

Banks on Sentence

Sentencing Alert No 128

27 June 2016

Dangerous driving causing serious injury

Speeding

R v Howsego 2016 EWCA Crim 120 D pleaded to aggravated vehicle taking, causing serious injury by dangerous driving and associated offences of having no insurance and failing to stop after an accident. V was driving his transit van over a railway bridge. He saw D, who was drunk, driving towards him in a Mercedes, at speed, on the wrong side of the road. Both drivers tried to take evasive action but the cars collided head-on. The van flipped onto its side trapping V inside. V was released by the emergency services and D left his car and disappeared across fields. D left his dog in the car. D returned four hours later wearing only his boxer shorts and socks and looking for his dog. The Mercedes had been stolen and bore false number plates. V suffered serious injuries including fractures to his neck and spine and a broken shoulder. He wore a full body brace for between three and six months and it was anticipated he would suffer from long-term spinal and neck problems. D was now aged 35. He had been disqualified through totting up. He drove when disqualified and drove when unfit. He had not been to prison before. The Judge started at 4 years. Held. That was too high. It was a Level 2 case under the *Causing Death by Driving Guideline 2008*. 4 years would be suitable for a Level 1 case. We start at 3 ½ years, so with the mitigation 3 years. With the plea, **2 years**, not 28 months.

Perverting the course of justice

Outbursts in court

R v Tinning 2016 EWCA Crim 525 D was found to be in contempt of court. Earlier he had pleaded to theft. He stole a gold chain from a jewellers' shop. When the Judge was sentencing him, he started at 2 years and D said "Two years? Call yourself a judge!". D then walked out. The Judge continued and reduced the sentence to 16 months for the plea. The Judge told counsel that D had subjected him to a 'tirade of abuse' the last time he was before him. Then the Judge had taken no action but warned D of the consequences of such behaviour. D returned to the court later that day. D made his apologies saying that he had been annoyed with his counsel as much as with the Judge's decision because facts about the theft were wrong. The Judge accepted the apology. D was aged 24. In 2014 he was sentenced to 32 months for burglary involving an 85-year-old woman for which he was still on licence. This was the case where D had been abusive. Held. A consecutive sentence was appropriate. As this was a very short incident, it was not picked up by the recording equipment and that the proceedings were not disrupted in any way, **7 days** not 2 months.

Rape

Historical cases

Defendant then aged under 18 Judicial guidance

Att-Gen's Ref No 121 of 2015 2016 EWCA Crim 173 D was convicted of raping his sister then aged 6 and indecent assaults against another sister which occurred 30 years before. D was then aged 14 and now aged 49. Held. para 37. The judge should (i) assess, [using] the appropriate guideline, the sentence that would have been imposed on an adult offender; (ii) adjust that according to statutory aggravating and mitigating factors, including age and maturity of the offender at the time of offending. In this [case] the narrative of the *Youths Sentencing Guideline*

2009 will be significant and helpful in identifying the appropriate and relevant principles to be applied in considering the impact upon culpability in an individual case. What is of less, if any import, is what sentence would have been imposed if the offender was [the age he was at the time of the offending]. The 75% reduction we make for D's age at the time of the offending and D's lack of convictions [is not setting a precedent].

Historical cases Defendant then aged under 18 Case

Att-Gen's Ref No 121 of 2015 2016 EWCA Crim 173 D was convicted of raping V1 and four specimen indecent assaults against V2. V1 and V2 were his sisters. V1 was then aged 6 and V2 was then aged 4. The offences took place over 30 years before when D, the eldest child of six, was aged 14. V1 recalls D coming into her room and raping her vaginally. This was a single incident. When V1 complained to her mother, the mother beat D with a stick calling him a "dirty little bastard". D and his five siblings were subjected to regular beatings. V2 recalls that D and his friends would encircle her. D would force his penis into her mouth and the friends would cheer when D ejaculated. This happened frequently. D would also force V2 to sit on his lap and would grind his penis against her. V2 believed D ejaculated when he did this. This also happened on a number of occasions. D, now aged 49, had 36 previous convictions but for non-relevant offences. He had heart problems due to long term amphetamine abuse, had type 2 diabetes and was depressed. V1 and V2 were severely affected by the offences. V1 had undergone counselling and V2 turned to drink and drugs in adolescence. She has since been diagnosed with post-traumatic stress disorder. The pre-sentence report said he posed a high risk of serious harm, namely sexual abuse. The Judge took into account D's then youth and the abusive childhood and considered D would not have received section 91 detention if sentenced at the time of the offences. She passed a 2-year Suspended Sentence Order. Held. Like the Judge we consider the rape to be Category 2B. For an adult we would have started at 12 years. Taking account the age at the time of the offence and D's lack of relevant convictions we arrive at **3 years**.

Relationship rape

R v C 2016 EWCA Crim 542 D was convicted of two counts of rape. D and his wife V met in Algeria and moved to the UK in 2010 to further V's education. D was very controlling of V and would check her emails, forbid her from using social media and disliked her having friends. D was also very violent towards V and would often punch and kick her. He made threats of serious violence. The first count happened after D and V had argued. D wanted sex but V refused. D squeezed her throat tightly and she escaped into the bathroom. After some time, V went back to bed where D then had sex with her. V felt she had no choice but to submit and was crying throughout. D and V continued to live together and there was consensual sex. Violence was not used in the second rape but again V felt she had no choice and cried throughout. D was now aged 29¹. The Judge placed the offending in Category 2 because of the violence. Held. This was a Category 3A case. The dangerousness criteria were made out. 11 years' extended sentence (**8 years'** custody and 3 years' extended licence), not 15 years' extended sentence (12 years' custody and 3 years' extended licence).

1. If D had had convictions I think they would have been mentioned. Ed.

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