**CHAPTER 21**

Based on the specific sentencing guidelines for a s. 47 OAPA 1861 assault contained in the Magistrates’ Court Sentencing Guidelines (see Appendix 3) this could be classed as a category 2 assault in that there is higher culpability but lesser harm. The higher culpability comes from the fact that the assault appears to have been motivated by racial hostility; Scott was in a group and the assault involved head-butting. The starting point in terms of sentence is a custodial term of 26 weeks with a sentence range reducing to a low level community order and increasing to committal to the Crown Court. Statutory aggravating factors in Scott’s case include:

• s. 143(2) CJA 2003—he has previous offences of a like nature;

• s. 143(3) CJA 2003—he committed this offence while on bail;

The effect of these is to increase the seriousness of the offence. This is a case where the magistrates’ court may consider that its maximum custodial term of six months is insufficient because of the number of aggravating features. It is highly likely that an ‘all options’ pre-sentence report would be requested, specifically preserving the right of the court to commit Scott to the Crown Court for sentence which is clearly within the range of sentence available. In determining the final sentence, regard would be had to any personal offender mitigation Scott might put forward. Scott would be entitled to the maximum sentencing discount available which, in accordance with the SGC’s Reduction in Sentence for a Guilty Plea (Revised) (July 2007), would be in the region of one third. The magistrates’ court could decide to impose a maximum term of six months in custody with the credit for guilty plea being the decision not to commit Scott to the Crown Court for sentence.

ANALYSIS OF CASE STUDIES

R v Roger Martin

Aside from the road traffic offences committed by Mr Martin, he is also pleading guilty to an offence of common assault committed in a road rage context. A guilty plea will of course attract a sentencing discount. Having regard to the guideline for common assault in the MCSGs (note: this particular guideline is not included in Appendix 3, you will need to access through the SC’s website), how would you categorise this assault in terms of culpability and harm? How serious was the injury caused in the context of a common assault? A bruised and bloodied nose and black eye is unpleasant but there does not appear to be any lasting effect. There was a repeated assault as two punches were thrown to the facial area. This indicates greater harm. As regards culpability there was a degree of provocation by the witness and there does not appear to be any premeditation as such. Is it therefore correctly classified as a Category 2 common assault or does the injury make it a Category 3? The correct Category classification makes a big difference to the starting point in terms of sentence. For a Category 2 assault, the starting point is a medium level community order with a range up to a high community order. For a Category 3, it is a Band A fine. Additional aggravating features in the commission of this offence include the fact that it was committed in the context of road rage. A little research on this point will reveal that such matters are taken very seriously by the courts. Consider B 2.3 in *Blackstone’s Criminal Practice*:

‘In *Fenton* (1994) 15 Cr App R (S) 682 the offender pleaded guilty to common assault (charges of assault occasioning actual bodily harm and dangerous driving were not proceeded with). In the course of an altercation between motorists, the offender pushed the victim in the chest. The Court of Appeal said that almost all cases of violence between motorists would be so serious that only custody could be justified. The appropriate sentence was seven days’ imprisonment. See also *Ross* (1994) 15 Cr App R (S) 384.’

Fenton predates the ‘Assault’ guidelines issued by the Sentencing Council. The context of the offence however will be an aggravating factor as will Roger’s relevant previous conviction. Assuming it is classed as a Category 2 common assault, the aggravating factors could lead to a high-level community order and could just cross the custody threshold. There do not appear to be any mitigating factors in the commission of the offence. Given the possibility of a community order and the risk of a short custodial sentence, a pre-sentence report should be ordered.

We will assume that having entered a guilty plea, the magistrates adjourn sentence and order a pre-sentence report, keeping all of their sentencing options open. We ask you to consider Chapter 22 before viewing the final sentencing hearing in relation to Roger Martin.

R v William Hardy

As the offence under s. 9 SOA 2003 involves penetration of the victim (albeit with her consent), the offence can only be tried on indictment and the maximum sentence for this offence is 14 years. This is clearly a serious offence.

If you have accessed the Sentencing Council’s website, you will have seen that a revised guideline covering offences under the Sexual Offences Act 2003 has been issued, which came into effect on the 1st April 2014. The guideline would be referred to in the course of the sentencing hearing.

The sentencing starting point would be determined by which category this particular offence might be placed within. If, as is likely, it is considered to be a Category 1 A offence, the starting point would be five years in custody with a range down to two years and up to 10 years. If it were to be placed within Category 1B, the starting point would reduce drastically to a custodial sentence of one year with a downward range of a high community order and an upward range of two years in custody. This offence clearly involves penile vaginal penetration and has resulted in pregnancy. There is an age difference though it is arguably not a significant difference and there is an element of breach of trust.

A key aggravating feature in this case is the suggestion that the prelude to sexual activity between William Hardy and his victim began when he was providing private tuition to the girl. Arguably he was in a position of trust as regards his victim. This is, however, denied by William Hardy. Importantly the defence and prosecution have been able to agree a basis of plea in which it is accepted that William was not in a position of trust when sexual activity was initiated. Had the basis of plea not been agreed, a Newton hearing would almost certainly have been required. In terms of mitigating features of the offence itself, the age disparity between the two is not that great and their sexual relationship would appear to be within the context of a loving and consensual relationship and had been initiated by the victim. Nevertheless, on the face of things, William is self-evidently in a serious predicament. Credit must of course be given for his timely guilty plea (s. 144 (CJA 2003).

Did you spot the fact that William Hardy will also be subject to notification requirements of the Sex Offender’s Register under the SOA 2003? The duration of notification will be determined by the nature of the sentence William receives.

A pre-sentence report should be ordered in this case.

We ask you to complete your reading of the chapters on sentencing before viewing the final sentencing hearing in relation to William Hardy.

R v Lenny Wise

Domestic dwelling house burglary is a serious matter. This is a case where a pre-sentence report would be ordered to explore relevant personal offender mitigation and to consider what might be regarded as the most appropriate sentence for Lenny given his personal circumstances.

The relevant sentencing guideline for this offence can be found in the Sentencing Council’s guideline on Burglary effective from the 16 January 2012 (see Appendix 3). You need to access the guideline which applies specifically to domestic dwelling house burglary. Having regard to the way in which SC guidelines are applied (see 21.8.1), in which offence category would you place this particular burglary? A Category 1 offence has a starting point of 3 years in custody with a range down to 2 years and up to 6 years. A Category 2 offence has a much lower starting point of 1 year in custody. There are several aggravating features which apply to Lenny Wise which raise his culpability. They include:

• the targeting of a vulnerable victim by means of distraction;

• the fact that the victim was at home;

• the fact that the burglars worked as a group.

Lenny’s culpability would be further heightened by the fact that he has a relatively recent previous conviction for burglary and numerous previous convictions for theft. In addition, the burglary has clearly had an impact on the victim who was left very frightened. This case arguably falls within the highest offence category (category 1). Had Lenny been convicted of this offence he could expect a custodial term of between three to four years, subject to any strong personal offender mitigation that could have been put forward on his behalf.