

Banks on Sentence

Sentencing Alert No 208

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Alert material

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Firearms

Minimum sentences ***Plea of guilty***

R v Wenn 2018 EWCA Crim 1892 D pleaded to possession of a prohibited firearm and other charges. The Judge concluded that before the plea discount 7½ years was appropriate. She treated the 5-year minimum term as requiring no discount and gave a full discount for the remaining 2½ years, making 6 years 8 months. Held. That was wrong. She should have given a full discount for the 7½ years, which made 5 years. The rule is that the sentence cannot be less than 5 years, [not that the 5-year part of the sentence has no discount].

Murder, Attempted

Fire, by

R v Bowen 2018 EWCA Crim 1682 D pleaded to attempted murder. He lived in a flat with his partner, L, and their five children. One night, a neighbour, V, was at their flat for drinks. Photographs taken at the time showed that everyone seemed to be having a good time. V returned home at 1.30 am and told her partner, S, that L was having some sort of fit. V had left her coat and phone at D's flat and so she and S went back to check on L and retrieve V's possessions. Once there, D became angry and said that V was interfering and that she could cause D to lose his children. He threatened to burn V's house down and said that he could send people round to intimidate her. V's coat was returned but not her phone. V and S returned to their flat at around 2 am. S then received a call from L using V's phone. L said that D had left the flat so V and S returned to the flat for a second time. The two women became separated at the communal door and V went into the flat by herself. D had in fact gone to retrieve some petrol from the shed. Upon entering, V thought L was having an epileptic fit and asked D for help. Shortly afterwards, L appeared to have recovered and was sitting with two of her children in the living room. D was brandishing the petrol canister and there was discussion between the three adults about whether he would "do it", namely attack V with the petrol. He then poured petrol over V and ignited it with a lighter. After hearing screaming, S managed to get into the flat with the help of neighbours. She discovered L lying face down in the hall and V in the living room. Her clothes and flesh were still burning and she was screaming in agony. They managed to extinguish the flames and called the emergency services. D fled the scene. He went to his father's house and then his sister's. He was arrested at 5.10 am. V suffered burns to 32% of her body. Her injuries were described as 'horrific'. The experience had a profound effect on the paramedics who

attended the scene. One of them needed counselling and considered giving up her job as she had been so shocked and upset by what she had seen. V had to have multiple major surgical operations. She has lost most parts of her ears and has had to have some fingers amputated and the likelihood of regaining any movement of her hands was minimal. The effect on V has been wholly life-changing. She had a 9-year-old daughter and came from a loving and supportive family. All the family have had to adapt their lifestyles in order to try and help V. S had been planning to marry V. She had regarded V's daughter as a member of her family. V and S's relationship has subsequently come to an end. The therapeutic prognosis is that V will have to wear pressure garments and a face mask for most of the day and night for two years. There will be further skin graft operations needed. She remains in constant high levels of pain. D was now aged 24, had four previous convictions, one of which was for assaulting his mother. There were reports of him being a very disruptive child and teenager. His last conviction was when he was 16. Since then, D had become a family man and had been holding down a good job. A pre-sentence report concluded that D posed a high risk of serious harm to the public. D had admitted to heavy use of cocaine, amphetamines and alcohol as part of his daily life. D showed a lack of insight as to what he had done and its gravity. A psychiatric report says that D was of normal intelligence and did not suffer from any mental illness. The report said that D had no understanding of the offence and that he claimed voluntary intoxication. D said he had consumed a gram of cocaine and a large quantity of whiskey before the offence. The Judge listed the aggravating factors as: a) the offence was committed in the presence of others including children, b) the offence endangered many lives including people in the adjoining flats, c) D had been intoxicated with alcohol and class A drugs, and d) D had attempted to conceal his involvement by washing his clothes at his sister's house. The only mitigation given was the guilty plea. It was agreed that this was Level 2 in the *Attempted Murder Definitive Guideline 2009* and the Judge said he would impose a sentence in the upper range of Level 2. He also made a finding of dangerousness. Held. We have found this an extremely difficult and upsetting case. The psychological effect of V's injuries and altered appearance are hard to predict, but easy to imagine. The conjoined aggravating features and the extremity of the personal injury and suffering caused to V bring this case within Level 1. We consider that a life sentence was called for. We start in the region of 30 years, so with 20% for the plea, a 24-year notional term making life with a **12-year** minimum term not 24 years' extended sentence (19 years' custody 5 years' extended licence.)

Offences against the Person Act 1861 s 18

Defendant aged 16-17 who used a knife

R v C 2018 EWCA Crim 1818 D pleaded to having an offensive weapon (no penalty) and was convicted of wounding with intent. D admitted a section 20 offence as an alternative. D entered a McDonald's restaurant and sat watching for people coming in. V entered the restaurant and stared at D. They each asked the other if they had a problem and then D swung a punch at V that missed. He then raised a chair at V. Staff defused the situation and D left. D returned and was given a knife which he brandished and he stabbed out at V with a number of thrusts. V sustained a 10 cm cut to his hamstring. D was aged just 16 at the time of the offence and had a bad record. He had committed a robbery in the same branch of McDonald's the day before this offence. In another branch D had attacked a girl, banging her head and causing her concussion. Whilst awaiting trial for this case, D committed an offence of battery in a clothing shop when someone tried to look into his bag because they suspected he was stealing. The Judge made reference to the fact that: a) D left the restaurant and returned twice, showing a degree of premeditation, and b) the offence was committed in broad daylight in front of many people including mothers with children. The Judge started at 9 years to reflect the fearsome nature of the weapon used and with D's youth moved to 6 years. Held. This was plainly a most demanding sentencing exercise. V could have been killed. Mercifully the injury was limited and there was an element of provocation. There is no doubt that the aggravating factors took this offending beyond the 6-year starting point. We move to 7 years, so with plea, **3½ years'** detention not 4½ years.

Rape

Relationship rape

Att-Gen's Ref 2018 Re Bishop 2018 EWCA Crim 2146 D pleaded on the second day of his trial to assault by penetration. V was D's partner of 23 years. D exhibited jealousy and occasionally violence. D returned home drunk and pestered V for sex. V made it clear she did not want to have sex. D forced her onto the bed and inserted his fingers into her vagina. D repeatedly called her a "bitch" and a "whore". V continued to ask him to stop and was visibly distressed. D expressed his jealousy as to what he claimed was V's infidelity. The following morning he apologised for his behaviour. V ended the relationship two years later and complained to the police about D's constant texts. D would not accept that the relationship was over. When answering a police questionnaire about safeguarding, V told the police about the assault. D was arrested and denied having sexual activity without consent. V confirmed that name-calling was part of consensual role play. D was now aged 48 and had 15 previous convictions, mostly for dishonesty. In 2000, he received 6 months for ABH. He had cut V's ear with a blade. A pre-appeal report referred to D's significant cocaine and alcohol abuse. The Judge said that she believed this case should never have come to court in the context of a relationship of this length and particularly given that it had continued after the offence. She noted that Parliament had said that there can be sexual assaults within a marriage and that the courts were not there to determine matrimonial issues. During sentencing, the Judge stated that V was vulnerable by reason of being a mother of two children and the offender had attacked her on two occasions. Held. There are dangers with a judge saying at the start of a trial that the prosecution should not have been brought. We also consider that the Judge should not have repeated these remarks after D had pleaded guilty. The Judge may have given the impression that the offence was less serious because it was committed in domestic circumstances. This offence was within Category 3B. There was a previous offence of violence against the victim, but it had been committed some considerable time before and the relationship had continued afterwards for many years. We start at 2 years and with the credit for the plea, **21 months suspended** not 4 months.

Supply

Permitting premises to be used for Class A supply

R v Lynch 2018 EWCA Crim 2184 D pleaded to two counts of permitting her premises to be used for the supply of class A drugs. One count was heroin and the other cocaine. She also pleaded to a bail offence (2 weeks consecutive, no appeal). A search warrant was executed at D's home and in her room were found 189 wraps of crack cocaine, 88 wraps of heroin and £215 in cash. The street value of the drugs was estimated to be £3,000. D said that the drugs belonged to M. M was located nearby and arrested. His phone was examined and there was evidence to suggest his involvement in the supply of class A drugs in the area. M, who had travelled from Birmingham to deal drugs in Cardiff, was paying D in crack cocaine and heroin for the use of her room. D was aged 39 at the time of the appeal and had a number of previous convictions for a variety of offences. The Judge found higher culpability due to D allowing the use of her premises as a base for dealing drugs. She also found greater harm due to the amount of drugs found being over 5g. The Judge considered that this was a Category 1 offence. Held. Finding high culpability was an error. The property in question was D's home. In one room she housed drugs for M. This was not a situation where someone allows their flat to be used as a crack den, where people arrive to purchase and perhaps consume drugs. Two drugs were involved. There was some mitigation available to D. Although she did have previous convictions, there was only a caution on her record for drugs. She allowed her premises to be used for a short period of time, 'a few weeks'. The only payment made to her had been small quantities of drugs for her own consumption. She was herself a vulnerable woman who was easy prey to drug dealers wanting to expand their customer base into her area. We start at 18 months, so with plea, **12 months** not 2 years.

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