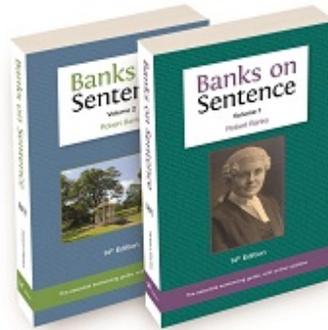


Banks on Sentence

Sentencing Alert No 221

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Death by driving: Dangerous Driving

Speeding

Att-Gen's Ref 2019 Re Guest 2019 EWCA Crim 422 D changed his plea to guilty of causing death by dangerous driving, driving whilst disqualified, perverting the course of justice, driving without a licence or insurance and three drug/driving offences. All the matters were on the same occasion. When speeding, D failed to notice a bend in time, lost control of his car, hit a pole and killed his passenger, V. After trying to make it look like V was driving (the perverting), D fled. D was aged 28, had 20 previous convictions on 13 occasions, including drink/driving, and later failure to provide a specimen. D was in breach of a suspended sentence. Held. It was a Category 3 offence. We move to 6 years, and with plea arrive at **4 years 9 months**, not 4. 2 years, not 1, for the perverting and 3 months for the breach of the suspended sentence, all consecutive, making 7 years, not 5 years 3 months.

Disqualification from driving: General principles

Custody, Combined with extended periods

R v Raja 2019 EWCA Crim 298 D pleaded to drug offences (total sentence 7½ years) and dangerous driving (14 months)¹. The total sentence was 8 years 8 months. The Judge imposed 3 years' discretionary disqualification for the dangerous driving and 3 years 9 months' disqualification (half the 7½-year term) as an extension under section 35A. Held. That was

unlawful. The Judge was obliged to pass the 3 years' disqualification with a 7-month (half the 1 year 2 months) extension under section 35A for the dangerous driving and [then an extension under section 35B]. We pass 3 years 2 months, under section 35B,² as an extension on the drug counts making the same 3 years 9 months' disqualification.

1. The sentence is not clear but I infer that D received two concurrent sentences for driving matters.
2. There is a greater discretion under section 35B than 35A and the Court of Appeal could not pass a longer term of disqualification than the Crown Court Judge.

Escape from Custody

Failing to return to prison

R v Clothier 2019 EWCA Crim 348 D pleaded to failing to return to an open prison after day release. He was at large for just over a month and was caught when he used social media. He had 13 previous convictions for failing to comply with court orders, including bail offences. Held. The important distinction between escape (maximum life) and this offence (maximum 2 years) was that for this offence defendants were deemed suitable for day release. The crucial factor here was that D was at large for more than a month and he continued to hide. With full plea credit, there was no fault in 8 months consecutive.

Extended sentences

Judge must explain sentence

R v Gardener 2019 EWCA Crim 170 D pleaded to two section 16A offences. He sent three videos showing D holding a shotgun and a pistol. D could be heard saying, "I am going to ruin your fucking life" and other threats. Held. The decision to impose an extended sentence was unimpeachable. It was a little unfortunate that the Judge ending with his remarks about the risk D posed and did not add something like, "The risk is such that it cannot adequately be met by a determinate sentence."

Firearms

Supplying firearms to criminals

R v Edmunds 2019 EWCA Crim 47 D was convicted of conspiracy to transfer weapons and pleaded and was convicted of other firearms associated counts. He was at the top of a group supplying hundreds of handguns and thousands of rounds of ammunition to criminal gangs. He also imported hundreds of weapons. He was aged 67 with no relevant convictions. Held. No complaint is or could be made of a global sentence of **30 years** on the conspiracy count.

Harassment section 4/Public nuisance

Demonstration

R v Roberts and Others 2018 EWCA Crim 2739 R, L and B were convicted of public nuisance. They were part of a demonstration against fracking. On 25 July 2017, seven lorries with imported drilling equipment drove to a site near Blackpool where a company was exploring for shale gas through fracking. There had been earlier demonstrations and attempts to disrupt the company's activities. Police cars were to the front and back of the convoy. There were 75 police officers on site. R ran through a police cordon and climbed onto a lorry. He remained there for 3½ days. L remained on a lorry for nearly two days. B remained and a co-defendant were there for just over three days. The A583 was blocked in both directions for about 11 hours. R was aged 36 and had a previous conviction for a taxi offence. He was studying at the Open University. L was aged 31, worked in education and was of positive good character. B was aged 26, worked as a research scientist and was of good character. Here the custody threshold was not passed. A **community sentence**, with a punitive element including work or perhaps a curfew would have met the justice

of the case. As 3 weeks had been served, conditional discharge instead, which will [deter] repeat offending.

Offences against the Person Act 1861 s 18

Unprovoked attack

R v Bailey 2019 EWCA Crim 318 D pleaded (full credit) to section 20. At about 7.15 pm, V and his friend were on their way home from Hull town centre. They heard someone shout, "What are you going to do to him?" V looked round and saw two people, D and U, whom he did not know. V said, "I haven't got a clue what you are on about. I don't know who you are." U shouted, "Get the machete". V quickened his pace and heard footsteps behind him. As he did so, V felt a sharp pain from a punch and he fell to the ground. D ran away. V suffered a fractured jaw. A wisdom tooth was removed and a metal plate inserted. For two weeks, V suffered severe pain and pain thereafter. For two weeks, V was unable to eat solid food and now could only eat soft food. The metal plate may have to remain permanently. The attack had caused sleeping problems and affected V's family and social life. D was aged 23. He had 18 previous convictions, including in 2012, ABH and three battery offences in 2013 and 2014. The Judge noted D's convictions, the attack was in public and under the influence of alcohol, and the effects on V. Held. This was not group offending, so it was a Category 2 not 1 case. We move to 33 months, so with plea **22 months** not 28.

Note: One factor not mentioned was that the injuries were caused by the fall and not the blow. I consider that this should have been mitigation. Ed.

Rape

Historical cases (anal)

Victim then aged 10 Defendant then aged 16

R v Jewitt 2018 EWCA Crim 2557 D was convicted of buggery and indecency with a child (no penalty). In the early 1980s, D, then aged about 16, and V, then aged about 10, met a few times over about four weeks in a barn. D showed V pornographic magazines and persuaded V to engage in oral sex and sit on his penis. The anal penetration was extremely painful and V ran home crying. V never associated with D again, although they saw each other in their village. V reported the incidents in 2016.³ The contact had a profound effect on V. V developed a drink problem and had mood swings. V said his wife had to cope with a great deal. D was now aged 53 and was treated as of good character. He had character references. Because of severe psychological harm, the Judge made the buggery Category 2A in the rape guideline. Held. The Judge erred in considering grooming was an aggravating factor. The delay in the reporting of the offence was not attributable to D. **7 years** not 10 reflects D's level of maturity.

3. This date is from a news report.

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