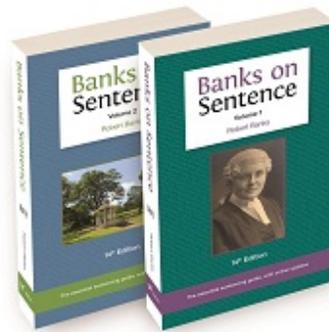


Banks on Sentence

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Death by driving: Dangerous driving

Speeding

Att-Gen's Ref 2018 Re Wilde 2018 EWCA Crim 3055 D pleaded to death by dangerous driving. He drove his best friend in a car with adapted tyres and rims which affected his ability to control it. At nearly 80 mph in a 60 mph area, D lost control of the car when over-revving it in a low gear. His friend died. D was aged 24, had no convictions and had a large number of references. Held. The bad driving was deliberate. There was an obvious and significant risk, which was not momentary. D was showing off. The case was Category 2. We start at 5 years and move to 5½ years. We reduce that by 9 months for the mitigation. With full plea credit (19 months) and the unpaid work done (2 months), **3 years** not 2 years suspended.

Defendant

Conduct of the defence during a trial

R v Perrett 2019 EWCA Crim 695 D was convicted of six counts of indecent assault against a boy. She had sex with a 14-year-old boy, B, on two occasions. The Judge said D sought to blacken B's character with fictitious accusations of blackmail and counter-allegations of serious sexual misconduct, including attempted rape. Further, D had sought to diminish B's credibility by an extensive examination of B's medical and mental health history. The Judge treated the allegations as significant aggravating features for the sentence. Held. The attempted rape suggestion was a gratuitous allegation. No complaint can be made about the Judge's approach.

Don't adjust sentence to prevent or assist deportation

Att-Gen's Ref 2019 Re Drazhi 2019 EWCA Crim 757 D pleaded to an ID document offence, a drug supply offence, no insurance and no licence. The Judge said it would be unjust if D was [deported] so he passed 11 months on each of the two main offences concurrently. After the sentence, prosecuting counsel told the Judge that the categorisation was agreed. The Judge said he would depart from the guidelines because he did not want the defendant deported. Held. We understand the Judge's sympathy, but it cannot be right to defeat the intention of Parliament by adjusting what would otherwise be a perfectly proper sentence. Taking into account the mitigation, totality and the plea, we substitute **30 months'** detention.

Discretionary disqualification

Must warn defence advocate

R v Branson and Taylor 2019 EWCA Crim 735 T was convicted of conspiracy to supply class A drugs and fraud. He had pleaded to possession of cannabis. The prosecution case was that T was a trusted lieutenant of the controller of the drug gang, AA, and drove AA around on occasions. T was sentenced to 9 years with 6 months' consecutive for the fraud. The Judge, without warning the defence, disqualified T for 12 months with an extension. Held. The Judge was plainly entitled to disqualify T. However, he should have raised the matter with counsel and had he done so counsel could have made submissions. Disqualification was not necessary, so we remove it.

Note: The implication was that had the defence been able to make submissions in the Crown Court, the Court would have upheld the order as it was an order within the Judge's discretion. As the defence were denied an opportunity to make those submissions it would be wrong to uphold it as the submissions might have been successful. Ed.

Factual basis for sentencing

Judge must sentence for the offences the defendant(s) had pleaded to/been convicted of

R v Brown 2019 EWCA Crim 779 D pleaded to attempted robbery and having an offensive weapon. D pleaded not guilty to threats to kill which was ordered to lie on the file. The Judge in his sentencing remarks referred to the threats to kill. Held. It can be inferred that the Judge relied on the threats to kill to [assess] the offence and as a feature for determining whether D [satisfied the dangerousness criteria]. That was wrong. We base our findings without taking into account the threats to kill. Here, the Judge was bound to pass an extended sentence. The sentence was not manifestly excessive.

Offences against the Person Act 1861 s 18

Relationship attacks Man attacking partner Significant previous convictions

R v Hinkley 2018 EWCA Crim 3054 D was convicted of wounding with intent and three assaults by beating. He lived with V. In December 2015, at about 11.40 pm, paramedics were called. They found V in a towel and she was wet. V told them there had been a fight. D said V had had an asthma attack. Police arrived and found V seriously wounded and extremely distressed. V said she was getting out of the bath and D, without warning, lost his temper. He became violent by strangling her and punching her in the face and chest. V feared he was going to kill her. V had four wounds to the face, two were below the eyes and one was 15 cm over an eye. V had bruising over all her body. D was interviewed and lied. He was released on bail with a condition not to contact V. V allowed D to stay with her because she loved him. He did so. In September 2016, during an argument, D stamped on V and kicked her to the head. They reconciled. Ten days later during an argument, D repeatedly punched V to the head. Twelve days later, during an argument, D dragged V by the hair and punched her in the face. D was aged 30 and had 26 convictions from 2004 to 2015. Most were acquisitive offences but they included: in 2008, threatening behaviour; in 2009, ABH; in 2010, battery; in 2012, ABH, where he punched and strangled an ex-partner

when on bail for an earlier assault on the same victim; in 2013, battery against another partner (suspended sentence); and in 2015, possession of a knife. D refused to attend a video interview with the Probation Service. Held. There were features of a Category 1 case, as it was a 'sustained or repeated assault on the same victim'. In certain circumstances teeth can amount to the equivalent of a weapon. The Judge was entitled to conclude that the offence was on the cusp of Categories 1 and 2. There were the following factors increasing the seriousness of the offence: a) highly relevant previous convictions, b) breach of bail, c) offences committed in V's home, d) an element of gratuitous degradation, and e) an element of control, coercion and abusive power. The three summary only offences did not warrant the raising of the sentence to 14 years. The aggravating factors and the additional offending warranted an increase from 9 years to 12 not 14, so 16 years' extended sentence (**12 years'** not 14 years' custody 4 years' extended licence).

Note: Although common assault/assault by beating is described as a summary only offence, it is triable on indictment under Criminal Justice Act 1988 s 40. The charging of such serious offending on bail with offences carrying only 6 months seems wholly wrong. It seems most likely that ABH took place. However, 14 years seems too long for what appears to be D's first, or first significant custodial sentence. Ed.

Supply of drugs

Couriers

R v Mboma 2019 EWCA Crim 773 D pleaded to conspiracy to supply heroin and possessing criminal property (12 months concurrent, no appeal). He transported cocaine from Leeds to Carlisle and collected the cash for the drugs. On his return journey, police found nearly £9,000 in cash which would pay for 250 grams of cocaine. D's phone showed that there had been a similar previous trip. D was aged 21 and of good character. The Judge found D played a significant role. D appealed that finding. Held. Being a courier is not itself determinate of which role a defendant played. If a defendant had been exploited, that could in some circumstances [indicate] a lesser role. The Judge was not wrong to ascribe a significant role.

Note: The Court of Appeal over the last few years has seemed very keen to increase defendants' roles. The problem with that approach is that it leads to disparity between sentences passed by different judges, prison overcrowding, and insufficient custodial distinction between the organisers and the foot soldiers in a drug gang. Ed.

book@banksr.com

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