

# Banks on Sentence

## Sentencing Alert No 199

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### Alert material

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### Appeals: Court of Appeal

#### ***Shall not be dealt with more severely***

*R v Suffi* 2018 EWCA Crim 1750 D pleaded to harassment (5 years' extended sentence (2 years' custody 3 years' extended licence)), perverting the course of justice (5 years concurrent) and two driving whilst disqualified offences (4 months concurrent). Held. The extended sentence was unlawful and the [longer] determinate sentence concurrent to an extended sentence was poor sentencing practice. We would wish to make a 5-year extended sentence (4 years' custody 1 year's extended licence), which would be lawful, and a reduced 4 years for the perverting count. Sadly, we can't. Currently D would be released after 2½ years (half the 5-year term) when the custodial term of the extended sentence would have been served. The proposed sentence would release D after 32 months (two-thirds of 4 years). The proposed sentence would treat D more severely. *R v Thompson and Others* 2018 applied.

### Conspiracy

#### ***Sentence to reflect the fact the offence was a conspiracy***

*Att-Gen's Ref 2018 Re Doherty and Others* 2018 EWCA Crim 1924 Four defendants pleaded to a puppy farm fraud. Held. Those who participate in a conspiracy involve themselves in a crime which goes beyond their individual role within the conspiracy. Of course, their individual roles may vary in the importance and/or in the duration of their involvement. The court must therefore assess the culpability of the individual offender. When determining the harm caused or intended to be caused by the offence, the court looks to the conspiracy as a whole, not to the part played by the individual offender.

### Dangerous Driving Simple

#### **Police chases**

*R v Aldhain* 2018 EWCA Crim 1359 D pleaded to dangerous driving, driving whilst disqualified (both with 25% plea credit) and other offences. After a collision, a police officer indicated that D must stop his car. D drove off at speeds of up to 64 mph in a residential area and through red lights. There were some near misses and the driving lasted a few minutes. The Judge said the

driving was not the worst he had seen but because D was drunk, he would start at the maximum. The Judge also referred to D's appalling record. With plea, D received 18 months for the driving and 4 months' consecutive for the driving whilst disqualified. Held. The Judge was entitled to start at the maximum and pass those sentences.

## **Murder, Attempted**

### ***Children as victims/Multiple attempts/Hammer attacks***

*Att-Gen's Ref 2018 Re Scott 2018 EWCA Crim 1336* D pleaded late to four counts of attempted murder and one count of dangerous driving. D split up with his former partner, B, with whom he had three children. B was the primary carer for the children. In the weeks prior to the offence, D had stopped attending work, had become convinced that his new partner was having an affair and told others that people were going to harm his children. On a day that he was due to care for his two sons, he argued with B, behaved irrationally and told B of his concerns. He repeated that people were after him. The next day he apologised for his behaviour and seemed calmer. With B's consent he collected his three children and one step-daughter with a view to going shopping. Over the next day and a half, D travelled with the children from Southampton to the Isle of Wight and then to Liverpool, Manchester and Huddersfield. Shortly after midnight, D deliberately drove his car at over 90 mph into the boundary wall of a public house. This was a deliberate attempt to kill all four children. In the two-and-a-half-hour period prior to the crash, D had attacked each of the children with a hammer. After the collision, D was found by the car. He had no serious injuries. He tested negative for alcohol but positive for cocaine. All four children suffered depressed fractures of the skull. The eldest, aged 8, also suffered pelvic, wrist and hand fractures, a laceration to the pancreas and bleeding to the gut. She has regular nightmares and suffered from a loss of balance. Her speech has been affected and she had headaches and mood swings. The second child, aged 7, had her skull shattered into multiple fragments. She was still in hospital at the time of sentence having undergone 13 operations. She will suffer from lifelong disability and will be wheelchair-dependent for the rest of her life. The third child was aged 21 months and was left with a hole in his skull which it is hoped will eventually heal. He now suffers from significant cognitive impairment with a risk of further cognitive difficulties. Some of those may not become apparent until his teenage years. The fourth child was 9 months old. He is missing a large part of the left side of his skull and is scarred. He will need surgery to deal with the skull defect. [The dreadful injuries and future prospects are not listed in full.] D was aged 29 at the time of the appeal with no previous convictions. During his arrest and subsequent police and other interviews, D maintained that he did not intend to harm the children and lied repeatedly. The Judge arrived at a determinate sentence of 35 years before giving credit for the guilty plea. That represented her assessment of all the circumstances, including aggravation and mitigation up to that point. Held. The victims in this case were four young children who were particularly vulnerable. Each child suffered dreadful injuries with long-term consequences. There was a gross breach of trust in relation to each of them. It is clear that some of the children were old enough to understand what the offender was doing whilst the attacks took place. B's life had been blighted. Those are very significant aggravating factors which must increase the level of sentence. With regard to mitigation, mental disorder can be a factor which lowers an offender's degree of culpability. However, D's state was an acute drug-induced psychosis as a result of taking cocaine. Therefore, little or no weight should be attached to this factor. The Sentencing Council's guideline indicates a maximum of 10% reduction for a guilty plea tendered on the day of trial. The Judge had accepted counsel's submissions that the gravity of the offences required D to take time to acknowledge his wrongdoing. It was submitted that D was now remorseful. These reasons did not justify a 20% reduction. The [sentence] should have gone significantly beyond the upper range of the guideline. 48 years should have been reached after the 10% credit for the guilty plea. So, **life with 24-year minimum term**, not 14 years.

Note: The Court made an intention to kill an aggravating factor. In fact, it is an element of the offence. Ed.

## **Prison Offences**

## **Assaults in prison**

*R v Saxton* 2018 EWCA Crim 1976 D pleaded (20% credit) to a section 20 assault. He punched and kicked a sex offender, V, in a medical centre of a prison with another. The two called him a 'dirty Paki rapist'. V was seriously injured. D had 90 previous offences, many of which were relevant. The Judge started at 5 years (the maximum). Held. The maximum was appropriate. It was a sustained assault on a vulnerable victim with a weapon in a prison. D played the leading role and there was an element of extra-judicial punishment. 5 years extended sentence (4 years' custody 1 year's extended licence) upheld.

## **Sex Offences: Images etc.**

### **Extended sentences**

*R v Jones* 2018 EWCA Crim 1733 D pleaded to possessing indecent photographs and two breaches of a SOPO. D had similar offences in 2007, 2009, and three times in 2013. He had a very serious medical condition and was in a wheelchair. The Judge passed two consecutive 7½-year extended sentences (30 months' custody 5 years' extended licence). Held. The Judge erred in finding D a dangerous offender. In *R v Guest* 2011 [see below] the Court said it was wrong in principle to make that finding for non-contact offences, even if the mechanism of the distribution had a high degree of sophistication and the case was in the more serious bracket.

Note: The Court said the two sentences were both 5-year extended sentences when they were in fact 7½-year extended sentences. The Court also said the sentences collectively made a 10-year extended sentence (5 years' custody 5 years' extended licence). In fact, the consecutive sentences made a 15-year extended sentence (5 years' custody 10 years' extended licence), see *R v Thompson and Others* 2018 EWCA Crim 639. Ed.

## **Supply**

### **Minimum 7 years etc. Pre-sentence reports**

*Att-Gen's Ref 2018 Re Marland* 2018 EWCA Crim 1770 D pleaded to three class A drug supply offences and claimed exceptional circumstances to avoid the minimum term. There was no pre-sentence report. Held. There should have been a pre-sentence report.

### **Minimum 7 years etc. Cases**

*Att-Gen's Ref 2018 Re Marland* 2018 EWCA Crim 1770 D pleaded to three class A drug supply offences. On three occasions D sold wraps of heroin for £15 each. The amounts were 280, 311 and 259 milligrams. D was aged 46 when sentenced and had 36 convictions including violence and burglary. There were class A supply offences in 1997, 1997 and 2006 (3 years). D's last conviction was in October 2012 (12 months). A psychiatrist said that D had a history of mental problems, in particular a breakdown in 2012, which related to him being a child victim of sex abuse. This was probably related to his opiate abuse. The Judge found three exceptional circumstances, namely a) the gap since his last supply conviction, b) the gap since his last conviction in 2012, and c) D's 'position in the hierarchy'. Held. Minimum sentences are intended to have a deterrent effect. Normal circumstances are not to be regarded as particular circumstances. It is necessary to find it would be unjust to pass a minimum term. The word 'exceptional' is not to be diluted, *Att-Gen's Ref No 115 of 2015* 2015 EWCA Crim 765, 2016 2 Cr App R (S) 23 (p 201), (a firearms case) see para 260.49 in the book. The length of time since the last qualifying conviction does not itself make a sentence unjust but it may be taken into account. The matters in the psychiatric report and D's steps to master his addiction did not justify a departure from the mandatory provisions. The Judge's reasons were insufficient. We start at 7 years and give D the 20% credit for his plea, so 5 years, 7 months not 3 years 9 months.

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