

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 latest edition, published in May 2012, is also available in an App for iPads 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. If you have access to a computer, you can follow us on [Twitter: @BanksonSentence](#)

Q I pleaded guilty to conspiracy to supply drugs. It is a mammoth case. My sentence was put back while others were tried. There was a long delay before there was a judge available to hear the case. Someone changed their solicitors so the date was put back. The first jury failed to agree and there was a retrial. In all, I will have spent two years awaiting sentence. Will I receive a discount for this delay?

A Yes, you should. Under the European Convention on Human Rights art 6(1) 'Everyone is entitled to a fair and public hearing within a reasonable time'. The problem of delay is less than it used to be because courts recognise the importance of sentencing people within a reasonable time and are more flexible. Although it is preferable for all defendants to be sentenced together, the opposing interest that people should not wait too long for their sentence often now takes precedence. When people are sentenced early, sometimes judges say their sentences will not influence the sentences of those convicted later on when more facts are known. Perhaps wiser judges don't say that, but give short sentences to those that plead, in the hope that others may be tempted to plead, saving many tens of thousands of pounds. Not only is there that advantage, but judges also know that guilty pleas can sometimes be used to make the case stronger against those pleading not guilty. Also if the convictions go in evidence it can cause real difficulties for those fighting on.

Where there is a long delay, the going rate is about a year off. In *R v Ali and Hussain* 2008 EWCA Crim 146, the offences took place between 1997 and 2001. The convictions were quashed by the Court of Appeal in 2005. The defendants were convicted again. They appealed to the Court of Appeal and the hearing was in 2008. With that delay, the Court thought a 2-year discount was appropriate.

Q I am having to plead to possession of a prohibited weapon (a revolver) and ammunition. The ammunition was for the revolver. I am a single mum on an estate where a drug gang has most in their grip. I was threatened that if I did not look after them I would be harmed. It was only for a few weeks and I was only going to receive a small reward for doing it. I have never been in trouble before. I am told that the penalty is a minimum of 5 years unless I can show exceptional circumstances. Surely this must be exceptional? My children need me.

A The first matter is whether the judge believes you. For the judge to use facts adverse to you, he or she must be sure they are correct. In *R v Rehman and Wood* 2005 EWCA Crim 2056, the Lord Chief Justice decided that circumstances are exceptional if to impose the 5-year minimum sentence would result in an arbitrary and disproportionate sentence. There are two approaches to this. The first is believing: a) storing guns for criminal gangs is exactly the situation where Parliament would expect the deterrent minimum sentence to apply, b) mothers should know it is dangerous for young children to reside somewhere where a gun and fitting ammunition are hidden, and c) if these facts made the case exceptional, criminal gangs would always find someone vulnerable to hold their guns and the deterrent regime of minimum sentences would be made ineffective. The second approach is to consider that the welfare of the children is paramount and needs to be accommodated. Here the culpability for you is reduced. The combination of circumstances, namely the children, the pressure, your vulnerability, your plea and your good character collectively make the required exceptional circumstances. Courts tend to use the later approach to prevent an unjust 5-year sentence being passed and the first approach to justify a significant custodial sentence to deter others. Examples where this approach has been applied are *R v Edwards* 2007 1 Cr App R (S) 111 (p

669), *Att-Gen's Ref No 64 of 2010* 2010 EWCA Crim 2956 and *R v Jones* 2011 EWCA Crim 1448.

Q I have a crack habit and when I am out I have to steal to pay for it. I steal briefcases and bags and hope there is money or cards in them. I never know what I am going to find. In my present case I stole a package. I didn't know what was in it. When I tried to sell it, it was spotted as a painting said to be worth £¼m. Will I be sentenced on the basis of what it is worth or what I thought it was worth?

A Both. The Judge will first determine whether you did in fact know. If he or she thinks you might not have known, you must be sentenced on the basis that you didn't know. Next he or she will determine whether you discovered what it was worth before you were caught. If the answer to both questions is 'No', the fact it was so valuable will still be taken into account. In sentencing, your intention and what in fact you did are both taken into account. Last year M, working with two others, crept up on a world-famous violinist, who was having coffee with a friend at Euston station, see *R v Maughan* 2012 EWCA Crim 692. M stole a package which contained her violin worth £1.2m and her two bows worth £65,000. The violin was insured for less than its true value. M researched the maker, Stradivarius, and the date, 1698, at an Internet café. M then tried to sell the goods for £100. M was arrested but the violin and bows were never found. M had 59 previous convictions including many for theft. He received ⅓ off for his guilty plea. The Court of Appeal reduced his 4½ year sentence to 3½ years. They took into account the value of the violin and bows and also the devastating loss it was for the victim. So you can see M received a sentence perhaps nearer to what it would have been had he known the true value than if he had stolen goods of little value.

Asking Robert questions

Please make sure your question concerns sentence, prison law or release and not conviction. 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. 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.