

# Banks on Sentence

## Sentencing Alert No 142

17 November 2016

### Court of Appeal

#### ***Advice and grounds Excessively long***

*R v James and Selby* 2016 EWCA Crim 65 para 49 S, a litigant in person, lodged many hundreds of pages of repetitive handwritten correspondence, grounds and purported fresh evidence. The Registrar directed him to consolidate his grounds into no more than 2 or 3 pages. S's response was to lodge a further 50 pages in respect of conviction and to fail to consolidate 150 pages in respect of sentence. Held. Grounds of Appeal in excess of 100 pages are simply not acceptable. Voluminous Grounds are not infrequently, (but not always), found when the applicant is a litigant in person. They can be unnumbered, handwritten and settled in a large variety of documents. In *R v Clague* 2015 EWCA Crim 284 a litigant in person had lodged over 1,000 pages of grounds of appeal and been ordered to lodge a summary. The court identified the grounds from that summary document only. Lengthy legal documents offer very little assistance to the Court. In *Tombstone Ltd v Raja* 2008 EWCA Civ 1441 it was said, "Practitioners ... are well advised to note the risk of the court's negative reaction to unnecessarily long written submissions. An unintended and unfortunate side effect of the growth in written advocacy... has been that too many practitioners, at increased cost to their clients and diminishing assistance to the court, burden their opponents and the court with written briefs." We invite the Criminal Procedure Rule Committee to consider these issues.

### Burglary

#### ***Persistent dwelling burglars***

*R v Jones* 2016 EWCA Crim 1358 D pleaded to burglary. The week before Christmas V1 and V2 were watching television in their house when they heard their patio door being closed. They investigated and found D standing at the garden gate about 1 metre from the kitchen doors. V1 pursued D and eventually caught and detained him despite D throwing 3 punches towards him. D had stolen a mobile phone and £60 cash. D said "I haven't done anything", in reply to the caution but later made full admissions. D was aged 50 and has been sentenced on 60 occasions for 217 offences including 115 of theft and 11 dwelling house burglaries. The defence said the confrontation was not initiated by D. Held. We start at 4 years not 5, so **32 months** not 40.

### Fraud

#### ***Forgery frauds***

*R v Chinnappah* 2016 EWCA Crim 1369 D pleaded to conspiracy to defraud and to money laundering. A package from Hong Kong addressed to D was intercepted. It looked like Christmas tags but hidden within were 225 packets of 20 first class stamps that were high quality counterfeits. Their face value was £16,200. The package was resealed and delivered to D. D signed for it using a false name. The house was owned by a friend of D's who was abroad and had asked D to check the property from time to time. D was arrested and his phone was found to contain text messages that showed he had sold £17,000 worth of stamps to three individuals over three months. The value of the fraud included £16,999 in cash at D's home making £33,000 in all. The Judge accepted that D was a middleman and did not stand to make the full benefit. D was aged 36, had no relevant convictions and had two young daughters who both suffered from ill health. D had been planning to give up his business and become the main carer for his children. Held. It was a Category 3 case (with a reduced starting point as the loss was less than the starting point figure). The offence could be said to be aggravated by the length of time the fraud lasted and that offence crossed borders. We have regard to his good character, the child difficulties and the 10-month delay while others were tried. We start at 18 months not 4 years. We reduce that to 15 months, so with plea, **10 months** concurrent for each, not 2 years. Compensation order to remain.

## **Offences against the Person Act 1861 s 18**

### ***Relationship attacks Men attacking wives etc.***

*Att-Gen's Ref 2016 Re Abercrombie* 2016 EWCA Crim 1675 D pleaded to section 20 and was convicted of GBH with intent. In October 2015, after D's six-year relationship with V broke up, D harassed V and drove dangerously at her. D was arrested and granted bail, including a condition not to contact V. In December 2015, in the evening, in Wallesey, V was out walking with her sister, S, and S's dog. D approached V in his mother's car and asked V why she was ignoring him. V reminded D of his bail conditions and there was an argument. D began to drive away and S shouted out. D stopped the car and kicked the dog. D went back to his car and took a golf iron out of his boot. V and S ran off. D chased V into an alleyway and swung the iron aiming for V's head. V put up her right arm and the iron hit her elbow, causing a fracture, bruising and swelling. D raised the club again above his head and V bent over to protect herself. The club hit V's buttock causing a large bruise. V managed to run away and D drove off. D left his car at his home and drove to Scotland where he had relatives. Six days later he surrendered to the police. V's arm was put in a cast and V needed help dressing and bathing. There was a psychological impact and V was frightened to go out alone. D was now aged 29. He had the following convictions: a) in 2004, common assault against his mother, b) in 2009, ABH and criminal damage, community order, c) in 2010, harassment of a former partner, community order and c) the matter he was on bail for, 6 weeks prison. At trial, D presented an entirely contrite and remorseful figure. The Judge took into account a) the plea to section 20, saying, "You admitted the facts broadly speaking at a very early stage." and b) the mental turmoil he was in at the time. Held. There were significant aggravating factors. It would not have been untoward to pass 7 years. However bearing in mind the Judge wanted to give the fullest weight to the mitigation, **6 years**, not 3.

## **Prostitution Offences**

### ***Causing/Controlling etc. prostitution No threats or violence***

*R v Nekudova* 2016 EWCA Crim 1585 D pleaded guilty to two counts of controlling prostitution for gain. Two women were trafficked to the UK for prostitution and they were given D's contact details. D contacted them on Facebook and assisted in creating Internet profiles for them. P, who was in charge picked them up from the airport and later collected the money obtained. D controlled their 'everyday activities'. The women commenced work the next day without clarification of their earnings. D advised the women and the clients of the locations to meet and the cost and services to be provided. The two women had second thoughts about the demands and had each seen 10 men per day. They began turning clients away and P told them that this was unacceptable. The police stopped the two women in a vehicle with P on the day after. Police found notebooks where D kept a record of fees for the prostitution business. Although the

indictment period covered five days, it was accepted for the applicant that she had worked for longer and was paid £400 per month. D was aged 36 and had no previous convictions. The pre-sentence report said the risk of D re-offending was '12% within 2 years'. The Judge said, a) the two women were vulnerable, b) D's function had been vital, c) there was remorse, d) she had a child and e) the category was 2B, with a starting point of 1-year custody. Held. D was a young, troubled woman, of positive good character, with parental responsibilities and someone who had been directed, and to an extent, controlled by others. We suspend the 8-month sentence and add 80 hours unpaid work.

## **Sexual offences: Assault**

### ***Victim at work***

*R v Jones* 2016 EWCA Crim 1339 D was convicted of sexual assault. D had used a tanning salon for 6 months. After a tanning session D, when fully dressed, walked passed the manager of the premises, V, in a small corridor. He grabbed her upper arm and pulled her back towards a room saying, "Fucking get back here." D pinned V up against a wall despite her kicking and screaming. He failed to kiss her but the side of his face touched her head. D then suddenly stopped and walked out as if nothing had happened, saying he would see her next week. V was left crying hysterically and had difficulty in breathing. She said D was like a different person to the one she had known and he had had a frightening look in his eyes. She was the only member of staff on the premises and D had known this. V's confidence was severely damaged. D's phone showed an interest in 'forcible sex' websites with names such as 'rape sex videos' and he had viewed videos of V in her underwear online. D was aged 37, had no previous convictions and a good employment record. The pre-sentence report spoke of an inclination to make unwilling females participate in sexual activity. Held. The victim was alone and vulnerable. It was in Category 2A. Whilst no private part of V's body was touched, it was still an unpleasant and aggressive sexual assault with V being targeted in advance but **15 months** not 21.

## **Supply**

### ***Death occurs***

*R v Jones* 2016 EWCA Crim 1635 D pleaded to supplying methodone. The evidence incriminating him was taken primarily from his interview record. D had a prescription for a daily dose of methodone which, on week days, he drank in front of the chemist. On Friday, he received two extra 35 ml bottles of methodone for Saturday and Sunday. V made repeated requests to D for some methodone. Having received his weekend allowance D agreed to sell V a 35 ml bottle for £3.50. D was not present when V consumed it. V was found dead in his bed. He was aged 34, involved in substance abuse and a father of a 4-year-old child who was extremely close to him. V was not tolerant of methodone. He died because the methodone and ethanol, the by-product of alcohol, caused difficulty in breathing, congestion in his lungs and haemorrhaging to his blood vessels. V's mother explained the massive hole in her life V's death had caused. D was now aged 29. In 2003, he received 3 years' detention for arson. In 2006, he was given a Hospital Order for ABH. The pre-sentence report said he took responsibility for his offending. It was said custody would disrupt his mental health care. The psychiatric report said D was suffering from a severe mental disorder, namely paranoid schizophrenia and other mental health problems. It too warned that a custodial sentence would be detrimental to his mental health. The medical consensus was that D was vulnerable. D had made improvements to his life and had stopped taking methodone. The Judge assessed the case as Category 4 with a significant role. The aggravating factor was the death, even though D neither intended it or foresaw it. The Judge took as mitigation that a) V had requested the drug, b) it was an isolated incident, c) there were no relevant supply convictions and d) the pre-sentence report and the psychiatric reports. The defence asked for a Suspended Sentence Order. The Judge said the death meant that was not appropriate. Had it not been for the mitigation, the sentence would have been **4 or 5 years**. With the mitigation he started at 3 years, and with the plea at the PCMH made it **27 months**. Held. That approach was faultless.

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