatory Offences Guideline. It deals with:

- a) Controlling or coercive behavior (Serious Crime Act 2015 s 76)
- b) Disclosure of private sexual images (known as revenge porn) (Criminal Justice and Courts Act 2015 s 33.)
- c) Harassment (both Protection from Harassment Act 1997 s 2 and 4)
- d) Racially or religiously aggravated harassment (both Crime and Disorder Act 1998 s 32 (1)(a) and 32(1)(b))
- e) Stalking (both Protection from Harassment Act 1997 s 2A and 4A)
- f) Racially and religiously aggravated harassment stalking (both Crime and Disorder Act 1998 s 32 (1)(a) and 32 (1)(b))
- g) Threats to kill.

The guideline is in force from 1 October 2018.

Offences against the Person Act 1861 s 20

Street fighting after drinking

R v Broadbent and Others 2018 EWCA Crim 1495 B pleaded to GBH. B, D and K pleaded to ABH. After a night out, V1 and V2, whom they did not know, were walking home. D, B and K approached them. The defendants were saying things to V1 and V2, who were not aggressive. Despite this, D punched V1 in face. B then punched V2 in the face. V1 was then repeatedly punched by all three defendants until he fell to the ground. A passer-by intervened and there was a lull in the proceedings. However, after V1 got up from the ground looking dazed, the defendants surrounded him again and B was seen to deliver a hard punch to V1, who was knocked to the ground unconscious (presumably the GBH). The defendants ran off but were tracked by CCTV and a police helicopter. In interview, all three defendants denied the offences until they were shown the CCTV. They then all admitted their parts in the incident. V1 suffered a soft tissue injury to his

face. His victim impact statement said he suffered anxiety as a result of the attack and is now reluctant to socialise at night. V2 suffered multiple fractures of the left orbit. In his statement he said that the effect of his injuries meant that he missed part of his university education because of the pain, stress, anxiety and depression caused by the assault. His face was now out of alignment due to his eye socket having been displaced. He will have to have surgery to remedy his facial disfigurement. Each of the defendants was of good character and had positive references. D was aged 22 and B and K were both aged 19. The Judge described the incident as "a drink-fuelled, unprovoked attack". The Judge in an e-mail after the hearing said from what he now knew he would have given a full plea discount not 25%. Held. The two offences were both Category 2. The aggravating factors were: location, timing of the offences, the intake of alcohol and the effect on both victims. The mitigation was their good characters. For B, we start at 2 years, so with the plea, **16 months'** YOI not 27 months. For D, we start at 9 months, so with the plea, **6 months** not 39 weeks. For K, we start at 6 months, so with the plea, **4 months'** YOI.

Totality

Defendant sentenced on separate occasions

R v Craggs 2018 EWCA Crim 1117 In October 2017, D pleaded to two dwelling burglaries, causing serious injury when driving dangerously and associated other offences. These offences were committed on 28 August 2016. D received 7 years 2 months in total. The sentence was made consecutive to a 5-year sentence imposed in December 2016 for two burglaries committed on 20 November 2016. No complaint was made about the length of either sentence, partly because D was a 'prolific and professional burglar'. D appealed the total sentence, saying 12 years 2 months in total (15 years before the plea discount) was too long. Held. We don't know why D was not charged with the August 2016 offences until March 2017. para 23 We need to look at the appropriate sentence for the overall offending if all the offences had been dealt with on the same day. The total sentence should not be disproportionate, although it was not purely a mathematical exercise. The overall sentence was disproportionate, so we keep the sentences the same but make the sentences passed on the two occasions concurrent, making 7 years 2 months in all. [With the 22 months D had served, which was the equivalent of a 44-month term, and the 7 years 2 months' sentence, the total was the equivalent of a 10 years 10 months' sentence.]

Variation of Sentence

Crown Court Extent of the power

R v O'Connor 2018 EWCA Crim 1417 D pleaded to robbery, ABH and other offences directed at his ex-girlfriend, G, her new partner, her mother and three police officers. D was aged 30 with 20 previous convictions, a number of them for violence. A psychiatrist considered that D had a severe anti-social personality disorder and a massive anger management problem. D had also attacked a prison officer, a prison inmate and a dock officer. [It looks as if at least two of these were after his arrest.] D said he wanted to kill G's family. For the robbery the Judge passed a sentence of 45 months with 4 months consecutive for three of the other offences. A week later, the Judge said he had approached the sentence wrongly. He changed the robbery sentence to an 8-year 1 month extended sentence (4 years 1 month's custody 4 years' extended licence). He also made the 4 months concurrent. Held. Sentencing is a much more complex matter than it used to be. There is the strongest public interest in addressing the risk D posed. We adopt *R v Warren* 2017 EWCA Crim 226. There was no difficulty in the Judge correcting his error.

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](#)