

Offences against the Person act 1861 s 20**299.13a** *Police officer, Against an*

R v Jonsyn 2013 EWCA Crim 1655, 2014 1 Cr App R (S) 67 (p 438) D pleaded on re-arraignment (full credit) to section 20. He was arrested at his home. On arrest, he was abusive and aggressive and at the police station could not be booked in properly. On removal of the handcuffs D squared up to V, an officer, and punched him once, hard, in the face. V suffered a fractured eye socket which required surgery. D changed his plea upon learning that full credit would be available. D, aged 19, had convictions for at least 37 offences, including assaulting an officer. A psychiatric report indicated D's remorse for his actions. Held. The Judge was wrong to categorise the case as Category 1 on the basis the officer was a vulnerable victim. Starting point 2½ years not 3½ so **20 months** not 30.

299.14 *Pubs/After drinking*

R v Chamberlain and Others 2013 EWCA Crim 1859 C and R pleaded to section 20. V1 and his girlfriend, V2, were in a nightclub. A disagreement arose between R's sister and V2. C punched V1 and all were asked to leave. The dispute continued outside the club and insults were thrown. C and V1 threw punches at each other, whereupon C asked R and D to assist. V1 was dragged, kicked in the head by D and punched by C. V2 lay across V1 and was kicked in the face by R. V1 attended hospital and was treated for cuts and bruising to the ribs and discharged. The pain worsened and he was later found to have closed fractures to his forearm, face, two ribs and spine. V2 suffered slight swelling and bruising. All three expressed extreme remorse and blamed alcohol for their actions. B, aged 24, had a conditional discharge for criminal damage. C, aged 27, had no relevant convictions. R, aged 24, had two cautions for criminal damage and affray. Held. It was a joint attack at night. Part of the attack was when V1 was on the ground. It was also not premeditated and of very short duration. There was no evidence of the residual effect of the injuries. The case was on the cusp of Category 1. There should be credit for the remorse. We sentence on the basis the offence was out of character. There was no evidence D was wearing boots. Starting at **2 years**, with full credit, for C and R **15 months** not two years.

For more details of B's sentence, see the **OFFENCES AGAINST THE PERSON ACT 1861 s 18** update at **298.29**.

R v Conner 2013 EWCA Crim 1860 D pleaded (full credit) to section 20 wounding. D was drinking at a pub with two friends, who were regulars and known to the staff. One of them, B, was said by the landlord to be "his usual argumentative self". V was on a pub-crawl with a group of his friends and very much the worse for drink. B was asked to leave the pub and did so accompanied by V and B's friend. V made an offensive remark to the men as they left. B retaliated and V and his friends followed them outside. D ran towards V and struck him forcefully with a single, swinging punch, putting "everything he had into it". V fell to the floor and D left the scene, reportedly stating "the job was done". He was arrested shortly afterwards. V suffered a significant laceration to his face and damage to his front teeth which persisted for five weeks after the event. The Judge described it as a savage blow causing a lot of damage. D was aged 45 with no convictions. The PSR proposed a suspended sentence and presented D as a placid and caring man of positively good character. Held. The Judge made insufficient allowance for the mitigating factors (presumably the single blow, the lack of convictions, his remorse and the offence was out of character). Therefore the offence was at the lower end of Category 2. **8 months** not 12.

299.16 *Relationship attacks*

R v Johnson 2014 EWCA Crim 1966 D pleaded (little credit) to s 20 assault. D had been married to V for eight years and they lived together for 21. V had a child, not D's, which was a source of ill feeling and so V asked her son to live elsewhere. Over time, D became abusive towards V, verbally and physically. He belittled her and complained about her conduct and V then began to drink more. Following both parties' drinking, an argument developed over the amount V was drinking and D pushed V. She fell and hit her head on a door frame, requiring three staples and hospital treatment. She had also broken her wrist, needing an operation to put pins in. She reported the incident to police, having fled the house in her pyjamas. D played the incident down and said that V, drunk, had fallen towards him and he had pushed her away. He also said that this was the first such incident and that he intended no malice or ill-will towards V. D was aged 45 on appeal and had only a caution for possession of an offensive weapon from 2003. He expressed remorse and the PSR recommended an 18-month community order with supervision. Held. This was Category 2, not 3. We would respectfully doubt whether the fractures to the wrist were serious in the context of this offence...they were not among the more serious injuries within the range of offences to which this offence relates. **9 months**, not 12 (immediate), **suspended** with supervision.

See also: *R v Caceres* 2013 EWCA Crim 924, 2014 1 Cr App R (S) 23 (p 128) (Plea to section 20, ABH, two of common assault and one of criminal damage (victim's clothes which had been destroyed). Domestic violence by a man on male partner. Regular violence. One resulted in broken eye-socket. On another occasion, iron used on head resulting in stitches. Previous for battery. Earlier police caution. Judge bound to take into account as an aggravating factor that each offence not an isolated incident. **4 years 2 months** upheld.)

299.18 Sexual/HIV infection

R v Golding 2014 EWCA Crim 889 D pleaded guilty to reckless section 20. In June 2007 and April 2008, D went to a clinic and was diagnosed with a herpes virus. In July 2009, he met V and their relationship became sexual. V contracted type HSV-2 genital herpes and said D was her only partner at the time. In interview, D admitted he had given V herpes. D was now 31 and of good character. He was given 14 months and appealed his conviction and sentence. He was conditionally bailed. Held. There had been a failure to apply CPS guidance about charging sexual assault. Genital herpes was capable of being 'really serious bodily harm'. D's plea had been properly made and was voluntary. No proper criticism could be made of the sentence. However D had lost his job because of the sentence and that over the 3 years on bail at the Court of Appeal, he had not found another one and family difficulties caused by that and his period in limbo meant it would be wrong to return him to custody, so **3 months** making immediate release appropriate.

For some more details about the Court of Appeal approach see the **APPEALS: COURT OF APPEAL** update at **3.73a**.

299.21 Unprovoked/Unwarranted attack

See also: *R v Knight* 2014 EWCA Crim 293 (Plea. Dispute about a queue at a cash machine. Defendant, worse for drink, punched and then gave full-bodied kick to V's head when V was on the ground. V suffered fractures to cheek bone and orbit. He faced continuing disfigurement. Intense remorse, good work record and acceptance of peer group risk factor. Insufficient account given to mitigating factors. We start at 3 years, with 20% credit, **2 ½ years** not 2 years 9 months.)

Note: It appears the Judge failed to deduct the full 20% as promised. Ed.

299.23 Victim seriously injured, Unexpected

R v Robinson 2014 EWCA Crim 1661 D pleaded (full discount) to s 20 assault. V and a friend walked up some stairs in a pub. D, who had been drinking, walked down the stairs. Words were exchanged and D grabbed V. D then pushed and pulled V to the top of the stairs and punched V once in the face. V was knocked down, fell down the stairs and hit his head on the floor. D left. V was unconscious with a fractured skull and swelling to the brain. V's injuries were life-threatening. V made a good physical recovery but would have serious lifelong problems. In interview D took responsibility, having initially said he acted in self-defence. D was aged 20, had a drink/driving conviction in 2011 and had references. D lived with his parents and was employed. He showed remorse. The Judge found this was Level 1 due to the injuries and the need to deter. Held. The attack was unprovoked. The Judge was unjustified in going above the top end of Level 2. No higher culpability factors were present. **24 months' YOI** not 30.