

Banks on Sentence

Sentencing Alert No 204

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Alert material

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Burglary, Aggravated

Relationship offences

Att-Gen's Ref 2018 Re White 2018 EWCA Crim 2142 D pleaded early to aggravated burglary and two threats to kill. An unlawful wounding count was not proceeded with. In June 2017, V, D's partner, broke up with him partly due to his gambling addiction, his debts and his controlling nature. They had a two-year-old son, S, and she had a 11-year-old son and a 15-year-old daughter. D was granted supervised access to the children. In November 2017, D started threatening V by phone and text. On 22 November 2017, D complained he had not seen S and told V to "watch her back", that he would snatch S and he knew people who could hurt her. There were other insulting and controlling messages. On 24 December 2017, he told V to tell S about him¹ as he was going to a better place and he had taken an overdose and slashed his wrists. An ambulance and the police were called but there had been no suicide attempt. D also took over V's Facebook account and he found out that V was thinking of changing S's surname. D next said V could have access to her Facebook account if he could have access to S. D also accessed V's e-mail account and changed the password. In January 2018, he was charged with harassment and was released on bail. At 7.45 pm on 9 February 2018, V was at her home with her children. D knocked on the door and V ignored it. He then kicked it at least 10 times and banged on the windows. He smashed one and climbed in, brandishing a large kitchen knife. As V tried to run away, D pulled her back by her hair and threw her on the floor. He tried to stab her in the upper chest and throat. V tried to seize the blade of the knife and D punched her in the face at least three times. As V tried to get up, D put her in a headlock and squeezed her 'really hard'. V reached for her mobile and D stamped on it and smashed it. D demanded to see S and said he would kill her, [one of the threats to kill counts]. V said he could see S if he dropped the knife. The two went upstairs and saw S and the other children who were all crying. One was in the middle of calling the police. V persuaded D to drop the knife. D took S downstairs and put him on his knee. He told V that voices had made him 'do it'. V called her parents who came to the address. D said if they came in he would kill them, [the other threat to kill count]. Further if the police arrived he would 'kick off'. When the police arrived, D gave himself up. The incident had lasted about 45 minutes. V had cuts to her fingers and at the sentencing hearing she said she still suffered pain and had been referred for plastic surgery. She and two of the children had received or would receive counselling. V feared for her children when D was released. She felt obliged to leave the area. D was aged 31 and had 11 convictions on six occasions. In 2006, he battered his stepmother. In 2010, he was fined for harassing his ex-wife which involved his contact with his child (a fine). In 2003, D received 4 years 8 months for arson, common assault and criminal

damage and he was given a Restraining Order. The case involved another partner of his, V2. She was repeatedly punched in the stomach and he set fire to her curtains. About a month later, V2 was threatened with a knife and D damaged her property. A mental health report said D suffered from an emotionally unstable personality disorder, He was given anti-psychotic medication which he was not taking at the time of the offence. The pre-sentence report said D was particularly susceptible to aggressive and impulsive behaviour when mentally ill. The prosecution said there were the following aggravating factors: a) a weapon was taken to the scene, b) D's previous similar behaviour including previous offending against the same victim, c) children were present, d) the offences were committed when D was on bail, e) there was offending against the same victim, f) the impact on V and her children including the fact they were forced to leave their home, g) threats were made to [stop] V reporting the matter to the police and h) the offence may have been committed under the influence of alcohol.² Held. It was necessary to factor in the number of factors that made the offence Category 1. There were three greater harm factors. The two threats to kill needed to be factored in as well. With full plea credit, we move to 9 years, so 14 years' extended sentence (**9 years'** custody, not 6, and 5 years' extended licence, not 3).

1. Assuming I have amended a typo correctly.

2. All facts for the sentencing hearing have to be established to the criminal standard of proof, so this factor cannot be an aggravating factor, see para 57.4 in Banks on Sentence.

Guilty Plea

Maximum given with a plea of guilty

R v Higham 2016 EWCA Crim 2314 D pleaded to dangerous driving, disqualified driving and no insurance. He was involved in a police chase with other people in his car. The Judge said the case had pretty well all the aggravating factors you can possibly get. D's driving record was 'appalling'. The Judge said he stopped counting at 11 disqualified driving offences on his record. He gave D the maximum (2 years and 6 months consecutive) saying D had no alternative but to plead. Held. Anyone who pleads guilty at the earliest opportunity is entitled to as a general rule a one third discount, *R v Caley and Others* 2012 EWCA Crim 2821, 2013 2 Cr. App. R. (S.) 47 (p 305). It is not a reason to reduce the discount because the maximum penalty is inadequate or because the defendant could have been charged with something different. Despite the overwhelming nature of the evidence [which was then a reason for a reduced discount] there was no proper ground to reduce the discount, so 16 months and 4 months consecutive.

Note: Although this case was heard in 2016, it has only just been published.

Rape

Victim(s) aged under 10 Defendant then aged 25+

R v Treavartha 2018 EWCA Crim 1522 D pleaded (full credit) to two rapes of a child aged under 13, an attempted rape of a child aged under 13 and seven other child sex offences. Between January 2014 and 2017, he abused three girls: LC, aged 7-9; BS, aged 11; and RL, aged 8-9. The rapes were oral. The other offending included masturbating beneath LC, LC masturbating D, D licking LC's vagina, D touching BS's penis and D masturbating over RL. D was now aged 34³. LC and BS said the abuse had ruined their life. The Judge found planning, grooming and abuse of trust. The Judge passed a 23-year extended sentence (18 years' custody 5 years' extended licence) Held. That meant a pre-plea discount sentence of 27 years. With the three victims and considerations of totality we arrive at 22½ years. With the plea discount, 20 years' extended sentence (15 years' custody 5 years' extended licence).

3. According to a news report.

Robbery

Firearms, With Betting shops

R v Gilbert 2018 EWCA Crim 1197 D pleaded to robbery. He went into a betting shop wearing a hooded top and screamed, "This is a fucking robbery." He ordered a customer to remain but one managed to escape. D pointed an imitation gun at a member of staff, S, and demanded their 'fucking money'. The staff would not have known the firearm was an imitation. S complied and D demanded the money from the safe and threatened to shoot S. S said there was not much money in the safe and D left. There were two people seen outside. The male one was encouraging D and the female one drove the other two away. D's basis of plea stated that he travelled to the robbery alone. He was handed the firearm just before the robbery. The idea was not his. D was now aged 24 with 42 previous convictions. In 2012, D had received 16 months' YOI for two affrays. In 2016, he received 6 weeks for handling, criminal damage and threatening behaviour. D was assessed with having a complex post-traumatic stress disorder with a long history of drug abuse. As a Category 2b robbery the range was 7-14 years. Held. The fact that the robbery was executed in a somewhat amateurish and unsuccessful way did not take it out of the more serious category of robbery. However, within that category there is a wide range of scenarios. Before plea, the offence merited 7½ years not 10. With plea, 9 years' extended sentence (**5 years** not 6 years 8 months' custody 4 years' extended licence).

Sexual Offences: Children, with

Digital and oral penetration Child aged 15 Defendant 25+

Att-Gen's Ref 2018 Re PD 2018 EWCA Crim 1181 D was convicted of five counts of causing a child, T, to engage in sexual activity, three counts of inciting a family member, his daughter, B, and he pleaded to two counts of causing a child to engage in sexual activity against T. T was a daughter of a family friend of D. One month before T's 16th birthday, D took advantage of T's crush on him and they discussed sexual activity, including full sex. D asked for photographs of T's vagina (the counts D pleaded to). At the first meeting D kissed T and touched T's vagina over her underwear. He also touched her breasts over her clothing. This activity was not indicted. On the next meeting D inserted a chocolate bar in a condom and put that in T's vagina. D stopped that when T said she felt pain. D also encouraged T to touch his penis and then suck it, which she did. D ejaculated in T's mouth. On the third occasion, D took her in a car to visit a flying club and stopped on the way. D asked T to perform oral sex on him. She did, and T again ejaculated in T's mouth after about 5 minutes. On the way home, D stopped again and D removed T's underwear and digitally penetrated T for about 10 minutes, when T asked him to stop. There was also oral sex then. T told a school friend and the conversation was overheard. Investigations led police to question B, D's daughter. Three counts related to B, when aged 5½, when she touched D's penis with her feet. This was from mid-2015 and was said to have 'happened a lot'. B also masturbated D with her feet until D ejaculated. T said she suffered from nightmares and panic attacks about meeting D. B was frustrated about not being able to see D. D was now aged 39, married and with a family. He had no convictions and suffered from Asperger's. D told the author of the pre-sentence report that he was a victim of a predatory child, namely T, and a vindictive wife who had manipulated B. Held. For the five main sentences involving T, we arrive at 8 years and with the mitigation we move to perhaps 6½ years. For the offences involving B on their own, we arrive at 6 years and with the mitigation move to 4½ years. We increase the extension period from 2½ years to 3. With totality, we arrive at 8 years for both, so 11 years' extended sentence (**8 years'** custody 3 years' extended licence) not 7 years' extended sentence (4½ years' custody 2½ years' extended licence).

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