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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 is available for tablets and computers and costs £80 + VAT. 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](#): [@BanksonSentence](#) and you can receive his weekly sentencing Alerter

Q I have pleaded to various child cruelty offences. I beat my three boys regularly for misbehaving and it is true occasionally they did bleed. It made them obey me. When I saw how some children behave round where I live, it made sense to me. My solicitor has different ideas. She says the sentence will be in years. Is that right? I do have a wounding with intent conviction about 7 years ago. Someone lost an eye. I received 10 years. I don't think that is going to help.

A I can't go into the rights and wrongs of this offence as you want advice. However I do wonder if you would have considered this treatment right if you had been beaten by your father or step-father in this way. By your plea you accept it was unlawful. The fact you are in custody implies the facts are particularly bad. The 2008 guideline about assaults on children says, 'A court must strike a balance between the need to reflect the serious view which society takes of the ill-treatment of very young children and the need to protect those children, and also the pressures upon immature and inadequate parents attempting to cope with the problems of infancy.' In your case I imagine the Judge will focus on the first part only. I can't reproduce the whole guideline but 'sadistic behaviour' is an aggravating factor. I don't know whether the prosecution will say that was present. Clearly the fact there is more than one victim, the assaults were with a weapon, there was bleeding and the length of time the assaults lasted are serious aggravating factors. The guideline makes a key factor the impact on the victims. Your plea will reduce the sentence particularly as the children will not have to give evidence. The court is very relieved when children are not required to give evidence against their parents or step-parents. For 'serious cruelty over a period of time' the starting point is 6 years and the range is 5-9 years. I would expect the Judge to impose consecutive sentences for each of the children.

You don't say whether this was historic offending or recent offending. The offence of child cruelty carries a maximum of 10 years' imprisonment, unless the offences took place before 29 September 1988, when the maximum was increased from 2 years. An extended sentence is available for this offence if you satisfy the 'significant risk of serious harm to members of the public' test. There are so many factors for this offence, the reported cases provide little assistance except for one. In *R v J* 2014 EWCA Crim 1442, a father was convicted of 23 child cruelty offences against his three children and one stepchild. The counts were sample counts. He hit his children almost every day and did so for his own gratification. The sentences for each child were made consecutive. Although he was effectively of good character, the Court of Appeal considered that 10 years was appropriate. The case did appear to have some exceptional features. Your previous conviction will have a significant impact on your sentence as like your current offences, it was an intentional serious assault with a weapon. I don't have enough information to advise you of the length of your sentence but I would be most surprised if your solicitor's advice about the sentence being in years wasn't correct.

Q I read your Q and A about ordering time awaiting an appeal not to count if the Court thinks an appeal is hopeless. I got a knock-back from the Single Judge but my counsel says he thinks the imprisonment was too long and he will appear for me at court for free. Am I at risk of having time docked?

A This is not an easy area. The basic position is that there is power to order that a period of custody awaiting an appeal should not count towards a defendant's release, where the court considers the appeal is 'wholly without merit'. I know of no occasion where time has been ordered not to count by the Single Judge. When a Single Judge refuses leave to appeal there is a warning on the form he or she signs, saying that 'if the application is renewed, the Court may make a loss of time order if the application is considered to be wholly without merit, even if it is supported by your legal advisers. The Court certainly will consider doing so if the Judge's initials appear in [a box on the form]'. Where the court considers making an order for loss of time it is usually critically influenced by whether the box has been ticked.

In May of this year, a defendant had time ordered not to count even though he had a barrister presenting his appeal, *R v Fogo* 2014 EWCA Crim 1462. Last week, a senior official at the Court of Appeal told me this has happened before. In July this year, the Court in *R v Lewis* 2014 EWCA Crim 1496 said they were minded to order time not to count but, as counsel had taken a 'wrong-headed approach' to the phrase 'wrong in principle', the defendant should not be penalised for that and made no order. In 2012, the Single Judge refused leave to appeal in 2,921 cases (79% of applications made). Many of the cases where leave to appeal was refused are successful at the main hearing. The orders for time not to count are rare. Figures are not available but I would be surprised if it was more than 20 cases a year.

On a different topic you are fortunate your counsel has offered to appear for free. There is, however, an unfairness about this. If a London counsel agrees to work for free, he or she may just pay their tube fare and may be able to do work in the afternoon. If a Newcastle barrister agrees to work for free, he or she is likely to have to stay overnight and their train fare (the cheapest currently £126). If they are given a mid-morning listing they would need to be at Newcastle station at 6.55 am and pay £199 for their train fare with the tube on top. There would be no afternoon case for them. Clearly one can understand why it is such a commitment for a Newcastle barrister to work for free. This geographical disparity clearly penalises those sentenced far from London.

Q I think it would be much better if my co-defendant pleaded guilty as if he gave evidence there could be a lot of damaging material that could come out. He is of course completely guilty. He is in a different prison to me so I told my solicitor to let his solicitor know that I think he should plead. He said he couldn't do that. That can't be right. I think he is just lazy.

A Your solicitor is right. This is a difficult area because no one is allowed to pressurise a defendant to plead guilty or not guilty. Each defendant should have a free choice. In clear examples it could be attempting to pervert the course of justice if someone was to seek to influence a plea. What your solicitor can do is to discuss the case in general with your co-defendant's solicitor. But he or she cannot be part of a chain of messages to pressurise the co-defendant to plead the way you want him to plead.

Asking Robert and Jason questions

All letters should be sent to Inside Time, marked for Robert Banks or Jason Elliott. Letters are then sent by Inside Time to a solicitor, who forwards them to Robert and Jason.

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). Unless you say you don't want your question and answer published in Inside Time, 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 to Robert, cannot be answered. If your solicitor wants to see previous questions and answers, they are at www.banksr.com.