

## October 2013 copy for November 2013

Robert Banks, a barrister, writes *Banks on Sentence*. It is the second largest selling practitioner's criminal text book and is used by judges for sentencing more than any other. The book is classified by the Ministry of Justice as a core judicial text book. The current edition is also available for tablets and computers. The print copy costs £96 on the web and there are regular updates on [www.banksr.com](http://www.banksr.com) If you have access to a computer, you can follow Robert on [twitter](https://twitter.com/BanksonSentence): [@BanksonSentence](https://twitter.com/BanksonSentence)

**Q** I tagged along in a group selling coke. I was not the organiser. It was easy money. My arrest was the most traumatic day of my life. But it didn't end there because I have found it very difficult to deal with the court appearances. I have two daughters and I am terrified that children at their school will find out about me. I have become very depressed and I am on pills. Will this significantly reduce my sentence?

**A** No. Judges are continually told a defendant is depressed. Doctor's letters are handed up which say that pills are being prescribed. In most cases it makes no difference whatsoever. Judges see that their job is to apply the guidelines. In drug cases personal mitigation carries little or no weight. Three defendants equally involved but with different or no significant personal mitigation usually receive the same sentence. It is easy to see why non-severe depression makes no difference. First, without belittling the bad time you are having, anyone can go to a doctor, explain how bad they are feeling and be given anti-depressants. If everyone with a doctor's letter received 6 months off, most defendants would head to a doctor as soon as they could. Second, judges frequently see the depression as being linked to the court appearances and case anxiety. So they think the passing of the sentence will end the uncertainty and the depression will, with pills if necessary, recede.

Different considerations arise for mentally disordered defendants. Here what is necessary are full doctor's reports. Hospital Orders can be passed even where a statutory minimum sentence applies and a significant prison sentence would otherwise be appropriate. The Sentencing Guidelines Council Overarching Principles guideline 2004 para 1.25 lays down that 'Mental illness or disability is a factor indicating significant lower culpability'. Courts attach importance to curing the defendant, not just punishment. However, since *R v Wood (No 2)* 2009 EWCA Crim 651 the discounts have been less.

**Q** I was sentenced for indecent photos. They were only seen by me and no one was put in danger. I pleaded and was given 12 months' prison. I was also barred and put on the children list and disqualified from working with children. What is the point of being doubly barred?

**A** As I see it there is no point at all. The disqualification order may be an unlawful order. Barring means being entered on one or both of the lists kept by the Disclosure and Barring Service. One list is called the children barred list and the other one is called the adults barred list. For some offences the defendant can apply not to be barred. For the rest, the defendant can't apply. Barring is not dependent on an order of the court. It is automatically triggered by a conviction. If the Judge forgets to tell someone he or she is barred, he or she is still barred. Different considerations arise with the disqualification from working with children. These orders can't be passed after 16 June 2013. The order had been partially repealed on 12 October 2009. It was kept alive as it was thought there was a gap between when a sentence was passed and when the Disclosure and Barring Service considers the case. Clearly that is no longer a concern.

**Q** I have six pages of convictions and I seem to have spent most of my adult life in prison. When released, I last a few weeks and then commit another burglary. One probation officer said I lacked the skills to manage outside prison. I just thought, I expect she doesn't have the skills to manage inside prison. But if all your friends are prisoners or ex-prisoners, it is more difficult than you would think. Well, I am back here again. The officers all joked as to when I

would be back. Part of me finds prison safe. I am fed and housed and do not have the daily grind of trying to survive. Part of me thinks there must be more to life than being locked up but I can't seem to find it. However, the sentences seem to be getting longer and my barrister just says you'll get the minimum sentence plus a bit. Reports no longer treat me as a person. They're all about victim empathy. I couldn't really understand my barrister. What is going on? Will the sentences just get longer and longer?

**A** I suspect the answer is yes. While you have been offending there have been a number of changes about the way you are treated by the criminal justice system. The first one is the minimum sentence for a third dwelling burglary. This means that normally someone indicted with burglary with two burglary convictions has to receive at least 3 years or if they plead guilty at least 80% of 3 years. The second burglary has to have been committed after the conviction for the first burglary. The third burglary has to have been committed after the conviction for the second burglary.

The previous sentencing policy meant that every now and then the defendant was given a probation/community order to see if that would work where prison had failed to deter them. That hardly ever arises now. The second change is that repeat dwelling house burglaries receive longer and longer sentences. I suspect judges look at the previous sentence and consider that it didn't work. Each time the repeat burglar is treated more harshly. One burglar, who had already received 12 years, 9 years and 6 years for burglary, discovered that the Court of Appeal thought 7½ years was appropriate for one burglary, whereas without the convictions the sentence would have been only 18 months, *R v Marcantonio* 2012 EWCA Crim 1279. Another burglar who preyed on elderly and vulnerable victims had 26 burglary convictions. He entered the home of a woman aged 77, who walked with a Zimmer frame. He had only been released from prison 'a matter of weeks before'. Although nothing was taken, the Court of Appeal thought a starting point of 12 years was appropriate, *R v Brooke* 2012 EWCA Crim 1642. It is true that most if not all repeat offenders receive less than 12 years. The third change is that personal mitigation is worth less now than it was. The deciding factor is the offence, not the defendant. The fourth change is that probation reports are viewed from the needs of the victim and society rather than being about the needs of the defendant. The fifth change is that the legal aid rates are now so low that advocates, if they are going to survive, cannot spend as much time with their clients as they once did.

### **Asking Robert and Jason questions**

Please make sure your question concerns sentence, prison law or release and not conviction. Prison law and release are dealt with by Jason Elliott, PO Box 847, North Shields, NE29 1FJ. Please start your letter with the question you want answered and send the letter to Inside Time, marked for Robert Banks or Jason Elliott. Unless you say you don't want your question and answer published, it will be assumed you don't have an objection to publication. 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.

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 sent by readers to Inside Time are sent on to a solicitor, who forwards them to Robert and Jason. If your solicitor wants to see previous questions and answers, they are posted on the website, [www.banksr.com](http://www.banksr.com).