

# Banks on Sentence

## Sentencing Alert No 217

28 March 2019

### Dangerous driving

#### ***Disqualification for how long? 3 years or less***

(Without considering the extended period)

*R v Henly* 2018 EWCA Crim 2794 D pleaded to dangerous driving, excess alcohol (41 µg) and failing to stop. He drove away from the police at speeds of up to 120 mph. Police did not keep up with him. Another police car tried to pursue him and failed. Yet another police car tried and reached speeds of 136 mph chasing him. D+ was later seen driving very dangerously at speed on the M69. Eventually after an hour being pursued, D crashed into a hedge. He was aged 21 and of good character. **3 years** not 4.

### Defendant

#### ***Health of the defendant, Poor      Circumstances change after sentence***

*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 tetraplegic<sup>1</sup> and the other was in a coma for several weeks. 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 the defendant would face in prison. Held. To argue a further reduction, it must be shown that imprisonment is even harder to bear than had been previously assessed. Here the deterioration was in part attributable to D's refusal to co-operate with the health professionals. Application for leave to appeal refused.

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

### Disqualification from driving: General principles

#### ***Custody, Combined with extended periods***

*R v Young* 2019 EWCA Crim 332 LCJ D pleaded to four burglaries, theft, dangerous driving, driving whilst disqualified and failing to provide a specimen (with 3 years' minimum disqualification). The Judge passed 3 years 10 months' custody and 3 years' disqualification extended by 23 months. D had spent 139 days on remand. There was 25 days' tag time. Held. The Court in *R v Needham and Others* 2016 recognised that if time spent on remand in custody was not credited against the total term of disqualification, that could lead to an unfair

disadvantage to an offender who had been remanded against someone else who had not. It is important to draw attention to limitations on that possible allowance. The scope for such an adjustment arises only where: a) there has been no interim disqualification, b) the period of time on remand was of such a nature that the term of disqualification would otherwise be disproportionate, and c) adjustment did not reduce the disqualification below the statutory minimum period attracted by any of the offences concerned. In *R v Needham* the period of 102 days on remand was described as 'substantial', but a failure to allow for that period was not considered disproportionate. As the disqualification was the minimum required, there was no scope for a reduction. We adjust the sentence to comply with the statute.

## Firearms

### ***Firearms Act 1968 s 2***

*R v Morton* 2019 EWCA Crim 154 D pleaded early to possession of a shotgun. Police executed a drugs search warrant and found in D's living room a full-length shotgun in good working order. There were two rounds of ammunition in the chamber, two rounds in a bag with the shotgun and four rounds sewn into a curtain. In interview D said he had found the gun and his whole account was rejected by the Judge. He tested positive for opiates. D was aged 44 with many previous convictions, mostly for dishonesty and driving whilst disqualified. Since 2003, D had only two convictions, one for possession of cocaine and one for possession of cannabis. The Judge found D was keeping the gun loaded and ready for use, probably for others. He started at 4½ years and with plea gave **3 years**. Held. It was open for the Judge to find D knew the shotgun was loaded. There was no basis for the Judge to conclude the shotgun was for use by others, but D had to be punished for the danger the loaded shotgun represented. Appeal dismissed.

## Fraud

### ***Charging for work that is not necessary or not done***

*R v Chapman* 2018 EWCA Crim 2539 D pleaded to conspiracy to defraud. He had earlier pleaded at the Magistrates' Court to fraud by false representation (8 months consecutive). The committal related to a 73-year-old woman, V1, who lived alone. V1 had memory deficiencies. V rang her daughter, S, and said there were workmen at her home who said her roof needed repairs and she was worried about the work being done properly. V1 said she was going to the bank to withdraw £1,500. S and her daughter and a builder, B, working for the daughter, went to V1's house. B went on V1's roof and V1's builders, including D, were abusive and one said, "You are not messing with me" and "I'll be back and burn this fucking house down". A surveyor found a black liquid had been poorly applied to a chimney stack and eave which was entirely unfit for purpose. The work needed would cost about £90, but the remedial work would cost about £600. About 15 months later, bank staff called the police because of large cash withdrawals being made by V2 and his wife, V3, who were elderly. V2 had dementia. £41,430 had been withdrawn over 3 months. V3 said people had approached her saying repairs were required to the roof. Later they said other repairs were required. Police attended the home and a group ran off. D didn't run and he was arrested. A surveyor said the roof was in good condition and no work on it was required. The work done elsewhere would cost just over £7,000. However, work actually done in all parts was not fit for purpose. The remedial work would cost about £1,800. The money lost was the whole of the victim's life savings. D was aged 29, with convictions for burglary in 2009, 2010 and 2014. In 2015, he had a conviction for engaging in misleading practices, which involved purporting to carry out work on buildings. The Judge found D had targeted people who were vulnerable through age and frailty. The Judge went outside the guideline and moved to 8 years making with the plea discount 5 years 4 months. We move to 6 years, making with the plea discount, 4 years and with the committal, **4 years 8 months**.

## Murder

### ***Whole life orders***

*R v McFall* 2019 EWCA Crim 425 (D was convicted of murder and acquitted of rape. U was convicted of both offences. The two met in prison where both were serving life for murder. Cannabis farming formed the background. V, a Vietnamese single mother, aged 28, met the two at a property. V was dragged through the house, asphyxiated, sexually abused and injected with whisky. D e-mailed U, 'We are raping the Chink xxxx'. U replied, 'Remove daft shit like that lol'. V's DNA was found on the barrel of a gas gun, consistent with it being used for sexual purposes or to threaten V when she was in the house. V was taken to a secluded area, placed in her car and set alight with petrol. Soot in her lungs suggested she was alive when the fire was started. During the incident U, accompanied by D, used her bank cards to withdraw money. V's body was 'virtually destroyed by the fire'. The Judge found significant planning, sadistic sexual and financial motivation and great physical and mental suffering to V over four hours. He also found D to be an extremely violent man capable of monstrous behaviour and 'chillingly devoid of any human empathy'. D was aged 51 with 87 previous convictions on 18 occasions. In his previous murder, D had struck a widow aged 86 in her home with a hammer and killed her. The Judge gave both **whole life**. D appealed. Held. The appeal was totally devoid of merit.)

## Robbery

### ***Defendant aged 17***

*Att-Gen's Ref 2017 Re Westman* 2017 EWCA Crim 2664 D was convicted of robbery. At night, with three others, D robbed a man who was with friends in the street. A knife was produced as one of the victims fell to the ground. There were repeated attempts to stab one of the victims, but there was no injury. Two gold chains, worth £5,000, were pulled off one victim and the chains broke into pieces. The robbers ran off with some of the pieces. The victim had been seen earlier in McDonalds. Two of the other robbers were aged 18 and 21 and had significant previous convictions. The fourth robber was not caught. D was aged 17<sup>2</sup> at the time of the offence and the sentence hearing, which was just over a year later. The Judge gave D a Youth Rehabilitation Order because of D's age, good character and changed lifestyle. Held. The starting point was 3 years. There had been three failures to attend as probation required. The other robbers were more experienced offenders and older. The Judge's hopes had not been realised. **2 years' DTO** was appropriate. Because of the 351 days on curfew and the unpaid work done, 12 months' DTO.

2. The report says that D was aged 17 at the date of the offence and sentence and also that the sentence was one year and three days after the offence. Both can't be right.

## Sex Offences Historical

### ***Physical non-penetrative contact Child then aged under 10 Defendant then aged 25+***

*Att-Gen's Ref 2018 Re Ghani* 2018 EWCA Crim 2598 D was convicted of seven indecent assault counts. Two were when the female victim, V, was aged 7-10, three were when V was aged 10-14 and two were when V was aged 14 or 15. Between 1995 and 2005, D, an Imam, when pretending to be involved in teaching, placed his hands under V's clothing and rubbed her naked thigh often while masturbating. Once he touched her bottom and the vagina area, but not her genitals. A threat was made to V's young brother. D was now aged 65 and of good character. The Judge found the abuse was on a near-weekly basis. As a result, V suffered mental health problems. Held. The gravamen was not the type of offence which was at the lower end of the spectrum, but the persistence and duration of the offending. It was a grave breach of trust. The consequences for V were serious. We pass 18 months, 18 months and 2 years consecutive making **5 years** not 2.

[book@banksr.com](mailto:book@banksr.com)

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