

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 book is classified by the Ministry of Justice as a core judicial text book. It is priced at £96 on the web and is regularly updated on the web. The latest edition is also available in an App for iPads from the Apple iTunes Store. If you have access to a computer, you can follow Robert on [Twitter: @BanksonSentence](#)

Q I was sentenced to two life terms in 2011. They were with 35- and 25-year minimum terms to run concurrently. Last year I pleaded to attempted escape, offensive weapon and two ABHs. I was given 2 years, 6 months and 6 months respectively. All the sentences were ordered to run consecutively making 3 years in all. The sentences were also ordered to run consecutive to my life sentences. Is this legal?

A The old law and the new TIC and Totality guideline 2012 both determine that the consecutive determinate sentence on top of life terms is legal. Otherwise a defendant could commit serious offences in prison knowing that a court could not add to the sentence he or she was serving.

Q On 6 December 2012 when I was recalled, I was sentenced to six years. The Judge ordered the 73 days that I had been in prison awaiting sentence to count. The first prison gave me those days but when I was transferred to another prison the custody officer there said I was not entitled to them and the Judge should not have said what he did. Is it up to the jail whether the days count or not?

A What a difference a few days make. Before 3 December 2012, it was the judge's job to determine how many days should count and to order those days to count. From 3 December 2012, it remains the task of the judge to explain your sentence and to indicate how many days on remand should count to your sentence, but from that date it is the task of the prison authorities to actually determine the number of days that should count. Both the judge when giving his indication and the prison authorities calculate this using the principles laid down by Criminal Justice Act 2003 s 240ZA as substituted by Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 108. It is hoped that judges give correct indications but an indication is not an order. Only the prison can determine the number of days that will count. Your problem is that under both the old system and the new system only days when you were remanded in custody count and not periods when you were serving a recall sentence. I am afraid you will have to serve those days.

Q I was convicted of 26 charges and was sentenced in five groups. The charges in each group were concurrent to each other but all the groups were consecutive to each other. The result was that I received 2 years for group 1, 8 years for group 2 and 3 years each for groups 3, 4 and 5. This made 19 years in all. A lot of inmates say that defendants should only receive two consecutive sentences, so taking the two highest I should have received 8 years and 3 years consecutive making 11 years. Are the inmates right?

A No. There is no limit to the number of consecutive sentences that can be passed on one occasion. Most judges start by deciding how long a particular defendant should serve and then arrange the sentences to add up to that figure. It is often a matter of style how each judge sentences. Some like to pass one global term and make all the sentences concurrent. Others like to show that each offence or each group of offences were reflected in the total sentence with a series of consecutive sentences. For you what matters is whether the total is manifestly excessive or not. If it is, you can appeal. If not, there is no appeal.

Q In 1968 when I was 14 I had sex with a 10-year-old girl. She has always agreed that the incident was mutual. In 2006 she tried to blackmail me and I went to a solicitor. In 2009 another blackmailer contacted me who suggested I had touched her. This never happened. Again I went to a solicitor. In 2010 I was arrested and questioned. I pleaded guilty to the 1968 matter on the advice of my barrister. I was convicted on the other matter 10-2. I was found guilty on 13 counts. The evidence was hearsay. The sex was said to have lasted over a 10-

year period. The Judge said the appropriate sentence was 6½ years in prison and the remaining 6½ years will be on licence. The prison said this was wrong and gave me 13 years prison so with one third off I had to serve 8 years 8 months and was eligible for parole after 6½ years. I was advised by the HMP Inspectors to write to the Judge. I did so and never received a reply.

A I know you have solicitors acting so I am not keen to tread on their toes. I am unsure whether the second accuser ended up alleging rape. However, the key question is what order did the court pass, which you do not reveal. It looks as if the Judge passed not a 6½-year sentence but a 13-year sentence and then told you the wrong release provisions. If the Judge explains them wrongly your release date is still determined by statute. The prison calculations are correct. A number of defendants have appealed to the Court of Appeal when the Judge has told the defendant that release will be after serving half the sentence whereas in fact because the offences are so old the defendant does not qualify for automatic release until two thirds of the way through the sentence. They have all failed in their appeals. In the latest, *R v Hardy* 2013 EWCA Crim 36, the Court did say: “There may be rare and exceptional circumstances where the Judge selects a length of sentence after which the defendant should be released. Here the Judge expressed no such intention. The sentence was not wrong.” This principle will, I’m afraid, not help you any more than it helped Mr Hardy, who was in the same position as you. It appears the sentence is likely to have been lawful.

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 sent by you to Inside Time are sent on to a solicitor, who forwards them to Robert. If your solicitor wants to see previous questions and answers, they are posted on the website, www.banksr.com.

There is no release and prison law column this month due to lack of space.