

January copy for February 2014

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 If you have access to a computer, you can follow Robert on [twitter](https://twitter.com/BanksonSentence): [@BanksonSentence](https://twitter.com/BanksonSentence)

Q One evening, I was driving my car and this twat cut me up and I flashed him. He then started braking to make me slow down. He then sped off and did the braking thing again. I flashed my lights again and overtook him. I then did the same to him until I stopped at some red lights. He was behind me. I got out to give him some reality and he then shouted at me that it was all my fucking fault. Well I was truly wound up by then and I whacked him with a baseball bat which I had on me. I took it for my self-defence. He only got some bruising on the jaw where I hit him and he deserved it. The prosecution charged a section 18 and it went to Crown Court very quickly but now they say they will accept a section 20. My solicitor says I am likely to go to prison. Well how can that be right when they give burglars community service?

A The judge is likely to consider the following. First, there was no reason for you to take the other person on by trying to overtake him. He should have been left alone. Serious accidents and fatalities can occur when people chase each other on the road. Second, you were unlikely to be going to a baseball match on a December evening, so why did you have a baseball bat in the car? The judge may conclude it was ready for use if you needed to hit someone. Third, self-defence does not arise as you could and should have stayed in the car. The judge is also likely to conclude you left your car as the aggressor. Fourth, interestingly you only exacted your punishment when you didn't like what the other person was saying. The judge will think that shows in verbal situations you think nothing of having your way through violence. Fifth, there are his injuries. You hit him on the jaw, which is part of the body that could have received serious injuries like broken teeth and a fractured jaw.

The judge will inevitably treat this as road rage. That offence has no official guidelines. The Court of Appeal has said, "In dangerous driving road rage cases, where no accident or injury results and there is no consumption of alcohol but there is ample evidence to suggest furious driving in temper with an intent to cause fear and possibly injury, the appropriate sentencing bracket is between 6 and 12 months." In another case it said, "Custody is almost inevitable even where the defendant is of good character." So you can see the starting point is going to be well in excess of 12 months.

You ask how can prison be appropriate when burglars are given community service. Each offence has its own sentencing framework. Once that has been established neither a defendant nor his or her advocate can suggest it does not relate to sentences for other offences because that is suggesting the first framework is wrong. The only time sentences for other offences can be used is when the offences have similarities, like murder and manslaughter, or for very serious, very unusual offending where there is little or no case law to go on.

So the news is not good. I should concentrate on letting the court know you accept that your actions were wrong and let them know of the steps you are taking to prevent that sort of offending happening again. That is likely to reduce your sentence.

Q I don't have a good relationship with this prison and I think some of my Christmas mail was not handed over. Before I complain, can you tell me what letters and parcels the prison can block and do they have to tell you they have kept them from you?

A Letters and parcels fall into three groups. The first group is items which contain illegal material like drugs. These can be forfeited and can lead to prosecution. The second group is

material which is not illegal but the prison can stop prisoners having possession of it. The third group is material that is handed over to the prisoner.

PSI 12/2011 para 2.1 says, 'Prisoners are allowed to have sufficient property in their possession to lead as normal and individual an existence as possible within the constraints of the prison environment.' para 2.7 'Prisoners must be allowed to have in possession or have access to such artefacts and texts as are required by their religion.' para 2.8 'Disabled prisoners must be allowed to have disability aids in possession, or have access to them subject to security checks.'

Prison governors have a wide discretion over mail. Prison Rules 1999 Rule 34(1) enables the Secretary of State (in reality prison governors) to impose restrictions 'either generally or in a particular case' on 'letters or other communications'. Prison Rules 1999 Rule 35(2)(a) allows prisoners to send and receive a letter on their reception into a prison and once a week after that. Further personal letters can be sent at the discretion of the prison staff or as part of a privilege scheme.

If cash is sent to you it may be paid into an account under the control of the governor, returned to the sender, or, where the sender's name and address are not known, paid to NACRO (a charity), Prison Rules 1999 Rule 44(2).

PSI 12/2011 para 2.64 creates a general presumption that items which are sent in by friends and family are not handed over unless there are exceptional circumstances. The stated reason is to ensure that the IEP (Incentive and Earned Privileges scheme) is not undermined. The real reason is likely to relate to prisoner retail services. In determining whether to allocate property to be held in possession, volumetric (= size) control has to be considered, para 2.66. If volumetric control is cited as a justification for not allowing you access to your property, you should be aware that convicted prisoners must be allowed to 'hand out' property already in possession through social visits, 2.68. This may enable you to solve that problem.

Prison staff may ask writers of letters to prison to limit the letter to four sides of paper. If they don't comply with this, subsequent letters can be returned to them, PSI 49/2011 para 2.9.

Recent media coverage has suggested that the new IEP policy contained in PSI 30/2013 alters your entitlement in relation to possessions. The relevant paragraphs are 10.4 and 10.5. They simply reiterate the content of previous instructions. The rule was previously cited at PSI 12/2011 para 2.64. The PSI does, however, codify the manner in which certain goods have to be ordered in an effort to maximise profit for the Government's preferred retailers. Thus goods available through the National Product List can't be provided through a different source. This echoes PSI 23/2013 para 2.3. Similarly, goods available through the catalogue system cannot be provided through a different source. This echoes PSI 23/2013, 7.1. The rules have been changed to alter the way in which you have to order your possessions in order to allow certain companies a monopoly.

Interestingly, the Government's own advice to friends and relatives seeking to communicate with prisoners was reviewed in January 2014 but fails to mention these changes.

So back to your question. This is the legal answer and put in a nutshell prisons can withhold many items and prisoners will be unaware of it. However, some people say that in most prisons staff carry out this difficult task with fairness. Perhaps readers can write in and let us know what the situation is in their prison, assuming they are allowed to write the letter in the first place!

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 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 have no 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 at www.banksr.com.