

## November 2013 copy for December 2013

Robert Banks, a barrister, writes *Banks on Sentence*. It is the second largest selling criminal practitioner's 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 worked as a housekeeper in a large house. What makes it awful is that the family were good to me and helped me with my child, Liam (not his real name), who is 18 months old. They gave me presents and support. Liam has no contact with his father. My boyfriend pressured me into helping him enter the premises when the family were away on holiday. I had the keys of course. It all seemed so easy and I thought no one need know. The money he promised me would have been useful as I never have enough for Liam. The police found some of my boyfriend's DNA and then traced him. He also took a large amount of property (worth over £25,000), which I had not expected. There were silver photo frames with pictures of their children and jewellery given to the wife. The Judge emphasised this. It wasn't long before I was arrested. I had never had any involvement with the police before. I lost my job. I was convicted and was given 2 years. Liam has medical problems and I know he needs me. Liam's care is split within the family and that can't be right. I pleaded guilty and received 2 years. Is there any way they can change the sentence to a suspended?

**A** No one could fail to be sympathetic to your plight but a sentence is often a balance between competing interests. In one way the child aggravates the offence because you committed it risking (if you were caught) that he would lose contact with his mother at a critical time in his development. What singles your case out is the gross breach of trust. Your Judge may have considered that you were there to protect the house and you let someone in who not only stole but appears to have stolen items of sentimental value.

Our sentencing law has to comply with the European Convention on Human Rights Article 8, the right to family life. However, the European Court of Human Rights recognises that sometimes immediate custody is unavoidable. The Equal Treatment Bench Book 2010 recognises that lone parents are over-represented among those at risk of social exclusion and the adverse consequences for children when they are separated from carers. Over the years, Judges have done all they can to avoid sending single mothers to prison. They are particularly keen to have the fullest information about not only the family unit but also the arrangements that will be available when a mother is in danger of a custodial sentence.

What helps you is not only the child but also your good character. Judges might consider that after this you are unlikely to offend again. In your case I can see that the majority of judges would consider prison to be inevitable because the seriousness of your offence requires a significant sentence. I also consider that the Court of Appeal is most unlikely to consider your sentence 'manifestly excessive'. However, for less serious offences judges do consider that the time you have served already would have had an effect and that the sentence could be suspended.

**Q** I appealed my sentence to the Court of Appeal. I hardly saw my barrister. He didn't put across the points I wanted him to make and the three Judges blocked me. I have no doubt my sentence was manifestly excessive. Where do I go from here?

**A** Our court procedures have built into them a principle that the public are entitled to 'finality'. That is because it is considered important that sentences don't keep changing. This means that once an appeal has been dismissed there are very few opportunities to obtain another decision. Once an appeal has been rejected by the full court (which means the second and final stage of the appeal process) there are only four possible avenues. First, an appeal to

the Supreme Court. This is not possible as there needs to be a point of law of general public importance and your case does not have one. Second, an appeal to the European Court of Human Rights. This Court does not deal with cases about whether a particular sentence was manifestly excessive. Third, to have the case relisted as there has been a fundamental mistake made, such as no one noticed the offence had been repealed. This does not apply to you. Fourth, to ask the Criminal Cases Review Commission to refer the case back to the Court of Appeal. The Commission would not refer your case back as there needs to be a special feature which is not present here.

The reality is that the Court of Appeal has determined your case was not manifestly excessive and I am afraid you have reached the end of the appeal process. It is similar to a football match. Once the referee has blown the whistle, that is the end of the matter.

**Q** I pleaded not guilty to handling a car. My case was that the police were lying and the owner was in league with the police. I was convicted. The Judge really didn't like me and gave me a full starting point sentence and then said the offence was aggravated by the defence I put up. He gave me 6 months more than the starting point. Is that lawful?

**A** No. The conduct of your defence should never add anything to your sentence. However, if you were to claim good or exemplary character with a view to a discount the fact that the Judge found you had lied and/or put up a false case could mean you would not receive the same discount you would otherwise have received. On the facts you gave me, I should approach your legal team for advice on an appeal against sentence.

#### **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).