

Answers by Robert Banks, the barrister who writes Banks on Sentence and Banks on Sentence Compact. The main work is the second largest selling practitioner's criminal text book and is used by judges for sentencing more than any other. The main work is now in an App for iPads, available from the Apple iTunes Store. It is priced at £94.99 and will be regularly updated until March 2013.

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Q The relationship with my partner has always been pretty volatile. One night, she really wound me up. I lost it and smashed her jaw. She was taken to hospital and went to the police. I'm going to plead to section 18. I want her back and I think it would help if I say I was out of order and it won't happen again. I want to write her a letter but my brief is not keen. What do you think?

A Interestingly, I note that you don't say you are sorry, only that you were 'out of order'. Unless there is some regret, any letter is pointless. However, if you are sorry, then I see the position as follows.

The starting point for most people is to look at their bail terms. Normally, bail terms include a condition not to approach the victim, directly or indirectly. You, however, are in custody. She is no doubt a witness so any contact with her will be treated with suspicion. I don't know the full circumstances but on what I do know I would suggest you write the letter so that your advocate can see your feelings. You should discuss it together. It could be used in mitigation, shown to the judge, and given to the prosecutor. Alternatively, your team could send it to the prosecutor, who could then decide whether to send it on.

Direct contact is dangerous and sometimes unlawful. The probation officer may say you are only trying to manipulate the victim and are writing the letter for your own ends. It is better if you express your regret to the probation officer so that he or she will not say 'you have not addressed your offending', which is a recurring mantra of theirs.

Q I am 53. I was sentenced to detention under section 91. Is my sentence unlawful?

A Yes. Section 91 can only be passed on those under 18.

Q I was finding it very difficult to make ends meet. I didn't like my job in a care home and felt that I was being exploited. I got friendly with this resident and she started to trust me with her money. I was given access to her account against the care home rules. She treated me like her daughter. The temptation was too great and over two years I took about £9,000. I pleaded guilty and the Judge gave me 18 months. I note that the guideline for theft breach of trust cases is 18 weeks. Surely I must have an appeal?

A A starting point is only a starting point and judges and magistrates need to sentence taking all the factors into account. The range for this offence is high-level community order to 12 months. However, your case is aggravated by the exceptionally vulnerable victim, the gross breach of trust and the large number of thefts over two years. Yours is one of the few types of case that will often be sentenced outside of the guidelines because of the public revulsion of it. I would consider that an appeal is likely to fail.

Q I am accused of rape of a girl under 13. I'm 17 and my mates are of that age too. She told us she was 16 and everyone thinks she looks 16. Even the prosecutor said so. In fact, she was two weeks off her 13th birthday. She approached us and took us to a shed where there was a mattress. All three of us had sex with her and she initiated it all. Frankly, she was more experienced than I was as she had slept around most of the estate.

I was the only one to admit it and because the girl is under 13 I'm told it's rape and the sentence is sky-high. How can that be right?

A These sky-high sentences are designed to protect young girls. The fact that the sentences are sky-high will not stop the girl from carrying on her behaviour. They wouldn't have stopped you as you didn't know her true age. It is rape because at that age, she is incapable of giving consent. Adults who rape young girls with force clearly do need long sentences, but your case is very different.

It is an odd situation when a 'victim' takes the lead in the activity but the person playing the non-lead role is the only one to be punished.

The relevant rape guideline lays down that for those who commit a single offence of rape when the girl is under 13, the starting point before plea is 10 years, with a range of 8 to 13 years. Clearly you would receive a discount for your age and the surrounding circumstances. Similar cases have been dealt with by the Court of Appeal with 12-month Detention and Training Orders.

You need a good report, a well-prepared speech in mitigation, an understanding judge and a fair prosecutor. I don't know enough to give you a prediction.

Prize draw

Thanks to those who wrote in about the availability of Banks on Sentence in prison. The winners of the draw are: M Hook of HMP Gloucester, J Bagoutie of HMP Leeds, J Watson of HMP Preston, and M Patterson of HMP Wandsworth. I will send them the book.

An interesting problem in prison seems to be theft of the book, and people tearing out pages of the book. In the legal bookshop near the Law Courts in London, Banks on Sentence is the most shoplifted book along with an immigration book. I don't suppose the thieves look at the shoplifting section!

It is usually not possible to determine whether a particular defendant has grounds of appeal without seeing all the paperwork. Analysing all the paperwork is not possible. The column is designed for simple questions and answers. Please start your letter with the question you want answered and send the letter to Inside Time marked for Robert Banks. Please make sure your question concerns sentence and not conviction or release. Unless you say you don't want your question and answer published it will be assumed you don't have an objection to publication. No-one will have their identity revealed. Facts which indicate a prisoner's identity will not be printed. Letters which a) are without an address, b) cannot be read, or c) are sent direct cannot be answered. Letters have to be sent from Inside Time to a solicitor. If your solicitor wants to see a previous question and answer, they are posted on the website, www.banksr.com.