

243.28 *Historic cases Basic principles*

R v Wright 2014 EWCA Crim 1328 Whereas the passage of time *per se* since the commission of sexual offences cannot amount to a mitigating factor, the absence of any convictions or criminal conduct thereafter can do. The extent to which it should be reflected in any sentence will vary from case to case, but in our judgment the Judge was, on the facts of this case, wrong in principle to exclude it from the reckoning.

For an example of where being aged 17 at the time of the offending, exemplary behaviour since and an interval of 38 years reduced a 15-year starting point to 6½ years, see *R v S* 2014 EWCA Crim 272 in the **SEX OFFENCES: HISTORIC** update at **340.4**.

243.35 *Mentally disordered defendants*

R v Barrett 2014 EWCA Crim 1222 D pleaded to robbery. V, aged 56, was totally blind. V had taken his guide dog to the vet and was standing, with the dog, at a bus stop. Suddenly he felt someone hit him in the face and the gold chain around his neck was snatched from him. He suffered reddening of the skin around his neck and the blow knocked his head against the bus shelter. A witness subsequently identified D. The gold chain, which was never recovered, had recently been valued at £3,500. D claimed he saw V and heard voices in his head telling him to attack him. He expressed remorse and said he did not realise V was blind. D was aged 22 and had no convictions. He had one caution for affray in 2010. It was common ground that D was suffering schizophrenia which involved associated external auditory experiences, which had been diagnosed in 2012. He was discharged from hospital on the basis that he agreed to take oral anti-psychotic medication. He failed to do so and avoided visits from and appointments with those who were there to help him. A report stated that D's condition was as a result of his cannabis use since the age of 15. The writer described it as a severe and enduring illness which significantly contributed to D's behaviour on the date of the offence. A subsequent report stated D's risk of re-offending would be significantly reduced with sustained successful treatment. Held. This was an unusual case. It is clear that the treatment in prison is not effective. Very often a robbery committed by a 22-year-old man is preceded by a number of earlier offences and interventions. This attack did not meet that characterisation. The offence fell squarely within the second category of the guidelines, 'force used which results in injury to the victim' (with a starting point of 4 years). On the other hand, the force was not that great. The starting point fell at the upper range between the lowest category of seriousness (starting point 12 months) and the intermediate level (starting point 4 years). There was no reason to disagree with the Judge's assessment that the particular aggravation of V's vulnerability and the particular mitigation of D's mental condition were of equivalent forensic weight. In which case, with full credit for the plea, the sentence should have been 2 years. On that basis, the sentence should have been suspended. This was a very nasty attack on an entirely innocent and vulnerable victim. But the public interest is better served by the management of D's condition so that such an offence never happens again. A Hospital Order was not required. **2 years suspended** with a mental health treatment requirement, not 2 years 8 months.

243.53 *Socially challenged, Defendant*

See also: *R v Holland* 2014 EWCA Crim 855 (Convicted of sex abuse with two nieces when one was aged between 3 and 6 years old and the other from when she was aged 5. over 6 year period. Defendant had learning difficulties and had the emotional maturity of an 8-year-old. Very low IQ in a dysfunctional

family. Vulnerable and of good character. Unusual risk of being bullied. 3 years would have been merciful. Factors take it well outside the sentencing range so **2 years.**)