Banks on Sentence

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Alert material

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Assisting offenders

Firearms offences assisted

R v Knight 2018 EWCA Crim 1755 D pleaded on the day his case was listed for trial to a new count of assisting an offender. S pleaded to possessing a prohibited firearm and possessing prohibited ammunition. He received 5 years. With sentences from other indictments S received 13 years 11 months in all. Armed police tried to arrest S. Police saw two men next to a car with the driver's door open. The men went into a wooded area and a man bag was left near a hedge. Both men returned to the vehicle, which drove off. The car hit a police car and drove on the pavement to avoid capture. The vehicle was abandoned and the two men made off on foot. They tried the back doors of nearby houses until they found a door unlocked. The two entered the house causing alarm to the occupants. Armed police arrived immediately afterwards. The occupants managed to leave and D and S were arrested. A police dog located the dropped man bag which contained a semi-automatic handgun and two live rounds of ammunition. One of the rounds was in the breach of the gun and one was in the magazine. D's basis of plea was D was unaware that D was attempting to dispose of the firearm but knew S had been in possession of the firearm earlier. D was aged 25 and had a conviction for class A supply (6 years' detention). He was still on licence for that offence. The Judge started at 3 years, which was reduced to 28 months for the plea. Because D could not be sentenced following the plea (S had not been produced from custody) and the remand time was not going to count, the Judge passed 25 months. Held. The assistance was to help S evade arrest. The 22% plea credit was not wrong. The underlying criminality was grave but it was accepted that D was not aware that S had disposed of the gun. The assistance was short-lived and largely ineffective. We start at 30 months and so with the plea and delay discount, **20 months**.

Note: The problem here is that the firearm concession to D was generous and a jury never considered whether D was involved with a joint enterprise with the gun. Had a firearm count remained, the sentencing exercise would have been easier as there would either be a conviction for a firearm offence or the Judge could have used the evidence given at the trial to determine the facts. Ed.

Blackmail

Judicial guidance

Att-Gen's Ref Nos 11 and 12 of 2016 2016 EWCA Crim 2312 D and B pleaded to blackmail. They threated a man whose company had gone bankrupt to pay money that was owed before the company was taken over by the liquidator. Held. The circumstances of such offences can vary enormously, as can indeed the circumstances of the individual offender. In consequence, a relatively wide range of sentences is indicated in the reported decisions. But some general propositions at least can be identified. First, blackmail is, by its very nature, an offence always to

be considered as a very serious matter. Immediate terms of custody are ordinarily to be anticipated. Second, offending of this kind justifies an element of deterrent sentencing. Third, where the threats are of a kind to disclose discreditable or embarrassing conduct, be it true or false, that may (depending on the circumstances) make the matter even more serious. Fourth, where the threats are not of such a kind, but are of the kind designed to extract money, not just by way of a protection racket but by way of seeking to recover a sum alleged to be properly due, the court simply will not tolerate people taking the law into their own hands.

Note: Although this is a 2016 case, it was only issued last week.

Debt collecting

Att-Gen's Ref Nos 11 and 12 of 2016 2016 EWCA Crim 2312 D and B pleaded late to blackmail after a *Goodyear* indication. V owned a company which went into liquidation in 2009, owing over £300,000. V immediately set up another company with a very similar name and carried on trading. A meeting of creditors was called for March 2014, where it was indicated the liquidator would say no [money] would be paid to creditors. In January 2014, D and B burst into V's office next to his home. Two staff members were present. B called out to V saying, "You owe a lot of money to fucking people. You rip them off. You owe this man £8,000." B then threw some invoices onto V's desk. B then said the figure was now £30,000 because a fine was put on top. B then punched himself on the face and said, "I'll do you over if you don't pay me now." Further he said there were two people up the road who were worse than B. V was petrified and said he would pay. B and D then went to the outer office area where a member of staff tranferred £2,000 to B's account. More threats were made. D intervened and ushered V back into his office where asset questions were asked and a truncheon was smashed down on the desk. In tears, V offered to write a cheque for £6,000, payable to B, which D accepted. The whole incident had lasted about 30 minutes. V contacted the police but in fear did not cancel the cheque. On the day after the incident, B phoned V and asked for money from someone D claimed was owed money. When V said he did not have the money, B said he would have to face the consequences. V remained fearful for himself and his family. B's basis of plea said the money was 'rightly owed' and there was no violence. D's basis of plea said D gave moral support to B and that he did not gain financially from the offence. B was now aged 53 and B was now aged 49. B had 16 previous convictions, mostly for dishonesty. He was convicted for fraud in 2012 and 2015 (community order). D had 29 previous convictions for both dishonesty and violence. There were robbery convictions in 1996 (3 years) and 1999 (8 years). D had mental health, heart and kidney problems. Held. This was a bad case of its kind. It had features of robbery and had the following unpleasant features: a) there were two men, b) B and D gave the appearance of muscular back-up, c) grave threats were made, d) staff were present, e) B punching himself was designed to increase the physical menace, and f) £30,000 was demanded, which was more than what was due. The effect on the victim was predictable. For B, after a trial no less than 4 years would be appropriate. For B, the lesser player with the worst record, 3½ years after trial would have been appropriate. The plea was worth 10%. We give a limited reduction because the two were released after the sentence and will now face custody. For B, **40 months** and for D, **34 months**.

Custody: General principles

Maximum must be reserved for the most serious of cases

R v Saxton 2018 EWCA Crim 1976 D pleaded 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). The defence said the case did not justify the maximum sentence. Held. It is well established that the maximum sentence is reserved not for the worst possible case which can realistically be conceived, but for cases which are truly identified as being of the utmost gravity. This can be because of one single stand-out feature or a series of features. Where the maximum sentence is relatively low there may indeed be a broad range of cases that require sentences [at][1] or approaching the maximum. The maximum here was justified.

1. The judgment says 'another', which must be a typo.

Offences against the Person Act 1861 s 18

Men attacking wives

Att-Gen's Ref 2018 Re Llewhellin 2018 EWCA Crim 1766 D pleaded to section 18 and assault by beating. D lived with his two sons, aged 5 and 3, and in August 2017 they were joined by V1 and

her 7-year-old daughter, V2. In December 2017, D returned from a bar at about 9 pm. Both V1 and D had been drinking. D asked the children whether V1 had had other men at her flat and one child said, "Yes". V1 denied it and believed the answer was given in fear. D seized V1's hair and punched her head several times. D also hit V1's face with his knee about 10 times. She screamed and told him to "Get off", but D continued. V1 retreated to a bedroom imploring her children to say she had not had a man at her house. D followed her and he continued to punch and knee her in the face. Next, D told V2 to collect her things and then seized her hair and threw her into the bedroom. V2 managed to get down the stairs. As V1 tried to leave, D seized her hair and threw her down the stairs. D followed her. Once outside, D pushed V1 to the ground. D's sons had watched the events from their bedroom door. V1 and V2 manged to seek help from a nearby shopkeeper. V2 had a fractured jaw and was at risk of further fractures. She needed permanent metal plates near her jaw. The bruising to V2's face was extensive. At the sentencing hearing her injuries were painful and visible. When questioned by the police, D lied. V1 had nightmares and flashbacks and believed D was going to kill her. D had convictions from when he was aged 16 in 2007 [making him aged about 26]. The convictions included burglary, public order offences, battery and criminal damage. In 2015, he received 9 months for ABH, after he had attacked 'another man who had attacked a former partner'. The pre-sentence report said D's anxieties and lack of self-confidence were at the root of his violence against women. The report also said that after drinking, his underlying tensions erupted catastrophically. He understood this when he was sober. D thought V2 was a troublesome child who came between him and V1. His previous reports referred to erratic drinking with associated violence, depression, stress and anxiety. It recommended a community order. Held. The use of a knee was the equivalent of a weapon. The use of the knee ten times made the offence 'higher culpability'. The offence was somewhere between Categories 1 and 2. The aggravating factors were: a) the presence of the children, b) V1 and V2 were forced to leave their home, c) alcohol had been taken, and d) the battery was against a child. The later factor reduces the weight given to the fact that D was the primary carer for his sons. These factors raise the 9-year starting point to not less than 10. With 25% plea credit, not full credit, **7½ years** not 5 years 4 months.

Supply

Material is a legal substance

R v Collins 2018 EWCA Crim 1833 D pleaded to fraud. D was found scaling a perimeter fence at a dance festival. Police found nine bags with creatine in them. D told police he had bagged it up himself and he was going to sell it as cocaine for £20 a bag. 15 days earlier, D had been given a 15-month suspended sentence for class A drug supply. D had been seen in a car park where packages were handed over. He was arrested with 23 wraps of cocaine and 28 wraps of heroin. D was now aged 19. The Judge said the drug guidelines (starting point 4½ years for a significant role) were more relevant than the fraud guideline. Held. It was not appropriate to use a guideline for an entirely different offence. D had been given a merciful suspended sentence to change his lifestyle. He had thrown that chance back in the court's face. The Judge was [correct] to activate the suspended sentence. The fraud guideline stating point was a medium-level community order. As the offending was at a festival, two weeks after the suspended sentence was given for dealing, a custodial sentence was justified. We move to 3 months, so with plea, **2 months**, not 2 years, making 1 year 5 months not 3 years 3 months.

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