

**July 2013 copy for August 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 new edition has recently been published and is also available for tablets and computers. The print copy costs £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 want to be a mother and live in peace with my children. I am 24. I committed a silly offence under Sexual Offences Act 2003 and was given 2½ years. It was a horrendous mistake. I was informed I would be put on the Sex Offender Register for life. I wanted to teach English abroad. The label strips me of my ordinary rights. Is there any way to challenge it?

**A** Offenders who commit sexual offences and receive 30 months or more are subject to the notification provision for 'an indefinite period', Sexual Offences Act 2003 s 82. It is not dependent on a judge's order. It is automatic when the legislation is triggered, as it was in your case. There is no appeal. However, the Supreme Court held that indefinite notification without a review was incompatible with the European Convention on Human Rights article 8. As a result the authorities issued the Sexual Offences Act 2003 (Remedial) Order 2012 2012/1883, which inserted Sexual Offences Act 2003 s 91A-F. This enables a person subject to an indefinite notification requirement to appeal to the relevant chief officer of police with an appeal from that decision to the Magistrates' Court. No appeal can be made until after 15 years have passed since the initial notification. I expect someone will take the issue back to Europe.

**Q** I served in the armed forces and then left and worked in sales for a mobile phone company. I did well and became assistant team leader. I got into drugs and developed an addiction. Work, friends and my girlfriend went as I was taking cocaine every day. I then started stealing the mobiles and when I was arrested I told the police everything. I was involved in a robbery in my car. Two of us got £1,520. I heard the police wanted me so I handed myself in. I admitted it all except who the other person was. I changed solicitors and I was reinterviewed and the solicitor told me to go "No reply". I did. I got my life back together. No drugs, new friends, a new girlfriend and a new job. The victim said there was a screwdriver which had the other person's DNA on it. It wasn't used. I had a *Newton* and lost. A barrister said I was not co-operating as I had 'no replied' and I got 3½ years. With 6 months for the phones that made it 4 years. I am 22. My girlfriend is pregnant and I will miss the birth. Is it worth appealing?

**A** You clearly had a lot of mitigation but the sentence is primarily determined by the offence facts. The guideline for street robbery follows. The screwdriver would make a significant difference.

*Robbery Guideline 2006* page 11, see [www.banksr.com](http://www.banksr.com) Other Matters Guidelines tab Street robbery or 'mugging' Robberies of small businesses Less sophisticated commercial robberies Plea of not guilty

Type/nature of activity	Age	Starting points	Sentencing range
The offence includes the threat or use of minimal force and removal of property	18+	12 months' custody	Up to 3 years' custody
	17	Community order	Community order to 12-month Detention and Training Order

Type/nature of activity	Age	Starting points	Sentencing range
A weapon is produced and used to threaten and/or force is used which results in injury to the victim	18+	4 years' custody	2 to 7 years' custody
	17	3 years' detention	1 to 6 years' detention
The victim is caused serious physical injury by the use of significant force and/or use of a weapon	18+	8 years' custody	7 to 12 years' custody
	17	7 years' detention	6 to 10 years' detention

#### **Additional aggravating factors**

1 More than one offender involved, 2 Being the ringleader of a group of offenders, 3 Restraint, detention or additional degradation of the victim, 4 Offence was pre-planned, 5 Wearing a disguise, 6 Offence committed at night, 7 Vulnerable victim targeted, 8 Targeting of large sums of money or valuable goods, and 9 Possession of a weapon that was not used.

#### **Additional mitigating factors**

1 Unplanned/opportunistic, 2 Peripheral involvement, 3 Voluntary return of property taken, 4 Clear evidence of remorse, and 5 Ready co-operation with the police.

Additional mitigating factors for young offenders: 6 Age of the offender, 7 Immaturity of the offender, and 8 Peer-group pressure.

The barrister's comment about the lack of co-operation was plainly unfair. However, the only consideration is whether the sentence was manifestly excessive. The restraint of the victim in the car and the fact there were two of you would increase the sentence. It appears the Judge did discount sentence a bit to reflect your mitigation. Looking at the guideline the sentence would appear unappealable especially as it included the offence of stealing the mobiles. The *Newton* hearing must have dented your discount for the plea.

**Q** I share a cell with someone who smells and snores. He also smokes. If there was a fight I would probably lose. I want to move to another cell but I don't want him to know I had asked to move. If he found out I would be frightened whether I was in his cell or not. What should I do about it?

**A** I infer the problem is not only the smell, the smoke and the snoring but also that he intimidates you. When prisoners first arrive in custody the prison authorities have an obligation to assess whether they have the potential to cause harm to themselves or others, PSI 74/2011 para 3.4. This is a continuing obligation which means in the closed estate a further (up-to-date) assessment must be undertaken whenever cell sharing is proposed, PSI 9/2011 para 1.4. Risk assessment in this context is based on whether there is a 'high risk' of 'serious violence', PSI 9/2011 para 2.1.

Cells have to be fit for the purpose they are used for. Prison Act 1952 s 14(i) requires that a cell has to be certified as adequately ventilated (among other things). If the level of your cell mate's hygiene is giving cause for concern this is a matter that prison staff may legitimately take account of in assessing his IEP level. You are entitled to living conditions that are 'safe, decent and secure', PSI 10/2011 para 2.7.

If you are concerned for your safety as a result of cell sharing you can raise the matter with wing staff. If you are a non-smoker you should not be forced to share a cell with a smoker, PSI 9/2007 para 8. If you are accommodated in a dormitory (defined as accommodation housing more than 4 persons) the dormitory must be smoke-free, PSI 9/2007 para 9.

Although I know little about the problem, I suspect the solution is to tell the wing staff you want a smoke-free cell and say nothing about the rest of it. Who knows, your cell mate might prefer the next person! If trying to deal with the problem though the prison staff doesn't work, you should consider speaking to a solicitor.

#### Asking Robert and Jason questions

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