

**84.23a** *Count just added to indictment*

*R v Hearn* 2014 EWCA Crim 110 D pleaded to handling stolen goods. The indictment initially alleged burglary and theft. At the PCMH, D offered to plead to handling but that was rejected. On the day of trial, the handling count was added and D pleaded. The first two counts were dropped. Held. The credit for the plea should be approaching the maximum. Sentence reduced.

**84.30** *Defendant requires advice*

*R v Creathorne* 2014 EWCA Crim 500, 2 Cr App R (S) 48 (p 382) D pleaded to death by careless driving. He was interviewed three months after the accident. D said he was suffering from amnesia but made no comment. He pleaded not guilty at his PCMH and was treated later as still suffering from amnesia. He pleaded shortly after, following the service of the collision report, toxicology evidence and a report of D's tyres. The Judge decided that D was only entitled to a 25% discount. D appealed, arguing he was entitled to a full discount as he had been suffering from amnesia and has thus pleaded at the first opportunity having received legal advice. Held. In *R v Caley* 2012 EWCA Crim 2821, it was held that, against the backdrop of a need for consistency in sentencing discounts, the determination of the 'first reasonable opportunity' was a matter for the sentencing judge and he or she had a residual discretion to treat cases individually. The Court in *Caley* also recognised the need to avoid an investigation into every case and slow down the administration of justice. Following this approach, the Judge determined the first reasonable opportunity was at the PCMH. The central question is therefore at what point in time was the advice given to D. D's amnesia at his PCMH meant his ability to form a considered decision as to his plea depended upon the ability of his legal advisers to review sufficient evidence to proffer sensible advice. In cases such as this, legal advisors should ordinarily be entitled to see all the material evidence before advising their client. What the material evidence will be will vary from case to case. In this case, the Judge did not analyse what evidence was available to D's legal advisers. A court should also normally be slow to go against the professional judgment of legal advisers where they say there is relevant evidence they have not had sight of. D should have received a full one-third discount.

**84.24** *Late plea*

*R v Redhead* 2013 EWCA Crim 1997 In December 2012, D pleaded not guilty to robbery at his PCMH. The case was put in the warned list for 2 April 2013. On 21 March 2013, D's solicitors wrote a letter to the CPS saying D would plead guilty. The witnesses were de-warned. On 3 April 2013, D pleaded and the Judge ordered a *Newton* hearing. On the 15 May 2013, the witness was not sure which robber kicked him so the *Newton* hearing was not required. On 13 June 2013, D was given only 10% for his plea. Held. The amount of credit is a matter for the Judge. Although the plea indication was a week before the trial date, it was not a court-door plea. There are good policy reasons for encouraging pleas before the date of trial. The discount should have been 20%.

**84.32a** *Defence needs investigating*

*R v Evans* 2014 EWCA Crim 1916 D pleaded to murder and was sentenced to a minimum term of 22 years. A number of psychiatric reports were prepared on D who pleaded guilty after the PCMH, but three weeks before trial. D never denied the facts surrounding the offence, the only issue was the availability of the defence of diminished responsibility. As soon as it was confirmed following the medical evidence that D could not run that defence, he pleaded guilty. The Judge began with a starting point of 25 years and afforded D credit of 3 years. Held. There was no good reason to deny D the full credit for his plea which

he had intimated as soon as he was advised he had no diminished responsibility defence. Full one-sixth credit given.

#### **84.36 *Defence request reports/watch CCTV***

*R v Port* 2013 EWCA Crim 2668, 2014 2 Cr App R (S) 26 (p 203) D pleaded (at his PCMH) to ABH and possession of an offensive weapon. The Judge gave him reduced credit as he considered the PCMH was not the earliest opportunity. The defence appealed contending that D had wished to see CCTV footage before entering his plea, so the PCMH was the first reasonable opportunity. Held. The Early Guilty Plea Scheme does not permit a defendant to delay admitting his guilt in order to see whether or not his criminality is revealed in film footage. D knew he had delivered an unlawful blow and was carrying an offensive weapon. Therefore to suggest that he was entitled to delay entering his plea so as to watch the film of the incident in which he had participated is an untenable suggestion.

#### **84.41 *Overwhelming prosecution case/Defendant caught red-handed***

*R v Kadiri* 2014 EWCA Crim 1106 D pleaded, at the first opportunity, to commercial burglary. The Judge found that the evidence was overwhelming and so only gave credit of 20%. Held. The case was very strong but not overwhelming. He was not captured on CCTV taking any items, merely entering and leaving the premises. Despite the obvious evidence against him it was not inevitable that D would plead guilty. D's plea saved valuable public time and resources. The Judge erred in not giving D full credit.

See also: *R v Ghebre-Amlak* 2014 EWCA Crim 1670 (D pleaded to burglary. Held. The efficient administration of Justice demands that time and expenditure is not wasted on cases where untruthful explanations are given. A fingerprint on the door of the premises and a belt and wallet from the premises on D should not have been assessed as 'overwhelming'. Full credit substituted.)