

May 2015 copy for June 2015

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 2015 edition of the book and app was published recently. The app is for Apple iPads and Windows 8 devices 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 [Twitter](https://twitter.com/BanksonSentence): [@BanksonSentence](https://twitter.com/BanksonSentence) and you can receive his weekly sentencing Alert.

Q I was convicted of raping some young girls. It's not true. Word has gone round the prison that they were under age. They weren't. I am 32 and had no sex offences on my record. I got 18 years. I am terrified of being attacked. It is a very hostile prison. Can I go back to Court and ask for a reduction because of the conditions I will have to serve my sentence under?

A Over the last ten or so years, the courts have concentrated more on the victims of crime than on the particular circumstances of defendants. Sentences are determined by the relevant guideline or recent cases. Discounts for personal mitigation have become less and less. However, for young offenders, personal mitigation does still make a difference.

To appeal this sentence the test is whether the sentence was manifestly excessive. You don't suggest that your sentence was manifestly excessive, you would just like a reduction. Reductions for the conditions prisoners serve under can be made, but only in limited situations. Examples are where a defendant does not speak English, knows no-one in this country or is blind, disabled or has an illness which makes serving a prison sentence more difficult. Judges have been consistent in not treating your type of problem as mitigation. In 1998, Lord Brocket, who was serving a 4½ year sentence for fraud, asked the Court of Appeal for a reduction in his sentence as he had been blackmailed, threatened, stabbed, kicked and punched. A prosecution against a prisoner for GBH and blackmail against him failed when prisoners were not prepared to give evidence. The Court held that this was not a factor which it could generally have regard to and dismissed his appeal. Since then the courts have been less keen to take such circumstances into account as they do not like making decisions that indicate that the prison service is not as it should be. So the answer to your question is No.

Q I went to our normal pub. I'm 20. No complaints were made. After closing time we went to the taxi rank and there was a ruck with the man in front of us. I was a bit too drunk to take it all in. At court it was said there was a row as to who was to have the taxi. My mate laid into him and when he stood up I thumped him. Two others kicked him. I think all he got from me was a bruise. In court it came out when the CCTV was shown that [the deceased] was hit again on the side of the head, but not by me. This side blow was more powerful and tore something in the man's brain and after three weeks he died. I was convicted of manslaughter and got 5 years' imprisonment. How can I get 5 years for giving a man a bruise and when I did not kill him? Can you explain this?

A If you were sentenced to imprisonment that sentence would be unlawful as the sentence should have been 5 years' detention in a Young Offender Institution. If so, and an appeal is launched, the Court would alter the sentence without anyone appearing, unless they thought the sentence was manifestly excessive.

Your case is about joint enterprise. This is an area of law which is being re-examined at the moment. The actions against the deceased have to be seen as one course of action. You do not have to have foreseen that death would result. As far as sentence is concerned, the law for sentencing was stated in a joint enterprise murder case. The Court of Appeal held that, 'It must be remembered that this was a joint attack where the vice lies not only in what the individuals do, but in the combined effect of what they all do. The combined effect of such an attack is

often, if not usually, greater than the sum of the individual actions, and all are responsible for [each other's actions].' So this means you were not being sentenced for the bruise you caused but for the whole series of events which you were jointly participating in with each person playing a different part. I know nothing about your background or whether you have significant previous convictions. On the little I know about the offence there are a number of aggravating factors: the number of individuals involved (at least five), the offence took place in a public place and, on the short account I have, the deceased offered no resistance and there was no reason why the deceased should have been touched let alone hit so badly. Your sentence seems in line with what the Court of Appeal would expect.

Q I served my sentence and was released, but I was recalled. I was then sentenced to 20 months for handling and the Judge ordered me to finish my sentence for breach of licence before I started the 20 months. This leaves me with a 3-year sentence. My co-defendant, who committed the burglary where the goods came from, received a 2-year sentence and only had a 28-day recall. That means the burglar will serve a shorter sentence than I will. I have no faith in my barrister, who I met for the first time that morning. Can you advise me?

A Your sentence is unlawful as the handling sentence cannot be consecutive to the licence recall, Criminal Justice Act 2003 s 265. I will ask David Wells to write to you to obtain more details. On your other point, the law does not consider you will serve a longer sentence than the burglar. This is because when someone is on licence recall the sentence he or she is serving is the first sentence (the one to which the licence relates) and not the new one.

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). 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.