

## Written January 2017 copy for February 2017

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 has sold out. 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 supplying a few grams of coke to my boyfriend. He is a serving prisoner and he had been beaten up because he had drug debts. I learnt that if I did not co-operate he and I would be beaten up. It was arranged that something would be delivered to me and I should give it to my boyfriend to reduce the debt. I did as I was told. The prosecution were asked whether the threats were disputed and they said the difference between the two versions wasn't worth a *Newton* hearing. The Judge said whether there was a drug debt or not the offence was very serious. She said it was a Category 4 case and my role was between 'leading' and 'significant'. That meant 4 years. Because of my previous convictions she raised that to 4½ years. The Judge considered that the mitigation of the pressure cancelled out the aggravating factor that the supply was into prison. With full credit that made 3 years. How can about 3 grams of coke be worth a year each?

**A** I think you are very fortunate that the prosecution took the stance they did. But once no *Newton* hearing had taken place the Judge had to sentence you on your basis. The starting point for a Category 4 leading role case is 5½ years and for a significant role is 3½ years. That means the Judge took the half-way point between the two figures. I think many judges would not consider the pressure to be as significant as the fact that the supply was into prison. So, the issue comes down to whether the categorisation of the role as between leading and significant was correct. The *Drug Offences Guideline 2012* (extracts of which appear below) does not define the three role categories. It lists those characteristics which may demonstrate the offender's role. It could be said that you had a leading role because you were the one who took the drug into prison. However, I don't think you fit into any of the listed characteristics for a leading role. You do, however, fit into one of the characteristics for a lesser role, 'engaged by pressure, coercion, intimidation'. Similar issues to yours arose in *R v Cluskey* 2016 EWCA Crim 1534. In that case the defendant supplied small amounts of drugs to her boyfriend and the prosecution accepted that she was under pressure. That might have been because he had already been beaten up and had a punctured lung and broken ribs. All parties agreed that the role was significant. Counsel then read *R v Hamilton* 2016 EWCA Crim 78 and appealed. In that case the court placed the offending in the 'lesser role' category and sentenced at the top of the range.

The Court in *R v Cluskey* 2016 took a similar position and placed the offending in a 'lesser role' (18-month starting point) and then increased the starting point to 3½ years to take into account that the drugs were taken into prison and the defendant's previous convictions. That with the plea credit made 28 months in total for three different drugs involved. I will send you two copies of this advice so you can send one to your solicitor, if you wish.

*Drug Offences Guideline 2012*

### **STEP ONE: Determining the offence category**

page 10 The court should determine the offender's culpability (role) and the harm caused (quantity/type of offender) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

In assessing harm, quantity is determined by the weight of the product. Purity is not taken into account at step one but is dealt with at step two. Where the offence is street dealing or supply of drugs in prison by a prison employee, the quantity of the product is less indicative of the harm caused and therefore the starting point is not based on quantity.

<p><b>Culpability demonstrated by offender's role</b></p> <p>One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.</p>
<p><b>LEADING role:</b></p> <ul style="list-style-type: none"> <li>• directing or organising buying and selling on a commercial scale;</li> <li>• substantial links to, and influence on, others in a chain;</li> <li>• close links to original source;</li> <li>• expectation of substantial financial gain;</li> <li>• uses business as cover;</li> <li>• abuses a position of trust or responsibility, for example prison employee, medical professional.</li> </ul>
<p><b>SIGNIFICANT role:</b></p> <ul style="list-style-type: none"> <li>• operational or management function within a chain;</li> <li>• involves others in the operation whether by pressure, influence, intimidation or reward;</li> <li>• motivated by financial or other advantage, whether or not operating alone;</li> <li>• some awareness and understanding of scale of operation;</li> <li>• supply, other than by a person in a position of responsibility, to a prisoner for gain without coercion.</li> </ul>
<p><b>LESSER role:</b></p> <ul style="list-style-type: none"> <li>• performs a limited function under direction;</li> <li>• engaged by pressure, coercion, intimidation;</li> <li>• involvement through naivety/exploitation;</li> <li>• no influence on those above in a chain;</li> <li>• very little, if any, awareness or understanding of the scale of operation;</li> <li>• if own operation, solely for own use (considering reasonableness of account in all the circumstances);</li> <li>• if own operation, absence of any financial gain, for example joint purchase for no profit, or sharing minimal quantity between peers on non-commercial basis.</li> </ul>

Class A	Leading role	Significant role	Lesser role
Category 4	<b>Starting point</b> 5½ years' custody	<b>Starting point</b> 3½ years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 4½ to 7½ years' custody	<b>Category range</b> 2 to 5 years' custody	<b>Category range</b> High-level community order to 3 years' custody

**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 Alan Burcombe 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 ODW). 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](http://www.banksr.com).