

December 2015 copy for January 2016

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 app is for Apple iPads and Windows 8/10 tablets and computers and costs £99 (incl. VAT). Updates will appear in the relevant paragraph. The print copy costs £106 and there will be regular updates on www.banksr.com. There is also a discount available when the print copy and app are purchased together. If you have access to a computer, you can follow Robert on @BanksonSentence and you can receive his weekly sentencing Alert.

Q I stole money from the company I work for. It was easy as I just created false invoices and paid the money into a company account I set up. Once I discovered how easy it was, I did it again and again. Then there was a surprise audit. I could not explain the amounts to the jury. The prosecution said the loss was over £38,000. As a mother, I spent the money on my daughter. Her father never abides by the court orders. Although my daughter is looked after by my mother, she needs me. I look in the papers and see people being given suspended sentences for this type of behaviour and don't see why I wasn't given one. I got 12 months. What determines whether the court gives you a suspended sentence or not?

A The rule is that courts should not pass a custodial sentence unless it is of the opinion that the offence, or that offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified, Criminal Justice Act 2003 s 152(2). There are two exceptions to that rule which I doubt apply to you. A Suspended Sentence Order is treated as a custodial sentence. The test for a Suspended Sentence Order is that custodial sentences should be suspended 'if they can' properly be imposed, see *New Sentences: Criminal Justice Act 2003 Guideline 2004* para 2.2.10. That in reality means the sentencing judge has a discretion whether to suspend the sentence or not.

I have little detail about your case other than you seem to have been convicted. That usually makes a big difference, because on a plea of guilty the defendant can express remorse and say they have learnt their lesson. That is not usually possible if there has been a trial.

There is a new *Theft Guideline 2016* but that will not be in force until 1 February 2016. This means you would have been sentenced on the old law which is primarily based on comparable cases. The *Magistrates' Court Sentencing Guideline 2008* says where the loss in a breach of trust case is more than £20,000 the magistrates should commit the defendant to the Crown Court. So that means you should expect a sentence of over 6 months. A 12-month sentence is well within the range for this type of offence.

Although it is not set out anywhere in the guidelines, the factor which makes the most significant difference to whether a defendant receives a suspended sentence is whether he or she has previous convictions. A first-time offender frequently receives a suspended sentence when a repeat offender will not. So for those who steal to fund an addiction and a suspended sentence has been tried and has failed, custody would often be the likely sentencing option.

The fact that you are a mother is a relevant factor. Courts avoid sending mothers to prison if that will impact on the welfare of the children. However, the impact in your case will be less because you are not the primary carer. I would not have expected the judge to treat your offence less seriously because you say you spent the money on your daughter, as many mothers with more menial jobs than yours live within their means. Also, I expect the judge would have considered that if you stole £38,000 you are likely to have spent a fair amount of it on yourself.

So as you can see, it is an evaluation of the individual facts of the case that determines whether the sentence is suspended or not.

Q I read in the papers that the government is wanting to reduce the number of people in prison. Will that mean we will be let out early?

A When Winston Churchill was Home Secretary in 1910-11 he said if we want to reduce the prison population we should stop sending people there. He knew a bit about prison because he had been a prisoner in South Africa in December 1899. When he escaped from his prison he reduced the prison population by one. Since then the government has alternated between being tough on crime and trying to reduce the prison population. Chis Grayling applied the former policy and Michael Gove is applying the later. Michael Gove wants to be seen as a listening Lord Chancellor. He is not playing to the gallery. He is hoping to be seen as a reforming Lord Chancellor as well. He has scrapped the Criminal Courts charge saying he did so because he was listening to what magistrates said to him. His options for reducing the prison population are limited. I expect he will move to resolve the IPP problem next year and introduce special measures to reduce a section of the prison population. Reducing the time one has to serve in prison for a fixed prison sentence (currently half the sentence) is unlikely because of what happened when that was last advocated. There was a howl of protest. I suspect the two areas he will alter are the time foreign prisoners have to serve and allowing elderly prisoners to be released on a tag. The former is attractive as it would be hoped they would not be released onto our streets. The second is attractive as housing elderly prisoners is very expensive and they are less likely to reoffend than younger prisoners.

So the answer to your question is that it is accepted that the current prison population is unsustainable. It is accepted that the large number of prisoners means there can never be proper rehabilitation and some reduction will have to be made. I can only guess what measures will be taken. I suspect that Michael Gove is some way from making up his mind.

Update

Linked to the above, I notice the odd coincidences in my recent answers. I see that in my November column I listed all the reasons why the Criminal Court charge was ridiculous. On 3 December 2015, the Lord Chancellor announced it was to be repealed. The last day for the charge is 24 December 2015. In my December column I listed the problems with those serving IPP who were still in custody. On 10 December 2015, the Lord Chief Justice adjourned the decision in the IPP case until January 2016. On the same day the Lord Chancellor announced that he was to review the situation of those serving IPP whose tariffs had expired.

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 David Wells of Wells Burcombe, 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). Conviction enquiries should be sent to Inside Time and they will be answered by someone else. 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. Robert and Jason cannot, in their answers, in effect do the work that should be done by solicitors and barristers who have the relevant case papers.

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.