

Banks on Sentence

Sentencing Alert No 126

19 May 2016

Burglary

Persistent burglars

R v Devlin 2016 EWCA Crim 402 D pleaded to attempted burglary. At about 6.30 pm, D was disturbed trying to break into a house, by chiselling a kitchen door. V, the owner of the house, had returned home and heard a rattling sound from outside the kitchen and noticed damage to the door. V went outside and saw D escaping into a neighbour's garden and then into an alley. DNA was obtained from a baseball cap left in the neighbour's garden. V had seen the man earlier in the day looking at houses and speaking to a neighbour after knocking on his door. The offence had a severe impact on V and led to the illness of three family members. D, aged 42, had 43 court appearances for 186 offences, numerous of which were for burglary. He was a heroin addict and was on licence for a 6-year sentence for burglary. The Judge made it a Category 2 offence and with the convictions moved it up to Category 1. He started at 4 years. Held. The offence was not easy to categorise. We start at Category 2 and 2½ years so with the plea, **25 months** not 40.

Firearm Offences

Possession of a firearm

R v Moran 2016 EWCA Crim 343 (Conviction for possession of a machine gun and ammunition to match. Found in kitchen cupboard hidden behind plinth. The gun's design made it easy to conceal. Aged 23 with 12 court appearances for offences including supplying cannabis and robbery. Judge found gun and ammunition was connected with drug dealing. Held. Taking into account the ammunition, an 8-year starting point was not too close to the 10-year maximum sentence. The range was 7-9 years. **8 years** upheld.)

Offences against the Person Act 1861 s 18

Unprovoked/Drug induced attack

R v Daniel 2016 EWCA Crim 388 D pleaded to burglary and to GBH with intent, when aged 18. In March 2014, D and C (both aged 17) approached V, a total stranger, who was sitting on a wall. It was a cold night. V was aged in his 50s and was eating some food. D was verbally aggressive towards V and pushed him off the wall causing him to hit his head on a metal barrier. D and C then repeatedly stamped on D's stomach and chest and then walked away leaving V where he was in a dark area. Two witnesses had observed the scene from a flat and contacted the emergency services. V was found with blood coming from his mouth. He had sustained multiple injuries including a head injury, rib fractures, a collapsed lung and a lumbar vertebrae fracture. D and C were arrested. D was drunk. V's blood was found on D's footwear. V was now too scared to go out of his house. In July 2014, D, on bail, burgled the property of his girlfriend's family. A Chubb lock was dug out of the front door to gain access. Items including games consoles and jewellery were taken. Milk was poured over the kitchen, a knife was embedded in a wall and all the televisions were damaged. The victims were so sickened they had to move house. D had nine previous

convictions, including ABH. The pre-sentence report said that D's lack of remorse was of serious concern and that he was beginning to show he was dangerous in the community. The report also stated that D had been brought up in an environment of drink and drugs and had a history of self-harming. A psychiatrist said D had severe ADHD. The Judge found V nearly lost his life and that D was highly intoxicated with drink and drugs. He further found D and C jumped up and down on V as if they were on a trampoline. He placed the GBH in Category 1. Held. This was truly sickening violence. For the GBH we start at towards or at the top of the category range at 15-16 years. With D's age and full credit for his plea **10 years** not 12 and with 1 year for the burglary, 11 years not 13 in all.

Offences against the Person Act 1861 s 20

Unprovoked/Unwarranted attack

R v Lonergan 2016 EWCA Crim 305 D pleaded to section 20. V approached D and his girlfriend at a bus station and asked him and others for money, V appeared to have been drinking heavily, V made derogatory comments about D's girlfriend. D lost his temper and struck V a substantial blow which knocked him to the ground. V attended hospital some hours later when he began to feel unwell. He had an injury near his eye. D had previous convictions for similar acts of violence. Held. It was a Category 2 offence. We start at **30 months** so with the plea 20 months.

Previous convictions and antecedents

Foreign convictions

R v Luciano and Rothery 2016 EWCA Crim 195 In February 2014, R was sentenced in Spain to 9 years but had absconded before sentence. A European arrest warrant was issued. In December 2014, in England, R received 15 years. Both offences involved drug supply. The defence argued that the Judge had increased the sentence because R had avoided serving his Spanish sentence. Held. The Judge could not pass a consecutive sentence nor a sentence increased to reflect his avoiding the Spanish sentence. However, the Judge could increase the sentence because of the statutory aggravating factor of having a similar previous conviction. Doing that exercise, 10 years 8 months.

Prison Offences

Conveying articles into prison Drugs Judicial guidance

R v Ormiston 2016 EWCA Crim 363 para 10 Drugs and drug substitutes are entirely inimical to the rule of the law within a prison and become a currency within prison. They are used to extort or bully and the evil they do is even worse than the evil done within our open society. It is important to underline that the gravity of the offending is in relation to the prison setting and that therefore the use of the drugs guideline is not entirely appropriate notwithstanding that it might be appropriate in certain cases of offending.

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