

Banks on Sentence

Sentencing Alert No 212

18 Feb 2019

Burglary

Dwelling ***How to draft the indictment***

R v Griffin and Bennett 2018 EWCA Crim 2538 G and B pleaded to conspiracy to burgle. The vast majority of the burgled premises were dwellings. Held. We consider Criminal Law Act 1977 s 3(3), *R v Courtie* 1984 78 Cr App R (S) 292, *R v Miller* 2010 EWCA Crim 809, 2011 1 Cr App R (S) 2 (p 7) and *R v Bridge* 2010 EWCA Crim 3026. As the indictment made no reference to the premises being dwellings, the maximum sentence was 10 years not 14.

See also: *R v Bridge and Others* 2010 EWCA Crim 3026 (D and others pleaded to conspiracy to burglary. The three venues were dwellings. The indictment did not specify that the locations involved were dwellings. Held. The maximum was therefore 10 years not 14.)

Compensation Orders

Means ***The required steps***

R v York 2018 EWCA Crim 2754 D pleaded to being in charge of a dog which caused injury. She said her outgoings were more than her income, but she just about managed with the help of her sick daughter's [presumed benefits]. The Judge made a £1,000 compensation order with a collection order. Held. Six principles are relevant. 1 An offender must give details of his/her means. 2 A judge must enquire about and make clear findings about the offender's means. 3 The court must take into account an offender's means. 4 A compensation order should not be made unless it is realistic, in the sense the court is satisfied that the offender has or will have the means to pay that order within a reasonable time. Although a compensation order for as long as 100 months has been upheld, a repayment period of 2-3 years in an exceptional case would not be open to criticism. In general, excessively long repayment periods should be avoided. 5 A court should not make a compensation order on the assumption that the order will be paid by somebody else, e.g. a relative. 6 It is wrong to fix an amount of compensation without regard to the instalments which are capable of being paid and the period over which those instalments should be paid. [It should not be left] for the Magistrates to sort out.

Court of Appeal

Defendant re-tried ***Limit on Sentence***

R v KPR 2018 EWCA Crim 2537 D was convicted of rape of a child under 13, two child sex assaults, three indecent image offences and possession of a firearm (1 year consecutive no issue). He abused his partner's daughter when she was aged 11-12. He received 11 years for the rape, 5 years for one of the assaults and 3 years for one of the image counts, consecutive,

making for the sex offences 17 years in all. His convictions on the sex offences were quashed and he was convicted again on a re-trial on all counts. The second Judge found D to be dangerous but considered that he was unable to pass a life sentence or an extended sentence because of Schedule 2(2), see above. He passed an Offender of Particular Concern Order on the rape (16 years' custody 1 year's extended licence) with concurrent terms on the other counts. Held. The first rape sentence was unlawful as an Offender of Particular Concern Order was mandatory. The task of the second Judge was to sentence afresh and apply the statutory restriction. Without considering Schedule 2, the Judge would have been entitled to pass an extended sentence. The Judge was obliged to pass an Offender of Particular Concern Order and so are we. Whether a sentence is more severe depends on whether 'an ordinary person' would consider it more severe, *R v Maw-Wing* 1983 5 Cr App R (S) 347. Criminal Appeal Act 1968 s 11(3) and Sch 2 para 2(1) provisions require similar consideration. We need to consider the different release regimes for the initial sentences and the sentences we seek to substitute. We substitute an Offender of Particular Concern Order on the rape (10 years' custody 1 year's extended licence), 4 years on one of the assaults consecutive and [presumably make the 1 year consecutive for the image offence concurrent]. Under the first sentence, D was entitled to be released after 8½ years and under our sentence he may be released after 7 years. That meets the overall justice of the case.

Disqualification from driving

Basic principles/Purpose

R v Acton 2018 EWCA Crim 2410 D pleaded to causing death by careless driving. A lorry driver indicated that D would have to drive out of a junction first to let the lorry turn right. D did so and a car hit him. The driver died. Held. A 6-month suspended sentence was well within the guideline range. In *R v Cooksley* 2003 EWCA Crim 996, 2004 1 Cr App R (S) 1 (p 1), Lord Woolf said: "The main purpose of disqualification is, 'forward looking and preventive rather than backward looking and punitive'." However, the *Causing Death by Driving Guideline 2008* para 30 makes clear that disqualification is an important element of the overall punishment for the offence. **2 years** not 3.

Firearms

Supplying to criminals

R v Dhatt 2018 EWCA Crim 2384 D was the subject of three separate indictments. In the August indictment, D was convicted of conspiracy to sell or transfer prohibited firearms (count 1) and conspiracy to sell or transfer ammunition (count 2). In the October indictment (20% credit), D pleaded to conspiracy to possess a prohibited weapon (count 1) and ammunition (count 2) without a firearms certificate. The third indictment saw D plead to driving whilst disqualified. In August 2016, D's co-accused, S, and another man, L, were observed by police making an exchange of packages in a supermarket car park. L's vehicle was followed to his home, where he was met by armed police. A search of his car recovered two 9 mm handguns and 12 rounds of ammunition. S's vehicle was stopped and searched and police found £2,000 in cash. S had been acting under the instruction of D to transfer the firearms and ammunition to L. L was acting on behalf of a drug dealer, U (14 years, no appeal). Mobile phone records showed extensive communication between D and U. There was photographic evidence that D and U had met and D's fingerprints were found on the ammunition box in L's car. The guns had been imported from Italy as blank-firing gas guns. They had been converted to fire with lethal force. The recovered ammunition, which had originally been manufactured as blank firing cartridges, had also been modified by the addition of propellant and lead projectiles. In October 2016, police searched a house in Wolverhampton and found a loaded revolver in the home owner's bedroom. She implicated D as the owner of the gun and further investigation revealed that D and her son, S, were associates. The firearm recovered was a genuine revolver, albeit of an age that might allow it to be possessed as an antique if decommissioned. It was in working order and contained live ammunition, although not of the correct calibre. In September 2016, D was seen to drive a stolen Range Rover to the home address of S. This was the subject of the third indictment. D was now aged 26 and had previous convictions including one for possession of a firearm with intent to cause fear of violence. The Judge did not accept the firearms were all requested from U on the

same occasion, therefore the different sets of offences reflected separate contracts with U. He did not accept that the offences were isolated incidents. A 28-day concurrent prison sentence was imposed for the driving offence. Held. For the August indictment, the offences were under Firearms Act 1968 s 5(2A)(b), which was not listed in Criminal Justice Act 2003 Sch 15 and therefore the extended sentence was unlawful. The ammunition that forms part of the October indictment (count 2) is not prohibited within the meaning of Firearms Act 1968 s 5 and therefore the sentence exceeded the permitted maximum of 5 years. We do not disturb the sentence of 8 years on count 1 of the October indictment. We impose 16 years on counts 1 and 2 of the August indictment to run concurrently, which reflects totality. The 28 days imposed for the third indictment remains concurrent, so **16 years** not 23 years' extended sentence (18 years' custody 5 years' extended licence).

Sex Offences: Historical

Ensure that the indictment considers the age of the victim/The steps in sentencing historical offences

R v Hyde-Gomes 2018 EWCA Crim 2364 D was convicted of attempted rape and other historical sex offences. Held. para 28 It is necessary for the particulars for multiple offences to make clear the minimum number of occasions on which the offending took place. As that hadn't happened here, the number must be two only. It wasn't clear whether the offending for the rape count occurred before the victim, V, became aged 13. Appropriate evidential focus [should] be brought to bear on relevant dates. This was not done. We must proceed on the basis that the offending took place after the V had passed her 13th birthday.

Note: This means that not only was the offending slightly less serious, it also means that an Offender of Particular Concern Order was not mandatory. Ed.

Suspended Sentence Order

Whole sentence served on curfew

R v Williams 2018 EWCA Crim 2396 D was convicted of possession of an offensive weapon. He had served on a curfew the equivalent of 166 days on remand. The Judge sentenced him to 3 months suspended, with an unpaid work requirement. The defence on appeal asked for a conditional discharge, so there would be no supervision. Held. We impose an immediate sentence of 3 months' imprisonment because that is what the offence merited. [The time had been served.]

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