Banks on Sentence

Sentencing Alert No 144

30 November 2016

Burglary, Aggravated

Dwellings

R v Calvert and Oliver 2016 EWCA Crim 1519 D pleaded with his brother, O, to aggravated burglary. D and O were in dispute with P over a small drug debt. There was an argument and present was a woman, M, who appeared to be supportive of P. The next evening M was at home with her 6-month old baby and a male friend when O starting banging on the window so hard that a picture fell off the wall. He was very agitated and shouting "It's all your fault". M shouted that she did not know what he was talking about and that he would wake her baby. Meanwhile D had kicked in the front door and entered the living room followed by O with M still shouting at them to stop. O held a small bottle in his hand and said, "Do you know what this is? It's ammonia. I'm going to blind you with it. It was you, it was you." He shook the bottle towards M and some liquid landed on her clothes. M thought it was acid and was terrified it would be thrown in her face and was fearful for her baby. At one point D shouted, "I wouldn't push your luck because I've got a knife." O went upstairs looking for P who they believed to be there. The man who had been in the house had hidden. In due course O and D left. The whole incident lasted around ten minutes and both O and D were drunk. D was aged 18 and O 21. They were both on license and both had multiple previous convictions although not for anything of this seriousness. The Judge found it was a Category 1 case and started at 10 years. He raised that to 13 years for the aggravating factors. For O, he reduced that to 12 years for the mitigation (mainly O's troubled background and remorse), making 8 years with plea. For D, he reduced the starting point to 11 years[1] for D's youth and less serious convictions, making 7 years with plea. Held. The factors indicating greater harm were vandalism to the property, the victim's trauma, the threat of serious violence, and the involvement of two weapons. The guideline aggravating factors were child involved, both were under the influence of drink, both were on licence and their previous convictions. The Judge moved too far from the starting point. Before discounts we arrive at 11 ½ years not 13. We reduce that for O to 10 ½, so with plea **7 years**. For D, after mitigation discounts we arrive at 9 years, so with plea **6 years**' YOI.

1. The Judge said he was reducing it to 11 years but the application of the full discount indicates it was 10 ½ years. Maybe the Judge just rounded down the final figure.

Firearms

Stun guns Minimum terms Exceptional circumstances

Att-Gen's Ref 2016 Re Davidson 2016 EWCA Crim 1626 D pleaded to possessing a prohibited weapon, theft, offering to supply a Class B drug and possessing a Class B drug. B heard that D was telling people he owed D money. At about 7.30 pm, B saw D and went out to speak to him. D offered to sell him some cannabis. B declined the offer. D asked B if he had any money on him and B produced two £10 notes. D snatched them and produced a knife with a 4-5 inch blade. D ran away and B reported the incident to the police. Later that evening, police stopped D's car. Police found a small amount of cannabis in his pocket and a stun gun disguised as a mobile and a police style baton, which were both hidden in the fascia of the car. No knife was found. D was aged 18 and had three theft and a handling conviction. In 2015 he was given a Youth Rehabilitation Order for possession of a bladed article. The defence said D's age, his immaturity, his parental

support and the fact there was no charging device were exceptional circumstances. The Judge took into account 'some very moving letters' and said he was going to give D a chance and gave him 12 months' YOI suspended. Held. Taking into account the stun gun was disguised and concealed, he had the baton, earlier he had a knife, earlier he had snatched the money and his previous for a bladed article, D was prepared to arm himself and use it in a public place to threaten people. The fact it was a stun gun is not enough to establish exceptional circumstances on its own. These facts were not exceptional. **5 years** YOI.)

Perverting the course of justice

Attacking court staff

R v Yusuf 2016 EWCA Crim 1684 D admitted contempt (full credit). Earlier D had pleaded to affray. D was remanded in custody and the co-accused, C, was admitted to bail. D was in conversation with C and the custody officer, P, indicated to D that he wanted him to move from the dock into the anteroom to enable C to be released. D ignored P, so P asked D to go into the anteroom again. D stood up, threatened P by saying he was going to 'knock P out'. P opened the anteroom door and D pushed P over the dock chairs. P got up and tried to restrain D. P's colleagues attended and D left court. P received injuries to his hand and elbow. D apologised. He was a 'young man'. In 2015 he received a community order for ABH, (two punches to a face). Later he was sentenced to 5 ½ years for the affray (striking a man on the head with a piece of wood) and arson. Held. Prison officers and court staff had to know that judges would impose deterrent sentences for those using violence against court staff. Those at court needed to know that this type of behaviour could not be ignored. Condign punishment was required, otherwise defendants would take opportunities to disrupt proceedings or use violence, thinking that all they had to do was apologise and nothing further would be done. We agree with the note in Banks on Sentence[2]. The principle stated is particularly important now that security provision in the courts is frequently pared down to a less than barely acceptable minimum. Short and spontaneous as this incident was, the sentence of **8 months YOI** was entirely justified.

2. The note in Banks on Sentence was after the case of *R v Russell* 2006 EWCA Crim 470 and read 'Note: This is an old case. Since then, the need to protect judges, magistrates and court officials has grown. These principles are very much in line with current sentencing practice. Ed.'

Rape

Attempted rape

R v Ali 2016 EWCA Crim 1503 D pleaded to attempted rape at his PCMH. At 2:15am, V, a 22-year-old woman, was walking home after a night out. V noticed D on the other side of the road and he crossed over and started walking with her. She could feel him pressing on her arm and he was saying "Have you seen a black cock before?" and asking if she wanted to have sex with him. She said no and made it clear she wanted him to go away. He said "Let's try it." and grabbed her around the waist and slapped her buttocks. D dropped his trousers and took out his erect penis and V walked away. D continued to pursue V at one point pulling her into some bushes and then pushing her up against a garage. In an effort to reach a place of safety, V suggested they go to her home nearby which they did. Once outside, D pinned V against the wall by holding her jacket around her neck. She screamed which alerted her flat-mate who saw her pinned against the wall and D's hands on her breasts. D ran off and two of V's flatmates searched for D in their car and found him in a cemetery caught on some railings. They detained him and the police arrived. D was aged 24. He had eight previous convictions over 5 years. None were sexual or as serious as the rape. The pre-sentence report revealed a lack of remorse and said D smirked when discussing the victim, although he claimed he had no recollection of the event. V was understandably devastated by the incident, had dreams about it and now mistrusted black-skinned men. She was having to see a psychologist. The Judge said it was a Category 2B offence, given the severe psychological harm and the violence. With a starting point of 8 years he moved it up to 10 years, because it was a young woman, it was dark and was at 2.15 am. He considered the previous convictions were an aggravating factor. Held. This was an appalling attempted rape of real seriousness. The location, time of the offending and the targeting of a particularly vulnerable victim put it at the very top of the guideline range. The previous convictions were relevant but not particularly significant. There should have been a reduction because it was an attempt. That reduction depends on the stage the attempt failed and the reason it failed. Here D was well on his way to [the full offence]. He was stopped by the intervention of others. For the victim the experience was little different from the full offence. The reduction would be modest. We start at 8 ½ years, so with a full plea discount, **5 years 8 months** not 7 years.

Stalking

Case

Att-Gen's Ref 2016 Re Abbas 2016 EWCA Crim 1566 D pleaded on his trial date to stalking causing alarm, sexual assault and battery. He subjected V, his sister-in-law, to a lengthy, sustained and very unpleasant campaign of stalking from March 2015 until May 2016 when she feared rape and contacted the police. D claimed that V was having an inappropriate friendship with a man, and threatened to expose that friendship to her family. He habitually approached her outside her work place and sent her numerous messages, declared his love for her, bit her face and tried to kiss her on more than one occasion while restraining her inside her car. In August 2015, for example, he was again waiting for her and got into her car outside her place of work. He tried to grab her. He pushed her back into the seat and tried kissing her. He bit her on the right cheek, causing an injury. In October 2015, when V's mother went abroad, D turned up at V's house and demanded that she let him in, threatening to smash the windows. In January 2016 D bit her on face again, and in May 2016 at her place of work, he tried to force himself upon her, but she resisted. He tried to kiss her and forced his tongue into her mouth. He told her to move onto the back seat because he was going to "have her" there. He punched her to the chest. He then pushed her back onto the seat again and bit her on the right side of her neck. He was disturbed by the arrival of another car and left hastily. When arrested D lied, claiming amongst other things he was entitled to follow her to work to protect the family's 'honour' and she had invited him to follow her. Thousands of text messages were discovered sent by D to V which included protestations of his love for V and her repeated demands that he leave her alone. He was re-arrested and continued lying. D was now aged 28 and had no previous convictions. He had spent five weeks in custody before being granted bail. D was a father of four. The pre-sentence report said D felt he was entitled to some level of sexual and emotional response from V simply because he wanted it. V's victim personal statement described the dramatic impact the offences had had upon her and the profound psychological harm caused. D had stopped her from having any friends, male or female. He would tell her, "I'm your only friend, and you're my bitch". She moved to work in a different work place but he had found out and had persisted in his campaign of harassment. She was fearful to leave home and go to work. She had injuries to her head and neck and was driven to self-harm. V suffered from stress, anxiety and insomnia and required counselling. The prosecution pointed out a) the prolonged period of the stalking; b) the number of physical and sexual assaults fell within the stalking offence; c) the premeditation; d) the deliberate targeting of V at times when she was alone and e) the use of cultural factors to coerce and blackmail the victim. Held. Whether or not severe psychological harm was established, the aggravating features were so many and so serious that what may have begun as a category 2 offence became the top of category 2A or the bottom of Category 1A. The very lowest starting figure was 4 years. With the plea and mitigation, the very shortest sentence we can pass is **3 years** not 15 months suspended.

Note: The problem here is that there should be a new stalking offence involving actual violence or a sexual offence with a maximum sentence of 14 years not the current 5 years. Here the sentence should have been based on the stalking offence and not the sexual offence. However, it is understandable that the court based it on the sexual offence with its unhelpful categories. The judgment makes clear the Attorney-General and the Court of Appeal are taking stalking seriously. Ed.