

Robert Banks, a barrister, 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 May 2012 edition is now published. This edition is now available 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. The book is classified by the Ministry of Justice as a core judicial text book. A supplement to the compact edition has just been published.

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Q I am serving a 3½-year IPP sentence. I was being transferred to another prison because I am a 'nuisance prisoner'. Those in the van noticed the escape hatches were all open. I climbed out and was away for 10 days. Two others were caught in a few minutes. I got 8 months consec and my parole hearing was moved. The other two received concurrent terms. Do I have a shout in appealing, as my sentence was inconsistent with the others? All the solicitors I have approached say I wouldn't get the parole date moved so there is no point. What prisoner serving IPP wouldn't clamber out? Surely the prison is at fault?

A There are a number of issues here. The consecutive sentence is lawful. The sentence is not determined by deciding who is at 'fault', although I can understand your grievance. The factors the judge should consider when sentencing for escape cases include: i) the nature and the circumstances of the crime for which you were in prison, ii) your conduct while you were in prison, iii) the methods employed in effecting escape, and in particular whether any violence was involved and whether there was extensive planning and outside assistance, iv) whether you surrendered yourself and how soon after, what else you did while you were at large, and v) whether there was some kind of personal pressure which persuaded you to escape. Immediate consecutive sentences of imprisonment are considered appropriate in all cases as a clear deterrent to others.

Sometimes the Court of Appeal intervenes in a multi-handed case because of disparity. Here, the sentences for the others will not influence the Court of Appeal as they will consider a concurrent sentence inappropriate. Appeals are only possible when a sentence is arguably manifestly excessive. Eight months is not (on what I know) likely to be considered that. Interestingly, someone who walked out of an open prison had a 10-month consecutive sentence upheld.

Q My Judge was considering IPP. The facts about my previous conviction given by the CPS were wrong. I wanted to speak to the Judge about it. The Judge said it wasn't my turn. Do I have the right to speak to the Judge?

A In my experience police CROs are frequently wrong. The law tries to avoid the problem in your case happening. The details of the CRO should be prepared for the first hearing so the court can make a decision about bail. The defence must raise objections to the list 'as soon as possible'. The details must be checked by the police 7 days before the hearing. If the police want to give extra details about the convictions, those details should be revealed to the defence before the hearing, preferably in writing. The defence can then correct them before the hearing. If they are disputed, the prosecution should check them again and if necessary withdraw them or prove them.

One particular problem is that references to previous convictions in pre-sentence reports are frequently wrong. With the report arriving on the hearing date and the writer elsewhere, unfairness can easily occur.

You have the right to address the court, but you do have to wait until it is your turn. However, if you are represented your advocate exercises that right for you. You do not have the right to speak as well as your barrister. Clearly the advocate in your case would need to speak to you before he or she addresses the court so your points can be put across.

Q I was convicted of conveying a SIM card into prison. Prison staff found the card in my jeans when I went to see my boyfriend, who is a Cat A prisoner. I have no previous

convictions. I received 18 months. Prisoners are allowed to use phones in prison so it can't be that serious. Should the sentence have been suspended?

A There are as yet no guidelines for this offence. I understand prison phones are monitored and recorded. Mobiles are seen as being able to 'encourage or incite the commission of other offences'. The aim of the courts is to deter others from conveying articles into prison. Immediate imprisonment is seen as providing more of a deterrent than suspended sentences. In May 2012, a defendant who was pregnant at the time and had since given birth had a 12-month sentence for this offence affirmed notwithstanding the child was taken away from her. The Court said the 12-month sentence would no doubt have been longer if it had not been for the baby.

Q While I was serving a 10-year extended sentence, my 9-year-old daughter was groomed, lured into a wood and raped. The 21-year-old claimed she was a 'willing little slut'. She was not willing. Can a 9-year-old give consent? No-one attended the trial but her mother was told he received 7 years. Can I get him resentenced? 7 years' IPP would be better.

A I suppose this is every prisoner's nightmare. Not being there when you are needed and wondering whether, if you had been there, the crime could have been prevented. A 9-year-old cannot give consent. If a barrister claimed this victim was a 'slut' the judge would intervene. There are rules to protect witnesses and victims from this sort of insult to a child. It is not permitted.

The starting point for rape of a child aged under 13 is 10 years' custody or 13 years if there is abuse of trust or one of a number of listed aggravating factors. The starting point for a 9-year-old victim would be more. The exact sentence would be determined by many factors which the Judge heard about, which neither you nor I know about. It may be the Judge started at 12 years. With an early plea this would reduce it to 8 years. Perhaps there was something else. I simply don't know.

Anyone, including prisoners, can ask the Attorney-General to ask the Court of Appeal to review an unduly lenient sentence. However, the time limit for review has passed and it cannot be extended, so the answer is the sentence cannot be reviewed now.

Asking Robert questions

Please make sure your question concerns sentence and not conviction or release. 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. 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 reader'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.

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