

Sentencing Update

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Most of the cases that follow are included in the fourth (July 2008) update to the Sentencing Guidelines Council's Guideline Judgments Case Compendium. That update will have been recently circulated to all judges and the cases in it may well, therefore, be at the forefront of their minds.

R v Tongue & Doyle [2007] EWCA Crim 561:

Where the Sentencing Guidelines Council has issued definitive guidelines it should be the exception, rather than the rule, to cite previous cases. NB: All previous guideline cases for assault have been removed from the Compendium and simply replaced with the SGC's new guideline on assault.

R v Davies [2008] EWCA Crim 1055:

When deciding whether an aggravating factor applies to a case so as to increase sentence the judge must be apply the criminal standard of proof to determine whether that aggravating factor was present. This case was decided in the context of aggravating factors increasing the minimum tariff of a life sentence for murder but the principle may be more widely applicable.

R v Kavanagh [2008] EWCA Crim 855:

Another case that emphasises the ever-increasing importance of the SGC's guidelines over case law. Where an offence (in this case public nuisance) is not the subject of an SGC guideline, but is akin to offences for which there is a guideline, the court should try, as best it can, to relate the offence to the guidelines.

R v Xu [2007] EWCA Crim 3129

Guideline case as to the appropriate sentences for cultivation of cannabis:

Gardeners: “One or more workers tending the plants in the particular premises, carrying out what might be described as the ordinary tasks involved in growing and harvesting the cannabis. They will usually, but not always, have had little or nothing to do with the setting up of the operation, but will simply be doing their tasks on the instructions of those running the operation. They will often be illegal immigrants, who are being exploited because of their vulnerability; and they may well be paid either nothing, but provided with board and lodging, or paid simply enough for subsistence.” Starting point, after a trial and before mitigation – 3 years

Managers: “Those who play a greater part in the operation, making arrangements for the plants to be brought in, and the crop to be distributed. They may help to run more than one operation and be involved in making payments, such as rental payments, albeit again on instructions from those running the operation.” Starting point after a trial and before mitigation - between 3 and 7 years depending on the level of their involvement and the value of the cannabis being produced.

Organisers: “Those who have played a part in setting up the operation, for example obtaining the premises workers and equipment with which to carry out the operation.” Starting point after a trial and before mitigation – between 6 and 7 years depending on the quality of the cannabis involved.

R v Povey [2008] EWCA Crim 1261

The case that caused a stir in respect of knife crime and led to a hasty amendment to the

new Magistrates' Sentencing Guidelines. Aside from declaring that sentences in the Magistrates' Courts should be at the top end of the new Sentencing Guidelines, the case does not actually set any new guidelines and purports to leave the old authority of *Poulton and Celaide* intact, but does so "with the current grave situation as we have endeavoured to explain it, and the sentencing considerations we have just identified clearly in mind". The inevitable result, though, will be tougher sentences for even the most minor of offences involving knives.

Attorney-General's Reference, Numbers 1 & 6 of 2008 [2008] EWCA Crim 677:

2 points here:

Where a defendant has possession of a false passport in circumstances where it has been or may be used to evade immigration control it is not acceptable to impose a very short sentence on the basis that it is better that he be deported quickly. The element of deterrent mentioned in *Kolawole* must be considered and defendants should expect sentences of 12 months or more.

Where, however, a defendant who is in this country lawfully uses a false passport, not to evade immigration control, but to obtain employment simply in order to feed himself and where that defendant's position is such that he cannot be expected to return to his home country then a suspended sentence can be a perfectly justified application of judicial mercy.