

Banks on Sentence

Sentencing Alert No 209

21 Jan 2019

Alert material

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Appeals: Court of Appeal

Abandonment

R v Furniss 2018 EWCA Crim 2574 D's counsel drafted grounds of appeal which were rejected by the single Judge. Counsel advised that D should not renew his appeal. D wanted to submit his own grounds of appeal. His solicitors advised him that he would have to abandon his appeal and submit the new grounds. D did so. Held. This advice was wrong. D did not wish to abandon the proceedings. If the correct advice had been given, D would have made clear that he wanted to continue the appeal. D's notice of appeal was a nullity.

Extended sentences

Automatic and Parole Board release

R (Stott) v Secretary of State 2018 UKSC 59 Supreme Court (3-2) para 152 The aim of the EDS provisions is in general terms legitimate. para 154 The early release provisions have to be seen as part of the chosen sentencing regime, and the question of whether there is an objective justification for the differential treatment of prisoners in relation to earlier release [needs to be] considered in that wider context. para 155 EDS prisoners cannot be said to be in an analogous situation to other prisoners. Rather than focusing entirely upon the early release provisions, the various sentencing regimes have to be viewed as whole entities, each with its own particular, different, mix of ingredients, designed for a particular set of circumstances. The provisions are not incompatible with European Convention on Human Rights art 5 and 14.

Firearms

Possession of prohibited firearms

R v Harvard 2018 EWCA Crim 2086 D pleaded to 'multiple counts of possessing prohibited firearms, weapons and ammunition'. In September and October 2015, UK Border Force officials in Coventry intercepted parcels addressed to D. They contained parts of Heckler & Koch G3 assault rifles. They had been sent from Berlin and D's address was correctly stated on the boxes. The weapons had been effectively deactivated to EU standards but they lacked the certificate of firearm deactivation. Officers searched D's address, a house on the corner of a caravan park which was D's business. D used an old building on the site to display military memorabilia and it was well known that D held a long-standing interest in the subject. D informed the officers that he possessed a number of weapons but did not tell them about a sawn-off shotgun that was found

with ammunition. In total, 6,500 items were identified as part of D's collection which included medals, uniforms, vehicles and armour. Approximately 300 items were seized. D's position was that he purchased all items from reputable dealers. The material that he had acquired was advertised on the Internet. The items carried with them certifications and disclaimers in relation to deactivation. D explained that he did not conceal the purchases and even used PayPal to pay for some of them. The sawn-off shotgun was recovered from on top of a wardrobe. It had belonged to D's father, who died in 1994. At the time of discovery it had not been discharged and was not loaded, although it was kept in proximity to viable ammunition. A stun gun was also seized by police and D said that this was to protect him and his wife. A man who was in prison for causing a considerable amount of damage to D's property was soon to be released and police had visited D to alert him to a potential risk. D had also purchased bulletproof vests. In 1987, D had been sentenced for two robberies, carrying a firearm with intent to resist arrest, and using a firearm with intent to resist arrest. The Judge did not find exceptional circumstances, concluding that D was aware that at least some of the items in his possession were unlawful. The Judge also observed that, given D's past history, the possession of the sawn-off shotgun and the stun gun meant that D posed a risk in the future. The Judge noted that there was no evidence that D intended to use any of the weapons and that D had no means to convert the weapons from inactive to active. On appeal, the defence relied on the plea, D's co-operation, the guns were not intended for any nefarious purpose, the items were acquired on the open market, the items were to be put on show, there were no attempts to fire the items and D's ill-health. Held. For exceptional circumstances, the Judge was primarily concerned with D's awareness that the possession of the items in question were illegal. The Judge did not cite *R v Rogers Re B* 2016 EWCA Crim 801 [see 260.58], which demonstrated that exceptional circumstances could exist, even when a defendant was aware that it was illegal to possess the weapon in question. The Judge placed too much weight upon this conclusion and upon the previous convictions. It was of real significance that the items were to be put on show. However, the items were stored insecurely and the sawn-off shotgun was an extremely serious matter meaning exceptional circumstances were not made out. The shotgun deserved 5 years but the other four counts could be 2½ not 5 years consecutive, making **7½ years** not 10.

Note: The judgment does not reveal the number of counts which carried the minimum term. The possession of prohibited ammunition does carry the minimum term. It appears that the sentence was unlawful as the possession of prohibited ammunition had to be 5 years as there were no exceptional circumstances. Ed.

Restraining Orders: Breach of

Previous significant breaches Pre-2018 guideline case

R v Saleen 2018 EWCA Crim 2398 D pleaded to breaching his Restraining Order at the Magistrates' Court. He was committed for sentence. D was now aged 51 and had been married for over 20 years. He and his wife, V, had five children. In May 2014, he received a conditional discharge for battery of V. In December 2014, D committed ABH on V and their eldest daughter. In August 2016, for that, with the breach of the conditional discharge, D received 28 months' custody. A Restraining Order prohibiting contact with V and their family was made. D contacted his son on Facebook and in June 2017, he was given a community order for that. In November 2017, he committed three harassment offences and [three] breaches of the Restraining Order. He: a) drove down the street where his family lived, b) visited his extended family around the country asking them to contact V, and c) approached his son. D received 9 months suspended for that. Four months later, V was with one of their daughters in a street when D shouted at them from a parked car saying, "I want to talk to you. I want to come home." V took her daughter into a supermarket. The Judge found the contact had a very serious impact on V and her daughter. Held. This was a 'single breach involving no/minimal contact', so in the lowest level of the then current guideline. We avoid an element of double accounting namely increasing the sentence for the repeated breaches and activating the suspended sentence consecutively for the past behaviour. We move to 6 months, so with plea, **4 months** not 12 consecutive to the 9-month suspended sentence activated in full, making 13 months not 21.

Sex Offences: Children, with

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