

Banks on Sentence

Sentencing Alert No 215

15 March 2019

ABH

Relationship offence

R v Emery 2018 EWCA Crim 2735 D pleaded (full discount) to ABH. In August 2017, he separated from his partner, V. D took it badly and was heartbroken. On New Year's Eve in 2017, he met V by chance in a club. Without saying anything, he pushed V, causing her to fall against a pillar and to lose consciousness very briefly. She suffered a bruised arm. D was aged 56 and had no relevant convictions. The pre-sentence report said he was suitable for unpaid work. The Judge found the offence was between Categories 2 and 3 and started at 6 months and moved to 4 months with plea. Held. If it fell between Category 2 and 3, it was nearer to 3. The harm was modest. V was not particularly vulnerable. It was not a sustained assault. It was just a push. The concept that this was domestic violence was stretching the meaning of that phrase. **We doubt any form of custody was appropriate**, so immediate release.

Computers

Overseas production orders This order enables a judge 'entitled to exercise the jurisdiction of the Crown Court' to apply a designated international co-operation arrangement and order electronic data to be produced, Crime (Overseas Production Orders) Act 2019. Commencement and accompanying regulations are awaited.

Defendant

Poor health of the defendant

R v McMeekin 2018 EWCA Crim 2373 D pleaded to two counts of causing death by dangerous driving and two of causing serious injury by dangerous driving. When showing off to four passengers aged 14 and 15, he drove at speed. When not watching properly, he saw a car too late, swerved and hit a tree. Two passengers were killed, one became tetraplegic¹ and the other was in a coma for several weeks, had a fractured skull and has not fully recovered. D was then aged 21 and now aged 25. He too became tetraplegic. He was bed-bound and had spent much of his sentence in hospital. The Judge started at 14 years and with plea made it 9½ years and then reduced that to 7½ years because of the difficulties D would face in prison. Held. The Judge was right to recognise the severity of D's injuries even though he caused them. D's outlook is very bleak, but the Judge's approach was correct. Application for leave to appeal refused.

1. The partial or full loss of use of all four limbs and torso.

False imprisonment

Offence connected with drugs

R v Osei 2018 EWCA Crim 2728 D and C were convicted of kidnapping. They were acquitted of GBH with intent. V went in a car to buy some drugs. V, D and C were all drug addicts. On arrival at about 12.45 am, D and C approached V's car and took the key. V tried to run away. The car belonged to another dealer. D and C dragged V back and put him in the back of the car. He was there for 2-3 minutes. D drove the car away. Police were called about a man being kicked and punched by two men who removed the man's shirt and trousers. A police cordon was set up. At 1.07 am, D approached the cordon saying he wanted to go to his partner's address. At about 3.15 am, D's partner spoke to police. She was worried about D and C and she had heard V crying out in pain. D was arrested at 5 am. V says he did not remember anything after 1 am until he woke up 34 hours later. V was taken to hospital. He had a fractured cheekbone, cuts and bruises. D was aged 38 and had 84 convictions on 34 occasions. There was a large number of shoplifting offences. He had not received any substantial custodial terms. The pre-sentence report found a high risk of D re-offending and that D posed a high risk of harm. The Judge found D was responsible for the violence in the road and handed V over to others. She found V to be unarmed and in a drugged-up state and not able to fight D and C back because they were well built and strong. She also found D was not responsible for the main injury because of his prompt return to the cordon. Further there was not a great deal of planning for the kidnap. Held. The offence was extremely distressing for V and related to drugs. We start at 8 years not 12. We don't reduce it by a year as the Judge did for D turning his life around, so **8 years** not 11.

Murder

Relationship killings

Att-Gen's Ref 2018 Re Beddoes 2018 EWCA Crim 2599 D pleaded to murder after an expert said diminished responsibility was not available as a defence. D had been in a relationship with V for about five years. They both used crack and heroin. The relationship was volatile but there was no history of violence between them. A neighbour described D's relationship with V as loving. A member of the public called the police to say D was going to jump from a railway bridge. He was taken to a mental hospital where it was found his condition was consistent with his drug use. D had admitted taking crack and heroin earlier. D said his relationship with V was fine. D was overheard saying he would be taking drugs. D was released and between 6 pm and 8 pm, he returned home. A drug crisis team called him twice, but D did not answer the calls. Between 10 and 10.30 pm V turned up at C's house and told him that D was 'doing her fucking head in'. V said she had had enough of D and he needed help. C invited V to stay. About half an hour later, D turned up looking for V. Between 10.30 and 11 pm the three went to D's flat. V continued to tell D he needed to sort himself out. C left the flat at about 11.30 pm. C believed D and V had taken drugs. About 3 am, a neighbour heard an argument at D's flat. Shortly after 5 am, D called a friend to say he had killed V. D said he had pushed V down the stairs and stabbed her. V was found with a large kitchen knife in her stomach area and 17 stab wounds caused by more than one knife. Most of the blows were to the back and the neck. The force required for the stabbings was severe. There were no defence injuries. At 6.33 am, D was found by police with a bloodstained kitchen knife in his pocket. Tests showed that D had taken cocaine, heroin and diazepam. In interview D gave conflicting accounts. D had 47 previous convictions on 22 occasions. There were none for serious violence. [No other details given.] In 2010, D had repeatedly stabbed a dog (no charge). The Judge did not find that a knife had been taken to the scene or that V suffered before her death or that there had been previous violence. The Judge did find a lack of premeditation. Held. As there was no history of violence it was difficult to see what the domestic [setting] for the murder added. The aggravation was the brutality of the attack and D's intoxication. The use of a knife is always an aggravating factor. D had the opportunity to stop taking drugs. We start at 15 years. The aggravating factors were the use of two knives, the savagery of the attack, demonstrating an intent to kill², the absence of defence injuries and D's consumption of drugs. We move to 19 or 20 years. The mitigation was the lack of premeditation, the D's lack of serious violent convictions and his mental illness. We move to 18 years not 14, so with plea, **15 years**, not 11 years 8 months³.

2. An intent to kill cannot be an aggravating factor because of Criminal Justice Act 2003 Sch 21 para 11, see 286.22. The lack of defence injuries may indicate that V was rendered unconscious early and was unaware of most or all of the attack.

3. This has been calculated by applying the deduction for plea given.

Sexual Harm Prevention Orders

Does an applicant need a change of circumstances to vary an order?

R v Cheyne 2019 EWCA 182 D pleaded to two counts of voyeurism and was committed for sentence. He then absconded for five years. D returned to the UK to renew his passport and was arrested. He was given a suspended sentence with a treatment programme and an SHPO. About three months later, the prosecution applied to add a foreign travel prohibition banning all foreign travel. The defence said that the prosecution would need a change of circumstances. The police said at the first hearing they had not investigated D's past fully and an officer deputed to monitor him raised questions about: a) D's activities in Thailand where he had been when he absconded, and b) who D had been associating with. Held. para 16 For a party merely to return to the court and say, "I would like a variation" would be wrong in principle, because it would undermine the finality of the original order. So, in general terms, a variation must have some basis, rather than be, in effect, an illegitimate attempt to appeal. However, it is not right that a variation is precluded as a matter of law by a requirement for change, even [when] the evidence which provides the basis for the variation in the order was not known by the court, but should have been. Here the Chief Constable has a continuing obligation to protect children and vulnerable adults. There would be a perfectly proper basis even if there was fault on the part of the police for the application for the variation as it was sought here. The order proceeds from a protective duty and [recent] knowledge does justify an application of this kind. We grant the application.

Theft

Breach of trust Victim vulnerable

R v Allen 2018 EWCA Crim 2189 D pleaded early to theft. He was employed to look after V, aged 35, who required assistance. One of his tasks was to accompany V to a cashpoint and assist him to withdraw money. Over a ten-month period, D withdrew £3,140 for himself from V's account. D claimed he had debt problems from a cocaine habit. D either made no record of the cash withdrawal or entered a lower figure than he actually withdrew in his employer's records. A victim personal statement from the company which employed D said that another member of staff had been suspected and it was sad for V as he had established a 'good bond' with D. D was aged 26 and of good character. D had an 'abusive domestic relationship' and expressed remorse. The Judge described the thefts as utterly wicked and committed in a systematic way for greed. Held. It was a serious offence of theft. It mattered little if it was categorised as 2A or 3A. We start at 2 years, not 30 months. So, with the good character and remorse, we move to 21 months. With plea, **14 months**, not 20.

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