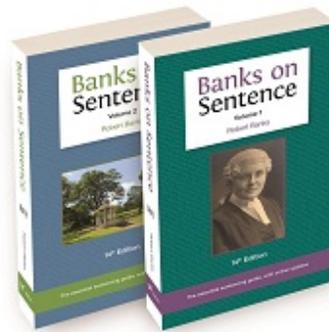


Banks on Sentence

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Confiscation

Assessing the value of property in the name of another

R v Reid 2019 EWCA Crim 690 D pleaded to drug offences. The Judge made a confiscation order for £1.33m. G, D's [partner¹], had purchased a property and at the beginning of the period for the assumptions, D had no interest in it. The prosecution said that after that he contributed to 84% of the mortgage repayments and other purchases which generated a trust as G could not have funded the property expenses. Held. para 39 *Jones v Kernott* 2011 UKSC 53 (see above), furnishes authoritative guidance. The quantification of the beneficial share should turn on an objective evaluation of the course of dealings between the parties over the period in question. On the facts we substitute 50% instead of 75% for D's interest in the property.

1. It is not stated, but the inference is there. There is an inference that it was their home, but that is not stated either.

Defendant

Deportation Don't adjust sentence to assist deportation

R v Alkidar 2019 EWCA Crim 330 LCJ D pleaded to using threatening words to provoke fear of violence. D was a failed asylum seeker with mental health problems. Held. It appears that the

Judge ignored fundamental sentencing principles to increase the custodial term to engineer deportation. That was simply not permissible.

Release Don't take release into account

Att-Gen's Ref 2018 Re Osborne 2018 EWCA Crim 2958 D was convicted of attempted GBH. He lured a prostitute to his flat and attacked her with a hammer. Six months before the offence he had been released from a custody for life sentence. That sentence was for manslaughter on the grounds of diminished responsibility where D had made a surprise attack on a good friend. The Judge passed a determinate sentence because D was subject to a life licence. Held. That was contrary to principle as release dates should be left out of sentencing. Extended sentence substituted.

Dismissal from HM Service

On the facts, dismissal correct

R v Bailey 2019 EWCA Crim 372 D, a Flight Lieutenant, pleaded to Armed Forces Act 2006 s 42, namely theft. He found a set of keys to the RAF station's gym and kept them for about a year. At a weekend, D entered a storeroom at the gym and stole a women's ski jacket for use by his wife on a holiday. After the holiday he said he tried to return the jacket but the locks had been changed. D was aged 43 with 22 years' service and was of exemplary good character. He had medals and decorations. There were five RAF references. The starting point for any offence of dishonesty was dismissal. The Court Martial said the keys should have been returned at the earliest opportunity and trust and integrity were essential for maintaining discipline. Further those guilty of theft could not realistically continue serving. Held. This is a very sad case. Dismissal would have a significant financial impact on him and his family. Most of the listed mitigating factors were present. We understand why a grave view is taken of dishonesty in service life. As outsiders we struggle to see how D could continue to exercise authority. Dismissal was not wrong.

Offences against the Person Act 1861 s 20

Victim very seriously injured

R v Maxwell 2019 EWCA Crim 130 D pleaded to section 20 (25% credit). D and some friends were drinking and they continued overnight and into the next day. At 3 pm the next day, the atmosphere changed and D and V bickered. D punched V in the face with a clenched fist and V fell. V hit his head on a concrete path. He bled from the head and was unconscious. V had a cerebral oedema and bilateral frontal contusion to the brain. A section of his skull was removed, which would need to be replaced with a titanium plate. V would not return to independent living for the foreseeable future. V's wife has a degenerative spinal condition and had relied on D for her care and to carry out physical things she could not do. D was aged 29. He had 37 previous convictions including: in 2007, battery; breach of an ASBO on 3+ occasions; in 2008, harassment (prison); in 2016, battery; in 2016 assault (conditional discharge); and in 2016, cocaine dealing (30 months). He was in breach of his conditional discharge and his licence. The Judge moved to 4 years 8 months and with plea passed **42 months**. Held. It is difficult to see how the factors indicating higher culpability were engaged. There was modest provocation. The criminal record and the ongoing effect on V moved the case well outside the Category 1 range. V could not play an active role in the day-to-day life of his young child. The Judge was able to reach the highest range of Category 1. The Judge did start close to the maximum, but we dismiss the appeal.

Perverting the course of justice

To avoid prosecution/conviction

R v Twizell 2019 EWCA Crim 356 LCJ D pleaded on the first day of his trial to doing an act intending to pervert. A traffic officer tried to check D's driving speed with a detection device and three readings failed. The third reading was 21 mph. The officer suspected the car had a jamming device. Police found a black box fitted under the registration plate. In interview D claimed it was a

parking sensor. D was aged 58 and of impeccable character, with references. In 2017, D had a speeding conviction. The Judge started at 4 months and with a late plea gave D 3 months. Held. The use of jamming devices will always be a serious offence. They prevent the police from detecting crime and hinder their role in keeping road users safe. Because of the strong mitigation and the *Imposition of Community and Custodial Sentences Guideline 2017* a **3-month suspended sentence**, a curfew and a fine would be appropriate. As D had spent 16 days in prison there will be no fine.

Note: One would have thought 16 days was enough, so that penalty could have been imposed. D was most unlikely to use a jamming device again. Ed.

Making a false statement

R v Mahmood 2019 EWCA Crim 732 D pleaded to perverting. When driving, he filmed a collision and was sent a form about an intended prosecution. D returned the form claiming someone else was driving the car. He was caught and fined £51 for the incident. D was aged 33 and of good character. His family depended on him and he helped with a younger sibling who had Down's syndrome. Held. The family problems would be temporary rather than significant. Immediate imprisonment cannot be faulted. Because of D's good character, we start at 12 weeks, not 6 months, making with plea **8 weeks**, not 18.

Victim Surcharge

Combined with Compensation order

R v Beckford 2018 EWCA Crim 2997 D pleaded to ABH. para 14 The Judge ordered that the victim surcharge was 'to be applied by way of compensation' to the victim. Held. The Judge had no power to make such a direction. The correct procedure under Criminal Justice Act 2003 s 161A was to make a compensation order in the sum of £140 and thereafter reduce the victim surcharge to enable the compensation to be paid. We substitute such an order.

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