

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. The next edition comes out at the end of April and will be available in multimedia form. It will be priced at £96 on the web and there will be regular updates on [www.banksr.com](http://www.banksr.com) If you have access to a computer, you can follow Robert on [Twitter: @BanksonSentence](https://twitter.com/BanksonSentence)

**Q** I was involved in a pub fight and was sent to prison for 4 months for section 20. One of the people I was sorting out got a community order. Even on the police's version we were all in it together so why do some people receive bird and others walk free?

**A** There are a few issues here so I will split them up. All defendants are treated separately. They will have different roles and different criminal records. Some will plead at different times and some will not plead at all. These factors will all affect the sentence imposed.

Courts tend to avoid sending people to prison if they can. This is because a key objective of sentencing is to stop people offending in the future. If you send people to prison they are liable to be corrupted and meet people who will confirm their criminality. However, sometimes it is obvious that a community order isn't going to work, so the courts think 'Why bother trying?' The obvious example is when community orders have been tried before and failed to stop the offending. Frequently a court will consider that a defendant with repeat offences for violence needs to be shown that reoffending will mean loss of liberty. Sometimes the judge or magistrate will send the ringleaders to prison and the others will be given community orders.

I have not seen your criminal record and pre-sentence report. Pre-sentence reports are increasingly important. They often have an assessment of the risk of you committing further offences. It is usually very unscientific and women will on average have more favourable assessments made for them than men by the predominantly female staff of the probation service. I note you say, 'I was sorting one of the people out'. If the court heard this or similar remarks it would be taken as an indication that you don't consider the law applies to you and that you consider violence to be an appropriate way of handing out your own justice. This would tip the scales against a community order.

You say the others 'walked free'. Well, some defendants would prefer a short period of prison. In theory you only serve half the sentence. In fact any days you have served will be taken off and if the prison is full the governor has discretion to let you out early. You may only serve a few weeks and then that is the end of it. There is no licence as the sentence is under 12 months. Someone on a community order will usually have to do community work in the evening or at weekends and will have the threat of being re-sentenced for the offence hanging over them for up to three years. Then there are the visits to the probation office, which can be very inconvenient and involve dealing with very intrusive questions.

**Q** Is it right that if one person takes the penalty points for another, both face a prison sentence? Around here it is very common. You can find someone in the pub to do it for you.

**A** Yes, that is right. A Judge at the Court of Appeal has said, "There is a long-standing principle that perverting the course of justice is so serious that it is almost always necessary to impose immediate custody unless there are exceptional circumstances", *Att-Gen's Ref No 35 of 2009* 2009 EWCA Crim 1375. The reason is that the courts want to impose deterrent sentences because the offence is, as you say, so common and hard to detect. If the offence was met by a fine, the offence would be very common indeed.

**Q** I want to appeal. I was sentenced in the Crown Court last September. The confiscation arguments are still not settled. I hear if I do appeal I can be sentenced to a longer term. Is this right? When should I appeal? Do I have to wait until the proceedings are over?

A Many readers believe that if they are determined enough they will be able to win through on an appeal. That rarely ever happens. The system is designed to a) heavily restrict appeals, b) overturn as few convictions as possible, and c) reduce as few sentences as possible. The key points are that if you want to appeal, in virtually all cases you have to ask permission from a judge, who invariably decides the case by just reading the papers. He or she is called the single judge. In 2011 (which is the year with the latest statistics available), the single judge only accepted 18.9% of cases. For defendants who appeal without support from their counsel the figure is far, far less than that. Those that are refused can appeal to the full court but without support from counsel it is an exceptionally difficult task. The main problem is that the court will not bring you from prison so there is no one to present your argument. Virtually all these applications fail.

The time limit for appeal is 28 days from the date of the order or finding that is the subject of the appeal. So a conviction appeal needs to be sent to the Court of Appeal within 28 days of the jury's verdict. An appeal against a sentence of imprisonment must be made within 28 days from the passing of the sentence. An appeal from a confiscation order must be made 28 days from the passing of that confiscation order. That means if you appeal here you will be out of time and will need to make an application to appeal out of time. The longer the delay the more difficult it is to be granted leave to appeal.

Back to your question about facing a longer sentence. If the court considers your case is 'wholly without merit' the court may order that the time you were waiting for the appeal to be heard shall not count as time served. I know of no occasion where the single judge has made such an order. Where the single judge considers the case to be without merit he or she normally ticks a box on the form warning the defendant that this order should be considered if there is an application to the full court for leave to appeal.

These orders are still comparatively rare. However, they are becoming more common. The orders are often 14 days or 28 days loss of time. So making appeals because you hope something may turn up when your counsel advises against it can be dangerous.

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

Please make sure your question concerns sentence, prison law or release (dealt with by Jason Elliott, Dere Street Chambers, Newcastle upon Tyne) 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](http://www.banksr.com).

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