

Banks on Sentence

Sentencing Alert No 95

19 December 2014

Cruelty to children

Violence to child aged 2-5

Att-Gen's Ref No 59 of 2014 2014 EWCA Crim 1926 D was convicted of cruelty to her children (x3). V1 was 12 years old, V2 years old 10 and V3 18 months old. V1, although terrified of the possible consequences flowing from her allegations, disclosed that D had hit her twice with a bottle, causing swelling and bleeding. D had assaulted V1 from the age of two including rubbing chillies in her eyes and vagina, pulling her hair and biting her hands, leaving her unable to write. Punishments were meted out for minor misbehaviour. It was also disclosed that D had assaulted V2 and V3 over a sustained period. When the victims were examined at hospital, V1 then lied about the multiple scars on her forearms as D was listening. A doctor concluded the scars were consistent with being burnt with hair straighteners. V2 has several small scars on her upper body which were compatible with being stabbed with a pen and hair straightener burns. V2 was once punched, her hair had been pulled and she was locked in the bathroom on one occasion. D told V2 to give false explanations to cover up the injuries. V3 was found uninjured but, when she was a baby, had previously been repeatedly slapped on the face, back and legs and was thrown across the bed. At the hospital D made a phone call in Bengali and when police later called, the bottle used against V1 was missing. The children were then placed in foster care, but during a supervised visit, D told V1 not to say anything. D's violence left her children "really scared". D was 35 at sentence and of good character, but posed a serious risk to children. She provided supposedly innocent explanations for the injuries and showed no remorse. Held. This was a deeply troubling breach of D's duty towards her own offspring and her violence was sometimes administered after a period of reflection. There were aggravating factors. The psychological scars will probably be profound and the physical scars will be born throughout the older children's lives. This case is, at the least, towards the top end of the second bracket. **5 years**, not 2 1/2 in all.

Offences Against the Person Act Section 18

Police officers on duty as victims

Assault with intent to resist arrest

R v Haywood 2014 EWCA Crim 2006 D pleaded (20% credit) to GBH with intent to resist arrest, aggravated vehicle taking and going equipped to burgle. During his day release from prison, D borrowed a stolen car. Police later tried to intercept D but he sped away, driving quickly through a red light. In the opposite lane was another marked police car which was waiting for D and the pursuit car. Two officers got out of

the waiting car to get the 'stinger' device, used to stop cars, out of the boot. One officer, V, attempted to deploy the stinger in front of D, but it failed to open. D then swerved, trying to drive through a gap between the police car and other vehicles and hit V, throwing him into the air. D was travelling at 50 mph in a 40 mph zone. He then failed to stop and carried on at 70 mph, eventually crashing and then running away. V suffered a severe head injury with extensive skull fractures and required operations to relieve pressure on his brain. He also had multiple fractures, a partial lung collapse and was in a medically-induced coma for several weeks. V's prognosis became uncertain and his condition variable. At sentence, V was significantly disabled and in a state of severely reduced consciousness with an uncertain future. The accident also affected V's family and his police colleague. D expressed remorse and did not intend to cause GBH nor did he foresee V's injuries. He had a poor record with 30 offences, some for motoring but no violence. Held. Recklessness of this sort does not fall far short of intent. Remorse can carry little weight when balanced with the dreadful harm which has been caused. Although the section 18 guideline does not cover this offence, it is to be noted that Parliament has imposed the same maximum sentence and so reference to the section 20 guideline was inappropriate. **8 years 9 months** upheld consecutive to 3 months for the burglary charge. This sentence was consecutive to a 6-year sentence D was serving for a conspiracy to burgle count.

Sex offences

Images etc.

Victim aged 10+ 3+ years' imprisonment

Post-guideline case

Att-Gen's Ref No 72 of 2014 2014 EWCA Crim 2003 D was convicted of five specimen indecent assault counts. D was V's step-grandfather and V was between the ages of 11 and 16. D had always been physically affectionate towards V but on one occasion, when V was 11, D put her on his knee and, placing his hand inside her knickers, D digitally penetrated V, hurting her. Afterwards, D asked V whether she had been "enjoying it". On another occasion, D stroked V's genitalia and penetrated her, pretending to be affectionate. There were nine or ten incidents of abuse, with some occurring when V's family was present but D would disguise his actions, for example, by using a cushion. On the final occasion, D was babysitting V and stroked her under her bedclothes and at some point, either then or on a separate occasion, exposed his penis to her. D was aged 67 on appeal and was of good character, but expressed no remorse. V felt that her childhood had ended when D began the abuse and she had become shy and wary of contact with males. Held. **6 years**, not 3 1/2 concurrent.

Historic Post-guideline case

Att-Gen's Ref No 61 of 2014 2014 EWCA Crim 1933 D was convicted of seven indecent assaults. One count was a specimen count against V2. In the late 1980s D was 15 or 16 and he would lie naked on top of V1, his step-brother, make him remove his clothing in bed and rub up and down until D ejaculated. He told V1 not to tell anyone and this occurred over a 12-month period. This was similarly perpetrated against V2, D's step-sister, but over an 18-month period. In addition, D had touched V2's vagina and had rubbed his groin against V2's under the pretence of playing a game. The offences took place when their parents were out of the house and D was left in charge. V1 was five and V2 six or seven at the time. The abuse ended when the V1 told his mother, coinciding with D leaving for the Army at 16. D admitted the offences to his parents who then sought advice from a vicar. V1 and V2 received counselling and the

Judge found the offences to have had a profound effect. D was now aged 42 and had a conviction for other sexual offences from 2010 (taking a child, who was 15, without authority and meeting her following grooming when he was a teacher). D was made subject to a SOPO which he breached three years later by still being in contact with that victim. It was then varied when she became an adult, to permit contact between the two. He was currently engaged in a Sexual Offender Treatment Programme (SOTP), and had continued on the community order imposed then, but now breached. The PSR noted that custody would be of insufficient length to enable work to occur with D to reduce his risk of harm. Research showed that non or partial completion can increase the risk of re-offending. There was some acceptance of guilt. Held. D's conviction shows that, many years after the [instant] offending, he was prepared to indulge his proclivities at the expense of his responsibilities. To bring the SOTP to an end by imposing immediate custody would not only frustrate such work, but might exacerbate the situation. This is a difficult and unusual case. We conclude that the interruption of the SOTP, with concomitant exacerbation of the situation, is an exceptional circumstance justifying the suspension of the sentence. **18 months, suspended for 2 years** unaltered.

Theft

Breach of trust

R v Nawara 2014 EWCA Crim 1912 D pleaded (10% credit) to theft (×2). D had entered the UK illegally and was employed in a restaurant at £3 per hour. The manager, V, asked D to deposit cash, £10,180 for the restaurant and £200 for V's personal benefit. D made off with the cash and V sent him text messages with Koranic references to peace and mercy, albeit that D did not know of them until his trial. V saw D as his friend. D had helped him significantly and had lent money to him. A month later, V spotted D and gave chase. D was stopped, arrested and gave a no comment interview. D considered returning the money and was remorseful, but gave large amounts to his friends who had supported him and spent some on consumer goods. D believed V had taken advantage of him and had also refused to give D time off, in line with a doctor's recommendation, following a work-related injury. V had lost sleep due to financial worries and felt used and abused by D. D was aged 27 with no antecedents. He was Palestinian but had moved to Libya, aged four. Due to political difficulties and war he had been smuggled into the UK. The Judge placed this into Category 2 as D had breached a high degree of trust. Held. Giving an employee over £10,000 in cash to take to the bank did involve placing in him a high degree of trust. We cannot agree that there was justification for giving consecutive sentences as the money was given to D on the same occasion. This was a single act of criminality. Starting at 27 months, **2 years** and **3 months concurrent**, not 39 months in all.

Shop theft

R v Raisis 2014 EWCA Crim 1887 D pleaded (full credit) to two thefts from jewellers' shops. D also breached a suspended sentence, which was activated concurrently. D asked to look closely at a ring worth £11,500 and then ran off with it. He then, with an accomplice, stole five rings and a chain, though he later handed the chain back. D had a very poor record, including violence offences and five dishonesty offences, but this was an escalation in offending. He was a drug user and assessed at high risk of reconviction, albeit that he had managed to break his habit. Held. The fact that D's

offences were motivated by drug addiction is not a reason for reducing a sentence. **3 years** concurrent, not 3 years and 18 months consecutive.

Violent disorder

Football offences

See also: *R v Coles and another* 2014 EWCA Crim 1842 (D1 and D2 each pleaded (full credit) to affray and D2 to violent disorder. Glass items were thrown and the police targeted. 139 chairs were damaged and there was a pitch invasion before the match ended. Lasted 5 hours. D1 confronted police, threw a punch and pulled at police shields and was on a suspended sentence. D2 kicked a police woman to nearly fell to the ground, threw a chair and had a previous football offence. **20 months** and **2 years** upheld.)