

Banks on Sentence

Sentencing Alert No 145

14 December 2016

Custody: Time on remand

Whole sentence served on remand

R v Pereira-Lee 2016 EWCA Crim 1705 D pleaded to ABH on a policeman and possession of cannabis (no penalty). He was aged 30, with 16 sentencing hearings for 29 offences, including assault with intent to resist arrest, possession of offensive weapons and bladed articles and drug offences. The pre-sentence report said there was a high risk of re-offending. D was on a curfew and there was a 15-month delay before sentence¹. The Judge started at 12 months which with the plea discount gave 10 months. The Judge considered that unless he was given more than that, prison or a Suspended Sentence Order would not be in the public interest or in D's interest. The Judge said he wanted to provide some structure to secure rehabilitation. He gave D a community order with 50 hours' unpaid work (now done), a two-year curfew and 25 Resolve Programme sessions. The defence said due to the curfew he should have been given the appropriate prison sentence, meaning immediate release. Held. The credit for tag time must be deducted, Criminal Justice Act 2003 s 240A(2). There is a distinction in credit. It must be given for remand time/tag time for custodial sentences (including suspended ones). The starting point for community orders is a discretion as to whether it is to be taken into account. The different approach is often adopted for community orders to rehabilitate the offender through participation in activities/programmes. The Resolve Programme was in D's interest. The Judge was fully justified in passing a community order. Although we would not have imposed the curfew or the unpaid work, we will not interfere with them.

1. The length of time the curfew lasted is not revealed.

False imprisonment

Domestic offences

R v Wani 2016 EWCA Crim 1587 D was convicted of false imprisonment. He was acquitted of sexual assault. V, a slightly-built woman in her early 20s, worked for the NHS in an equivalent role to a District Nurse. She attended D's home at about 9.50am to apply a fresh dressing to a wound on his leg. D was a large powerfully built man in his mid-fifties. D was not expecting her because he had had his wound dressed the previous day. His landlord, G, woke D up and let V in. D was not happy as he had worked most of the preceding night as a cab driver, and told V that. He allowed V into his bedroom. On being told that she was not expected, V asked to look at his medical notes and later indicated that she proposed to leave. D said, "You're here now. You have to do something for me". She did not understand what he meant. He grabbed her by the right forearm and repeated a number of times, "You have to do something for me", without any explanation as to what he meant. V asked repeatedly that he let her go. D reached for his cigarettes and V started to make her way downstairs. He followed her and barged past her on the stairs before positioning himself between her and the front door. He said, "I told you, you're not leaving this place. You're here now and you have to do something for me". V told him that she had to leave and to move out of her way. He laughed and continued to block the doorway. She went into the kitchen to ask for G's help. G did not offer to help her. V walked back towards the door. D walked towards her and again told her that she was not leaving and that she had to do

something for him. D and G were laughing. D continued to block V's way and blew smoke into her face. V tried to call the police but D grabbed her right arm and causing her to drop her phone. He held her, despite her attempts to resist. He stood very close to her and looked closely at her chest. He grabbed her bicep and, while holding her, walked round behind her. She could feel his body touching hers and his breath against her neck. She tried to walk towards the door, but he seized her back and held her firmly. After repeating many of these actions, D allowed V to open the door sufficiently for her to escape. The incident had lasted about 20 minutes. V was unable to drive for a few minutes, but did visit a number of other patients before being advised to return to the office. V was off work for about two months. D had some convictions but wholly different to the instant offence. He had worked consistently since he had arrived in the UK in 2007. Held. It was a serious, sustained assault upon V, but it was as nothing to what she must have feared D was about to do to her. D toyed with her and derived obvious pleasure from tormenting her. She and people like her who visit strangers in their homes for their work were highly vulnerable and entitled to look to the courts for protection. There are a number of aggravating features, namely: a) the vulnerability of V, b) she was performing a public service, c) the duration of loss of liberty, d) the use of threatening words and gestures which would have been terrifying, and e) the serious impact upon V. However, **3 years** not 4.

Perverting the course of justice

Evidence, Interfering with

R v French and Others Re W 2016 EWCA Crim 1644 W pleaded to perverting the course of justice (full credit). Her partner Fr went to V's address and abused V and his neighbours. V left his house with a pick axe handle and ran after Fr. Fr disarmed and brutally attacked V. His cousin Fl kicked and stamped on V. Fr went home with the pick axe and W washed Fr's bloodstained clothes and used bleach to wipe down the pickaxe handle. V was found face down in the street and taken to hospital where he died of brain injuries. W also went to the scene to see what was happening. Police visited W's address and recovered the pick axe and the damp clothes from the washing machine. In interview W said she knew Fr had been involved in a fight and she did not know the gravity of what she had done. W had three young children and a caution for ABH in 2005. Fr was convicted of murder. On appeal the defence said that a) W's acts had no real effect on the investigation, b) W was in an impossible position by Fr and Fl and had little choice but to do their bidding, c) all W had done was clean the clothes and the weapon and d) she had made admissions. Held. There was limited persistence in the conduct which had little effect on the investigation. For Fr the minimum term is 16 years not 18. There was strong personal mitigation. We start at 3 years not 5, so **2 years** not 3 years and 4 months.

Preventive orders

Contact with victim Victim has custody of defendant's children

R v Kaddu 2015 EWCA Crim 2531 D pleaded late to ABH. At night he conducted a protracted, very serious, very frightening, sinister attack in a number of locations on his ex-partner, V, while their children slept. D had previous convictions for supply, robbery and firearms. Held. Due to considerable psychological harm to ex-partner and other factors, the Judge was able to make the offence Category 1 and to start at 4 years. The terms of the Restraining Order were likely to prove unworkable. We substitute, '1) except as provided in para 2, D must not contact V directly or indirectly, whether by himself or by any person acting on his behalf; 2) contact for the purpose of making arrangements in relation to the children of D and V may be made through a solicitor, through the relevant Social Services department or otherwise in accordance with any order of the Family Court.

Rape

Fathers

R v SP 2016 EWCA Crim 1410 D pleaded to three attempted rapes, assault by penetration and three sexual assaults all against V, his 13-year-old daughter. The offences were committed in less than a month. V lived with her parents. While her mother, M, was out, D removed his trousers and asked V to rub lotion into his legs. He placed his hand on his penis which became erect and the incident ended when he ejaculated. A week later, while M was out, D entered V's bedroom and rubbed her breast area. Next he removed her pyjamas and rubbed his exposed penis on her which touched her vagina. He attempted to rape her but his penis did not enter V, who was trying to

push him away. D did digitally penetrate her and licked her vaginal area. He masturbated to ejaculation. During the incident V was crying and distressed. On a different day D kissed V on the lips and removed her top. Next he undid her bra and kissed her breast area. D stopped because M started to come upstairs. On two different occasions D attempted oral rape of V. He pushed his penis towards V but she kept her mouth shut. On the second time D's penis touched V's lips. V told friends and the police were informed. The events had destroyed V's trust in men and boys. D made confessions in interview. D was aged 50 and had no relevant convictions. Held. V was particularly vulnerable. The offending had had a shattering effect on V. The attempted rape was Category 2A (starting point 10 years). There was other sexual offending to include. We start at **15 years**, so with plea 10 years not 12.

Sex Offences: Children, With

Seeking sexual activity with children

R v Stilwell 2016 EWCA Crim 1375 D pleaded (full credit) to Sexual Offences Act 2003 s 14 (arranging the commission of a child sex offence) and other sex offences. In 2011, D was dealt with for 23 indecent child photo offences and was given a SOPO. He had breached that seven times. In 2014, one breach was accessing a paedophile ring on the internet, (28 months prison). Five weeks after his release, D posted an internet message posing as a 'Naturist dad who was open-minded'. It was spotted by police and they corresponded with D, posing as a father with a 9-year-old girl, V, and a 12-year-old boy. D responded asking whether the girl had a 'cute pussy' and the boy had a 'nice penis'. He also asked whether the children indulged in oral sex. More communication continued with D saying he would 'love to share' the children. D said he would like to meet V and 'suck, lick and play' with her. A meet was arranged and at the meet D said he wanted to lick V and he didn't want full sex at this meet. He also said he wanted mutual masturbation with the boy. D was arrested and police found trading cards for a Disney film and sweets in his car. The Judge described D as a 'deeply entrenched' paedophile with a history going back to 2001. On appeal 'dangerousness' was agreed. Held. The category was 3A and not 2A. With the number of aggravating factors, we think it can be moved to the top of Category 2. The absence of actual harm is not the sole criterion of which harm is assessed. Intended harm is something judges must have regard to. However, as it was a section 14 offence [and not the full offence], 9 years was not justified. 3 years for the breach of the SOPO was justified. If there had been consecutive sentences, 6 years for the section 14 offence and 18 months for the SOPO offence would have been justified making 7 ½ years. With plea and a global sentence, we substitute a 9 not 10-year extended sentence (**5 years** not 6 custodial term with a 4-year extended licence).

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