

July 2014 copy for August 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 has recently been published. The book will be available for tablets and computers shortly. The print copy costs £102 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) and you can receive his weekly sentencing Alerter.

Q I have pleaded to a fraud and I want the judge to see I am respectable so I want a really good suit brought in. I went to a private school. The prison have been difficult in the past and I want to know my rights before I make my demands. So what are my rights?

A Before I answer that perhaps you won't mind if I make some observations. The law does not divide defendants into two categories, 'respectable' and 'others'. As you are on remand it can be assumed you committed a large and serious fraud. You will be treated the same as all defendants except for one group. The court usually give reduced sentences for those first-time defendants who, through problems in their upbringing or low IQ, have difficulty living in society. You may not like this but you will be treated the same as a burglar. The court should treat you respectfully but by your plea you are accepting your involvement in a serious offence and you will be treated just like the rest of those being sentenced.

A prisoner who repeatedly asserts his rights will never achieve as much as a prisoner who uses quiet persuasion. You may have already found out that prisoners who think they are a cut above the rest are soon put in their place by the staff and other prisoners.

The next matter is, as Mrs Thatcher, the former prime minister, learnt, the way you dress sends a message. Her style was called power dressing. Her clothes presented the message of power and confidence. It was very effective. Your clothes would also present a message but it may not be the one you want. If on the day of sentence you arrive in a very expensive suit, it will convey the message that you are rich and that you received a lot of money from the fraud. I anticipate there will be a confiscation application. Your suit may be in the judge's mind when he or she determines the amount you should pay. My advice would be to dress down. Something clean and simple which the man next door might wear when he goes to the doctor's.

So what are your rights? Remand prisoners are entitled to access their own clothes, Prison Rules 1999 Rule 23. They are entitled to have their own clothing supplied from outside prison, but such a request can be refused if it means some of the clothes they already have need to be placed in storage, PSI 12/2011 para 2.6.

However you have pleaded guilty so are no longer a remand prisoner. For those convicted at trial or recalled to custody post 1 November 2013, they will be graded 'Entry Level' under IEP (Incentives and Earned Privileges) scheme. Among the consequences of this is that they will be expected to wear prison issue clothing, PSI 30/2013, para 1.9.

Jason and I's experience is that prison authorities prefer prisoners to wear their own clothing and prisoners invariably do. If a prisoner attends court for a trial, prison clothing can cause difficulties. There is a danger that the clothing will inform a juror that the defendant is being held in prison which may be prejudicial.

Problems often arise with suits being brought to court by relatives. Dock and security contractors invariably refuse to allow any clothing to be handed in at court. One can see why. Checking clothing for drugs, SIM cards and messages is not a task custody staff want to perform when they are running a busy custody area.

Q I pleaded not guilty to common assault and was convicted because of my record. I was sentenced for that and for breach of a suspended sentence. I got 16 weeks for common assault and 8 weeks for the breach. My solicitor told me that I can appeal but that I will be found guilty and my sentence will be increased. Is that right?

A You do not say which court sentenced you. It is likely to have been the Magistrates' Court. If this is the case then, if you appeal, the court will usually find you guilty again and then they do have the ability to increase your sentence. The case is not heard by a jury but by a judge and no less than two magistrates. Your sentences were comparatively short and I would be most surprised if the court was remotely interested in your appeal.

I dealt with the position about increasing sentences at the Court of Appeal last month. That Court cannot alter the sentence so the defendant is treated more severely than he or she was at the Crown Court. They can, however, order that a number of days awaiting an appeal do not count as time served.

Q I keep being brought before the court and then sent to prison. I think it is because I keep turning up before the same biased magistrate. He sits alone and recognises me. Then, whatever my brief says, he sends me to prison. The offences are not serious. They are to pay for my drug habit. Is there any way I can ask someone else to deal with my case? My solicitor says there isn't.

A It is possible to ask a judge or magistrate not to sit, or to ask a judge that a juror should not sit on your case because of bias. It is a very difficult application to make. Even when there is some good evidence, the applications invariably fail. The only reason you say the magistrate is biased is because he keeps sending you to prison. It is possible to argue that where prison is repeatedly tried and has repeatedly failed to stop the offending then the court should consider a community order or suspended sentence which addresses the causes of the offending. I haven't seen any of your pre-sentence reports so I don't know how viable this proposal is. However, the fact the magistrate keeps sending you to prison can be explained by your no doubt unfortunate record. The magistrate may feel if you are on the streets you will need to feed your habit and no community order is going to stop your offending. Consequently he keeps sending you to prison. On the facts you give you don't have a choice of who hears your case. It is not like choosing which pub to go to.

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.