

Written July 2016 copy for August 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 book has an app which is for Apple iPads and Windows 8/10 tablets and computers. It costs £95 plus VAT. The print copy costs £108. There is also a discount when the print copy and app are purchased together. If you have access to a computer, you can follow Robert on Twitter, @BanksonSentence and you can receive his weekly sentencing Alert.

Q I pleaded guilty to robbery and false imprisonment. At the sentencing hearing a lot of stuff was read out that had not happened. I had heard none of the aggravating factors from my barrister. What can I do. Is this fair?

A I was sorry to read of your plight. Well it certainly is not fair. When a barrister advises a defendant before the sentencing hearing, he or she should go through the evidence and obtain the defendant's comments on it. They should then serve a basis of plea setting out what is or is not accepted or tell the prosecution the parts that are not accepted. The Judge is then told of this. If this did not happen it is most regrettable. It would be open for you to appeal the case but you would have to make a list of your complaints about the barrister. He would then give his account and I expect he would not want to say anything that did not protect his position. The solicitors would have to give their file to the prosecution and the Court of Appeal and the prosecution would no doubt do everything they could to support your barrister.

There is no reported case about what the Court of Appeal should then do. I think it is likely they would say, if your account was true, you would have sent a note to your barrister and as you didn't you have fabricated a complaint since. Alternatively, they may say even if your account was accepted the sentence was not manifestly unfair.

You may think this is all very unsatisfactory but I regret to say I can see no realistic solution for your problem, as it is the sort of problem the Court of Appeal is not going to want to help you with in any way.

Q Three of us pleaded to moving drugs. There were two Englishmen, a Scotsman and a Russian (sounds like a joke but it wasn't). We all pleaded and one Englishman received 5 ½ years and I and the rest received 6 years. When we returned to prison a screw said, the foreigner will be let out first. Is this right?

A This is a very problematic section of law as it is ill-considered and has been drafted piecemeal. Barristers can ask that a reduction should be made for defendants who do not speak English or will serve their sentence far from their friends and relations. Reductions in my experience are usually not significant and often it appears no reduction is made. While the sentence is being served it becomes more complicated.

The public accounts committee of the House of Commons reported in 2015, that there were over 5,600 foreign nationals in custody who had served their sentences and were awaiting deportation. The cost of managing and removing these prisoners was estimated to be £850m. So in one respect certain foreign nationals serve a longer sentence than the comparable UK citizens.

In 2003 the government introduced the mandatory Early Removal Scheme. It was amended in 2008. It enables foreign nationals serving sentences of 3 years or more to have up to 270 days deducted from their sentence. If the sentence is less than 3 years, the period is a quarter of the sentences. It does not apply to those serving a sentence for non-payment of a confiscation order or a fine. For extended sentences, the defendant is released between the Early Removal Scheme eligibility date and the two-third point of the custodial term of the sentence.

Under the Tariff Expired Removal Scheme foreign nationals serving life sentences or IPP may be removed at any time after the end of their minimum term. Jason's and my experience is that the Home Office is very keen to remove as many foreign prisoners they can. This means a UK person who receives the same sentence as a foreign national may serve three times longer or more than the UK citizen who is regularly refused parole which does not apply to the foreign nationals.

There is another inequality. Once the UK citizen is released he will normally be subject to a licence with its conditions. Licences are frequently revoked. Licences do not apply to foreign nationals when they have been returned. Foreign nationals are also able to ask to serve their sentence in their own country. Prisons in foreign countries vary considerably. In some, bribes to persons in authority make all the difference to the period to be served and the conditions.

So back to your Russian. I assume he will be automatically deported as his sentence is over the 12-months threshold for automatic deportation. He is likely to be released 270 days earlier than you and the Scotsman. That means you and the Scotsman will serve 3 years and then be released on licence and the other Englishman will serve 2 years 8 months. The Russian will serve about 2 years 95 days and be returned without being on licence. The prison officer is likely to have been right.

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 (1 Amron House, North Shields, NE29 6RN). 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.