



# The Criminal Appeal Reports (Sentencing) 1992

Editor  
David Thomas, LL.D.

Consultant Editor  
David Evans, Barrister

Editorial Contributor  
T. Rees, M.A., LL.M., Barrister

Volume 13

**THOMSON**  
  
**SWEET & MAXWELL**

This volume should be cited as 13 Cr.App.R. (S.)

ISBN 0 421 46820 3

All rights reserved. No part of this publication may be reproduced or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, or stored in any retrieval system of any nature, without the written permission of the copyright holder and the publisher, application for which shall be made to the publisher.

Reprinted 2005 by TJI Digital, Padstow, Cornwall

## Table of Cases

AHMED (1984) .....	211	CAIN (1984) .....	268
Ahmed and Ahmed (1988) .....	470, 471	Carter (1983) .....	422, 424
Anderson (1989) .....	588, 589, 590	Casey (1932) .....	255
Anderton v. Anderton (1977) .....	482, 484	Cato and Others (1976) .....	552, 554
Aramah (1982) .....	128, 129, 146, 167, 262, 263, 356, 358, 500, 501, 555, 653, 655, 679	Chapman (1990) .....	258
Ashraf (1981) .....	653, 655	Commissioners of Customs and Excise v. Menocal (1980) .....	253, 255, 256, 257, 258
Aslam Mohammed (1987) .....	51, 53	Cook (1988) .....	420, 422
Attorney-General's Reference No. 1 of 1989 (1989) .....	182, 183, 184, 530, 531, 532	Crarioto (1990) .....	342, 345
Attorney-General's Reference No. 4 of 1989 (1989) .....	338, 340, 352, 403, 405, 530, 531, 532, 693, 724, 725, 729	Crosbie (1990) .....	36, 37, 124, 125, 126
Attorney-General's Reference No. 5 of 1989 (1989) .....	338, 340, 724, 725, 729	Cullen (1989) .....	27, 28, 29
Attorney-General's Reference No. 7 of 1989 (1990) .....	33, 35	Cunningham (1979) .....	599, 601
Attorney-General's Reference No. 3 of 1990 (1990) .....	447, 449	DALBY (1982) .....	552, 554
Attorney-General's Reference No. 4 of 1990 (1990) .....	447, 449	Danga (1992) .....	408
Attorney-General's Reference No. 17 of 1990 (1990) .....	174, 175	Davis (1988) .....	182, 183, 184
Attorney-General's Reference No. 23 of 1990 (1990) .....	609, 610	Dearn (1990) .....	384, 387
Attorney-General's Reference No. 24 of 1990 (1990) .....	338, 340	Devall and Others (1984) .....	442, 443, 444
Attorney-General's Reference No. 25 of 1990 (1990) (Alan James Doheny) .....	382, 383	Dickens (1990) .....	67, 68, 390, 391
Austin (1986) .....	555	Dickson (1990) .....	578, 580
BALOGH v. St. Albans Crown Court (1975) .....	595, 596	Dighton (1983) .....	247, 249
Bannister v. Clarke (1920) .....	268, 269	Dillon (1983) .....	480, 481, 482
Barley (1989) .....	258, 259	Director of Public Prosecutions v. Anderson (1990) .....	189
Barrick (1985) .....	645, 646	Director of Public Prosecutions v. Frost (1989) .....	201
Bartholomew (1986) .....	182, 183, 184	Dolan and Cormack (1981) .....	564, 565, 567
Bassett (1985) .....	313, 314	Doorgashurn (1988) .....	581, 583
Batchelor (1952) .....	255	Duggan (1984) .....	182, 183, 184
Bedborough (1984) .....	247, 249	Dunbar and Johnson (1987) .....	684, 685
Bell (1989) .....	292, 294	Durkin (1989) .....	244, 246, 319, 321, 650, 652
Bilinski (1987) .....	146, 149, 555, 584, 585, 653, 655, 680	EATON (1989) .....	416, 418, 419, 508, 511
Billam (1986) .....	135, 136, 220, 222, 360, 362, 382, 384, 468, 469, 622, 623, 624, 625, 698, 701, 702	Edwards (1990) .....	508, 511
Birtles (1969) .....	519, 520	Emberton (1980) .....	540, 542
Boswell (1984) .....	218, 219, 278, 279, 337, 338, 339, 477, 478, 521, 522, 616, 617, 618	England (1990) .....	225, 226, 228
Bouchereau (1977) .....	500, 501	Evans (1976) .....	588, 589
Bradford (1911) .....	258	Ezcoke and others (1988) .....	679, 680
Bradbourne (1985) .....	231, 232, 234	FISHER and Manlow (1989) .....	302
Brook (1949) .....	258	Fleming and Dodge (1984) .....	322, 324
Browne (1984) .....	684, 685	Flemming (1973) .....	292, 294
		Ford (1981) .....	399, 401, 402, 564, 565, 567
		Frascati (1981) .....	538, 540
		French (1990) .....	146, 148
		GAY (1989) .....	315, 316
		Gayle (1989) .....	319, 321
		Godber (1986) .....	296, 298, 299, 322, 324, 325
		Goodchild (1991) .....	508, 512
		Goodwin (1981) .....	650, 652
		Gould (1983) .....	578, 580
		Green (1986) .....	384, 386
		Green and Green (1984) .....	399, 401

HAGGIS (1990) .....	267, 269	Newton (1974) .....	189, 190, 191, 192
Hammertons Cars Ltd. (1976) .....	498, 499	Newton (1982) .....	442, 660, 661, 663, 664
Hart (1983) .....	253, 255, 257	North (1971) .....	599, 601
Hart (1986) .....	8, 10	Northern Ireland Trailers v. Preson Corporation (1972) .....	490, 493
Harwood (1979) .....	304, 306	Nunu (1991) .....	560, 562
Hawkins (1985) .....	660, 661	O'BRIEN (1984) .....	712, 713
Haynes (1983) .....	384, 387	O'Callaghan (1987) .....	456, 458
Hill (1989) .....	292, 295	O'Sullivan (1983) .....	315, 316
Hodgson (1968) .....	364, 368	Olliver (1989) .....	63, 65
Holloway (1982) .....	581, 583, 662, 664	Ottey (1984) .....	273, 274
Holmes (1990) .....	278, 279	PALMER (1991) .....	718, 719
Horrigan (1985) .....	422, 424	Parkinson (1987) .....	322, 324
Horseman (1983) .....	578, 580	Passmore (1989) .....	51, 53
Hough (1984) .....	225, 226, 228	Patel (1987) .....	653, 655
Howard (1985) .....	426, 427	Perry (1986) .....	456, 458
Hughes (1988) .....	508, 511	Phillips (1985) .....	508, 510, 511, 544, 547
Hunter (1991) .....	282, 284	Pike (1971) .....	526, 528
Hussain and Mugal (1983) .....	470, 471	Pilford (1985) .....	322, 324
JONES (1980) .....	480, 481, 482	Pither (1979) .....	364, 368
KANDIARI (1979) .....	342, 344, 560, 561	Powell and Carvell (1984) .....	336
Kearns (1989) .....	523, 524	Powis and Pritchard (1987) .....	57, 59
Kelly (1987) .....	505, 506	Pridge v. Grant (1985) .....	189, 192
Kent (1990) .....	586, 588	Pritchard (1989) .....	640
King (1973) .....	180, 181, 182	Pugsley v. Hunter (1973) .....	189, 191, 202
Knight (1991) .....	581, 583, 628, 629	QUEEN (1984) .....	626, 627
Kouadio (1991) .....	679, 680	R. v. BROADCASTING COMPLAINTS COMMISSION, <i>ex p.</i> OWEN (1985) .....	438
LAKE (1986) .....	336	R. v. Burnley Magistrates Court, <i>ex p.</i> Halstead (1990) .....	27, 28
Lamb (1968) .....	526, 528	R. v. Cardiff Stipendiary Magistrate, <i>ex p.</i> Morgan (1989) .....	428, 429, 434
Lawrence (1982) .....	258, 259	R. v. Chelmsford Crown Court, <i>ex p.</i> Birchall (1989) .....	495, 497
Lennard (1973) .....	482, 483	R. v. Croydon Crown Court, <i>ex p.</i> Miller (1986) .....	495, 497
Litchfield (1988) .....	322, 324, 325	R. v. Derby and South Derbyshire Magistrates, <i>ex p.</i> McCarthy (1980) .....	428, 429, 434
Lowther (1990) .....	650, 652	R. v. Grice (1977) .....	256
Luff (1986) .....	182, 183, 184	R. v. Guildhall Justices, <i>ex p.</i> Cooper (1983) .....	434
McCANN (1972) .....	519, 520	R. v. Harlow Justices, <i>ex p.</i> Galway (1975) .....	428, 429, 434
McCormick v. Hitchins (1988) .....	482, 483, 485, 496	R. v. Hartlepool Justices, <i>ex p.</i> King (1973) .....	428, 429, 434
McCue (1987) .....	186, 187	R. v. Highbury Corner Stipendiary Magistrate <i>ex p.</i> di Matteo (1990) .....	273, 274
McGarrie (1989) .....	260, 262	R. v. Inner London Crown Court, <i>ex p.</i> Bentham (1989) .....	490
McLaughlan (1987) .....	8, 10	R. v. Kings Lynn Justices, <i>ex p.</i> Carter (1969) .....	428, 429, 432, 433
McLonghlin (1985) .....	403, 404	R. v. Lymm Justices, <i>ex p.</i> Brown (1973) .....	428, 429, 433
McNamara (1984) .....	544, 547	R. v. Newbury Justices, <i>ex p.</i> Pont (1984) .....	595, 598
Mackenzie (1988) .....	642, 644	R. v. Newham East Justices, <i>ex p.</i> Hunt (1976) .....	490, 493
Mathieson (1987) .....	63, 65		
Matthews (1987) .....	480, 481, 482		
Michael (1976) .....	488		
Michael (1990) .....	471		
Miller (1976) .....	494		
More (1988) .....	442, 444		
Morgan (1988) .....	336		
Morgan (1990) .....	508, 511, 512		
Morris v. Crown Office (1970) .....	595, 596, 597		
Murphy (1988) .....	592, 594		
NABIL AHMED (1984) .....	208		
Nazari (1980) .....	342, 345, 346, 347, 500, 501, 560, 561		
Newsome (1970) .....	255		

R. v. Rotherham Magistrates' Court, <i>ex p. Zaine Floyd Brongh</i> (1990) .....	408, 410	Smith (1988) .....	182, 183, 184
R. v. Southwark Crown Court, <i>ex p. Ager</i> (1990) .....	17, 19, 282, 284, 285, 300, 302, 568, 569	Smith-Bryant (1989) .....	572, 574, 575
R. v. St. Albans Crown Court, <i>ex p. Cinnamand</i> (1980) .....	495, 497	Spura (1988) .....	501
R. v. Tower Bridge Magistrates, <i>ex p. Osman</i> (1971) .....	428, 429, 433	Stewart (1983) .....	322, 323
R. v. Warrington Justices, <i>ex p. Mooney</i> (1980) .....	428, 429, 434	Stewart (1988) .....	650, 652
R. v. Whitchurch (1881) .....	490, 493	Stone (1988) .....	150, 151, 152, 153
R. v. Wyre Magistrates' Court, <i>ex p. Boardman</i> (1987) .....	439, 440	Storey (1984) .....	38, 39, 40
Randall (1986) .....	269	Stuart and Williams (1979) .....	416, 418
Reeds (1987) .....	51, 53	Sweeney (1986) .....	226, 228
Reynolds (1985) .....	322, 324, 325	Symes and Lowery (1982) .....	408, 411
Richards (1989) .....	586, 588		
Roberts (1989) .....	38, 40	TAYLOR (1986) .....	511, 544, 547
Robertshaw (1981) .....	363	Thompson (1989) .....	695, 697
Robertson, Coupar and Baxendale (1982) .....	20, 21	Todd (1990) .....	319, 321, 381, 382
Robinson (1990) .....	304	Tosland (1981) .....	247, 249
Rodenhurst (1989) .....	218, 219	Townsend (1979) .....	384, 387
Rolt (1984) .....	628, 629	Turner and Others (1975) .....	352, 578, 579
Ronaldson (1990) .....	306	Turtan (1986) .....	364, 368
Roote (1980) .....	313, 314		
Ruby (1987) .....	474, 476, 508, 510, 544, 546	UNIVERSAL SALVAGE v. BOOTHBY (1983) .....	495, 497
Russell (1990) .....	669, 670		
SAKHI (1984) .....	540, 542	VALLETT (1950) .....	428, 429, 431
Sattir Singh (1988) .....	356, 358	Velor (1984) .....	581, 583
Savindra, Carter and Benmore (1968) ..	401		
Saville (1980) .....	486, 488, 489	WALKER (1990) .....	731, 733
Scott (1989) .....	334, 335, 336, 599, 601	Wallis (1979) .....	63, 65
Scott (1990) .....	231, 234, 262, 263	Ward (1971) .....	599, 601
See (1990) .....	568, 570	Warrior (1984) .....	322, 323
Shah (1987) .....	422, 424	Webster (1991) .....	299, 300, 301, 302, 439, 440
Sheen (1987) .....	472, 473	Wehner (1977) .....	268
Shettan (1986) .....	442, 444	Wemyss v. Hopkins (1875) .....	289
Shelton (1988) .....	472, 473	Wheatley (1983) .....	478, 480, 481
Silver and Gosling (1982) .....	544, 547	Whittall v. Kirby (1947) .....	483
Slee and Worgan (1990) .....	302	Wichine (1958) .....	482, 483, 484
Smith (1981) .....	578, 580	Wilburn (1991) .....	684, 685
Smith (1983) .....	329, 330	Williams (1989) .....	15, 16
Smith (1984) .....	244, 246	Willis (1974) .....	461, 463
		Witchelo (1992) .....	677, 678
		Wortley (1991) .....	609, 611
		YOUNG (1991) .....	442, 445
		ZAMPA (1984) .....	581, 583

## Table of Statutes

1861	Offences against the Person Act (24 & 25 Vict., c. 100)		1959	Obscene Publications Act (7 & 8 Eliz. 2, c. 66)	581
	s. 4	251	1960	Administration of Justice Act (8 & 9 Eliz. 2, c. 65)	
	s. 18	286, 288, 289, 396, 651		s. 13	597
	s. 20	130		(3)	597
	s. 29	396	1961	Criminal Justice Act (9 & 10 Eliz. 2, c. 39)	
1873	Supreme Court of Judicature Act (36 & 37 Vict. c. 66)			s. 1(2)	411
	s. 47	494		s. 3	528
1875	Public Health Act (38 & 39 Vict., c. 55)	493	1967	Sexual Offences Act (c. 60)	463
1925	Criminal Justice Act (15 & 16 Geo. 5, c. 86)			Criminal Justice Act (c. 80)	597
	s. 24(1)	431		s. 39	597, 598
1933	Children and Young Persons Act (23 & 24 Geo. 5, c. 12)	706, 709		(1)	597
	s. 1(1)(a)	605		s. 56	157, 158, 406, 407, 525, 526, 529
	(5)	411		(5)	529
	s. 39	358		s. 67	15, 16, 32, 249, 644
	s. 53	411		(1)	15, 16, 642, 643, 644
	(2)	1, 4, 295, 296, 298, 321, 322, 323, 324, 325, 326, 327, 328, 636, 637, 666, 667, 705, 708, 729, 730	1968	Criminal Appeal Act (c. 19)	
1936	Public Health Act (26 Geo. 5 & 1 Edw. 8, c. 49)	491		s. 11	328
	Pt. III	492		(3)	326
	s. 92	490, 492		s. 17(1)(a)	146
	(1)	492		Trade Descriptions Act (c. 29)	
	s. 93	492		s. 1(1)(a)	132
	s. 94	489, 490, 491, 492		Theft Act (c. 60)	212, 214
	(1)	492		s. 17(1)(a)	154
	(2)	490, 491, 494		Courts Act (c. 23)	
	(4)	492		s. 4(1)	269
	(5)	492		s. 11(2)	255, 256, 488
	s. 95	493	1971	Misuse of Drugs Act (c. 38)	429
	s. 96	493		s. 27	256
	s. 99	490, 493, 494		Finance Act (c. 68)	229
1948	Criminal Justice Act (11 & 12 Geo. 6, c. 58)			Immigration Act (c. 77)	346
	s. 17	597, 598		s. 3(6)	344
	s. 20(1)	411		s. 6	347
	s. 28	431	1972	Road Traffic Act (c. 20)	
	s. 29	431		s. 6	335
	(1)	430, 431		(1)	335
	s. 79	431		s. 8(7)	483, 485
	Sched. 9	431		s. 97	485
1952	Magistrates' Courts Act (15 & 16 Geo. 6 & 1 Eliz. 2, c. 55)			s. 143	335
	s. 18	431	1973	Powers of Criminal Courts Act (c. 62)	406, 440
	s. 19	431, 433		s. 2(1)	596
	(2)	432		(7)	407
	s. 29	430, 432, 433, 434, 436		s. 8	406, 407
1956	Sexual Offences Act (4 & 5 Eliz. 2, c. 69)	463		(6)	406, 407
				(7)	63, 65
				(8)	157, 158, 159
				s. 12(2)	406, 407
				s. 14	259, 589, 590
				(1)	589, 590, 621
				(a)	591
				(1A)	590
				(3)	588, 589, 590, 591
				(8)	621
				s. 16(3)(b)	439, 621

1973	Powers of Criminal Courts Act— <i>cont.</i>	1981	Supreme Court Act (c. 54)
	s. 16(5) .....		s. 47 .....
	(b) 299, 300, 301, 619, 620, 621, 642, 644, 302, 439, 440		(2) .....
	s. 20 .....		Transport Act (c. 56) .....
	(1) .....		Wildlife & Countryside Act (c. 69) .....
	s. 21 .....		s. 1 .....
	s. 22(2) .....		s. 21 .....
	(3) .....	1982	Criminal Justice Act (c. 48) .....
	s. 24 .....		439, 440, 590, 697, 733
	(2) .....		Part I .....
	s. 28 .....		s. 1 .....
	s. 29 .....		(2) .....
	s. 31(3)(a) .....		(3)(a) .....
	s. 35 .....		(4) .....
	(1) .....		(a) .....
	(1A) .....		(i) .....
	(2) .....		(4A) .....
	(4) .....		19, 231, 232, 233, 234, 235, 299, 300, 301, 302, 438, 440, 441, 596, 570, 670, 692
	s. 37 .....		(a) .....
	s. 40(1) .....		(b) .....
	s. 43 .....		(c) .....
1974	Legal Aid Act (c. 4) .....		(5) .....
	s. 28(5) .....		s. 1A(1) .....
	Health and Safety at Work Act (c. 37) .....		s. 1B .....
	s. 33 .....		(2)(b) .....
1975	Salmon and Freshwater Fisheries Act (c. 51) .....		(5) .....
	s. 27 .....		s. 2(1) .....
1976	Endangered Species Act (c. 72) .....		s. 7(8) .....
	s. 4 .....	1983	Mental Health Act (c. 20) .....
1977	Criminal Law Act (c. 45) .....		s. 1(2) .....
	s. 16 .....		s. 47 .....
	s. 20 .....	1985	Companies Act (c. 6) .....
1979	Customs & Excise Management Act (c. 2) .....		s. 223 .....
	s. 68(2) .....		Sexual Offences Act (c. 44) .....
	s. 170 .....	1986	Drug Trafficking Offences Act (c. 32) .....
1980	Magistrates' Courts Act (c. 43) .....		s. 1(1) .....
	s. 19(1) .....		(2) .....
	(3) .....		(3) .....
	(3) .....		s. 2(2) .....
	s. 22(2) .....		(3) .....
	s. 38 .....		s. 3 .....
	428, 429, 430, 434		s. 4 .....
	s. 40 .....		(3) .....
	s. 108(1) .....		s. 5 .....
	(3) .....		(3) .....
	s. 133 .....		(4)(b) .....
	(1) .....		(9)(a) .....
	525, 526, 527, 528, 529		s. 6 .....
	(2) .....		(1)(a) .....
	s. 150(1) .....		Insolvency Act (c. 45) .....
1981	Forgery and Counterfeiting Act (c. 45) .....		s. 360(1)(a) .....
	s. 15(1)(b) .....		Company Directors Disquali- fication Act (c. 46) .....
	Contempt of Court Act (c. 49) .....		s. 11 .....
	s. 12 .....		(1) .....
	598		s. 13 .....

## TABLE OF STATUTES

xvii

1988	Road Traffic Act (c. 53)		1988	Criminal Justice Act— <i>cont.</i>	
	s. 5(1)	189, 200		s. 41	171, 213, 264, 265, 315, 334, 335, 338, 479, 480
	(a)	193, 196, 197		(7)	269
	s. 7	495		s. 69	273, 274
	(6)	495		s. 71	686, 687, 688
	s. 34(1)	189		(2)	687
	(3)	266		(4)	687
	s. 35	518		(5)	687
	(1)	517, 518		(6)	688
	(2)	518		s. 104	32
	Sched. 2	495		s. 123	19, 143, 326, 327 (4) 323
	Criminal Justice Act (c. 33)	66, 411, 686		Copyright, Designs and Patents Act (c. 48)	
	Part IV	728		s. 109	576
	Pt. VI	66	1990	Environmental Protection Act (c. 43)	491
	s. 36	183, 220, 286, 338, 340, 350, 352, 361, 403, 578, 592, 622, 624, 650, 653, 656, 690, 693, 712, 725			

## Appellants

ADAMS, Mark Barry .....	180	Bates, Michael John .....	57
Afzal, Mohanimed .....	145	Beaumont, Steven .....	270
Ahmad, Asif .....	212	Bekka, Janet Angela Helen .....	520
Akehurst, Edwin Alexander .....	568	Bennett, Robert Edward .....	586
Alibhai, Amin Mohammed Nazbudin and Others .....	682	Betts, Mark .....	281
Anderson, Barry Michael .....	564	Bingham, Andrew Hill .....	45
Anderson, Daniel Blake .....	325	Black, Jason George Michael .....	262
Anderson, Gerald Joseph .....	456	Bowen, Michael Patrick .....	89
Andrews, Roger David .....	504	Bradshaw, Andrew Donald .....	393
Arshad, Mohammed .....	145	Bray, Martin .....	5
Ashraf, Mohammed .....	451	Brown, Stephen Graham .....	239
Attorney General's Reference No. 25 of 1990 (Alan James Doheny) .....	220	Brown, Wayne Kenneth .....	382
Attorney General's Reference No. 1 of 1991 (Eric Stephen Hughes) .....	134	Browne, Jason Anthony Martin .....	92
Attorney General's Reference No. 2 of 1991 (Edward Peter Campbell Dil- lon) .....	337	Bruce, Marcus, and Kumah, Papafu- mah .....	636
Attorney General's Reference No. 3 of 1991 (Richard Sean Hyland) .....	349	Bulmer, Ian .....	424
Attorney General's Reference No. 4 of 1991 (David Christopher Noble) .....	182	Burnett, Anne .....	13
Attorney General's Reference No. 7 of 1991 (Sefton Kendrick Morgan) .....	285	Busby, Colin Ian .....	291
Attorney General's Reference No. 8 of 1991 (Lawrence Jepson) .....	360	CALLEN, Philip .....	60
Attorney General's Reference No. 11 of 1991 (Edward Peter Campbell Bur- nett) .....	402	Calvert, Martin .....	634
Attorney General's Reference No. 13 of 1991 (Philip Richard Smart) .....	650	Campbell, Philip .....	630
Attorney General's Reference No. 14 of 1991 (Stephen Arthur James Reed) ..	446	Carroll, Thomas Anthony .....	99
Attorney General's Reference No. 15 of 1991 (Kevin King) .....	622	Carter, Carol Dawn .....	576
Attorney General's Reference No. 16 of 1991 (William Peter Clark) .....	653	Carter, Derek Charles .....	354
Attorney General's Reference No. 17 of 1991 (Anthony Hart) .....	656	Case, Matthew .....	20
Attorney General's Reference No. 18 of 1991 (Gareth Vaughan Roberts) .....	624	Casseeram, Ramjutee .....	384
Attorney General's Reference No. 19 of 1991 (Richard Henry Garbutt) .....	711	Chamberlain, Gary Allen .....	535
Attorney General's Reference No. 20 of 1991 (Steven Ronald Roast) .....	577	Chamberlain, William Andrew .....	525
Attorney General's Reference No. 21 of 1991 (Ryan Samuel Gormley) .....	689	Chewings, David Ernest .....	609
Attorney General's Reference Nos. 22 and 23 of 1991 (Mark John Jacques and Richard Charles Jacques) .....	592	Choudhary, Javed Akhtar .....	290
Attorney General's Reference No. 24 of 1991 (Mark Andrew Willcocks) .....	724	Clark, Christopher David .....	124
BAKER, Ian .....	57	Clarke, Anthony John Clifford, and Purvis, Edward James .....	552
Barracough, Michaela .....	604	Clarke, Simon .....	640
Barrell, Steven Edward Charles and Others .....	646	Cleary, Terence Henry .....	237
		Cleaver, Timothy Ross .....	449
		Clugston, John .....	165
		Cocks, David Robert .....	166
		Coleman, Anthony Neville .....	508
		Collier, Dean Russell .....	33
		Connors, Miles, and Connors, Thomas .....	666
		Cordner, Alan .....	570
		Coy, Christopher .....	619
		Cramer, John Charles .....	390
		DANGA, Harbeer Singh .....	408
		Davids, Carl and Others .....	468
		Davies, Gordon Barry .....	459
		Derbyshire, Andrew Stuart .....	126
		Devall, Richard .....	598
		Donnelly, Gerard .....	684
		Dowdell, Christopher John and Smith, James .....	441
		EDWARDS, Angela .....	662
		Edwards, Sean Karl .....	356

Evans, Christopher Anthony .....	413	Kemp, Kelvin Mark .....	556
Evans, Kelvin .....	377	Kent, Warren .....	299
F., Anthony .....	420	King, Phillip .....	668
F., Jacqueline Ann .....	358	Kumar, Shekhar .....	498
Fanson, Christopher Edward Gordon ..	78	LEATHERBARROW, Thomas .....	632
Fenton, Paul Anthony .....	85	Lemmon, Kevin .....	66
Fogarty, Stephen John .....	328	Luxon, Michael John and Others .....	138
Frank, Michael .....	500	Lynas, Karl .....	363
Frazer, James .....	705	McCLUSKIE, Alexander .....	334
Fuller, James .....	680	McGrath, Paul Willaim Shaun .....	83
Furlong, Kenneth .....	112	McGuire, David .....	332
Fuzzey, Claire Anne .....	169	McKinney, John Fitzgerald .....	185
GARCIA, Juan Pareja .....	583	McNichol, Alan .....	250
Gibbon, Jason .....	479	Madarbakus, Afzal Mohammed .....	542
Gill, Christopher Martin .....	36	Mahoney, Peter John .....	328
Golding, Calvin Dale .....	142	Marti, Justin .....	1
Gormley, John Henry .....	133	Martin, David Alan .....	303
Grant, Martin Charles .....	54	Martin, Vanessa Jane .....	392
Gravil, James Darren .....	416	Mawson, Gary .....	218
Green, Paul Palmerston .....	613	Mendez, Michael Mervyn .....	94
Grey, Anthony John William .....	522	Miah, Mohammed .....	278
Griffiths, Clive Samuel .....	380	Miall, John Fraser .....	264
Gunn, George Urquhart .....	544	Moore, David Anthony .....	464
HAILES, Ian Gordon .....	540	Moore, Eugene William .....	130
Harling, David Michael and Hayden, Alvis .....	672	Morrell, Paul .....	659
Harrison, Susan .....	40	Morton, Bernard Charles .....	315
Hawker, Gary Alan .....	694	Munns, Andrew Jason .....	470
Hayer, Sean Francis .....	454	Murphy, John Patrick .....	717
Hayes, George Markie .....	626	N., Bruce Edwin Albert .....	571
Hayes, Michael John .....	722	Nawaz, Ahner .....	506
Haywood, Alan John .....	175	Nolan, Leroy .....	144
Helder, Stephen .....	611	O'NEILL, Justin Paul and Others .....	730
Hewitt, Paul Jonathan .....	131	Odendaal, Peter Arthur .....	341
Hiscock, John Andrew .....	24	Okelola, Festus .....	560
Hoey, Donald Michael .....	177	Oliver, John Richard Bryan .....	96
Holland, Rachel .....	244	Omojudi, Stephen Olaurewaju .....	346
Holmes, David Leonard .....	29	Onwuka, John Ekilisi .....	486
Hooper, Julie Ann .....	714	Osborne, Robert John .....	225
Hotchen, Neil .....	250	P., Pamela Jean .....	369
Houghton, Martin Paul .....	11	Page, Lawrence Howard .....	426
Howard, John .....	720	Palmer, Jane Veronica Susan .....	595
Hull, Graham Brian .....	223	Parnes, Anthony Keith .....	153
Huskinson, David Arron .....	312	Patel, Mohammed Iqbal .....	550
ISMAIL, Ibrahim .....	395	Peffer, Terrence .....	150
JACKSON, Jane .....	22	Perrin, Robert James .....	518
Jackson, Trevor .....	22	Pesapane, Simon .....	438
Jama, Rashid .....	63	Plessis, Brendan Michael .....	331
Jason, Orlando S. ....	306	Porter, Leslie Jason .....	258
Jewell, Ian Anthony .....	253	Postlethwaite, Lee Alan .....	260
James, Gwilym Evans .....	399	Powell, Shane .....	202
Jones, Melvyn Ashton and Others .....	698	Pretty, Martin Alan .....	280
Jones, Susan .....	275	REAY, Raymond .....	533
Judge, Noel Christopher, and Wood- ridge, Susan .....	685	Redfern, James Michael, and Dunlop Limited (Aircraft Tyres Division) ....	709
KALKAN, Dursan .....	547	Reid, David .....	645
Kearsley, Peter Paul Anthony .....	295	Reid, Stephen Anthony .....	513
		Remblance, Peregrine Elias .....	388

Richards, Colin David .....	502	Theivendran, Sundranpillai .....	601
Richards, Desley David .....	272	Timbers, Mark .....	229
Richardson, John Richard .....	51	Tranter, Wayne David .....	515
Rigby, Philip .....	111	Tucker, John .....	15
Robertson, Steven .....	38		
Robinson, Darren Lee .....	104	U., Alan Robert .....	530
Rogers, Edward Richard Joel .....	80	Uddin, Aslam .....	114
Ronson, Gerald Maurice .....	153	Upchurch, Edward Henry .....	476
Rose, Keith John .....	119		
Ruffell, David Ian .....	204	VALENCIA-CARDENAS, Luis .....	678
SAMRA, Harjit Singh .....	168	WAITE, Glen Antony .....	26
Sanyo Electrical Manufacturing (U.K.) Ltd. ....	657	Wake, Graham William .....	422
Scamaronic, Carlos Alberto Margary and Pacheco-Nunez, Jose Manuel ....	702	Walker, Colin Frederick .....	474
Scott, Nigel .....	173	Wallace, Glyn .....	628
Scurry, Alan .....	517	Watson, Peter James .....	319
Sheldon, Gail Joy .....	558	Webster, Richard .....	615
Sherwood, Leonard Wayne .....	177	West, Richard Colin .....	70
Siha, Joseph Martin .....	588	Wheeler, John .....	73
Simmons, Andrew John .....	242	White, Edward .....	108
Simpson, David .....	665	Whitlock, Nicholas Anthony .....	157
Singh, Narinder .....	123	Whittle, Aiden and Others .....	321
Sisk, Ian John .....	214	Wilburn, David Victor .....	309
Smith, Alan .....	247	Wild, Stephen .....	607
Smith, Catherine Elizabeth .....	17	Wilkes, Stephen Paul .....	121
Smith, Michael Malcolm .....	461	Williams, Douglas William .....	671
Sperr, Rolf Hermann .....	8	Williams, John .....	236
Staddon, Malcolm .....	171	Williams, Kenneth .....	562
Stark, Gerrard Michael .....	548	Williams, Michael John .....	161
Steventon, David John .....	127	Wilson, Edward John .....	397
Stillwell, Kenneth Michael .....	253	Wiltshire, Mark .....	642
Sturton, Kerry .....	116	Witchelo, Rodney Francis .....	371
Sutcliffe, Colin .....	538	Wood, Michael George .....	317
		Wood, Stephen Robert .....	207
		Wright, Ashley .....	347
TAYLOR, Ivor John .....	472		
Taylor, Jeremy John Alexander .....	466	XENOPHONTOS, Xenophan Peter, and Mace, Steven Terence .....	580
Telford, Robert George .....	676		

## JUSTIN MARTI

COURT OF APPEAL (Lord Justice Watkins, Mr. Justice Boreham and Mr. Justice Tucker): April 10, 1991

*Long term detention of juvenile—robbery—robbery by boy aged 14—whether sentence of detention under Children and Young Persons Act 1933, s.53(2) appropriate.*

Two years' detention under Children and Young Persons Act 1933, s.53(2) upheld on a boy aged 14 for robbery.

The appellant, a boy aged 14, pleaded guilty to robbery. Wearing a mask he accosted a woman aged 60, threatened her with a knife and demanded money. The woman gave him her purse containing £5. The appellant was arrested a few minutes later. Sentenced to two years' detention under Children and Young Persons Act 1933, s.53(2).

**Held:** there were no grounds on which the court could interfere with the sentence.

**References:** detention of juveniles, *Current Sentencing Practice* E 4.5(g).

*Miss S. Spier* for the appellant.

**BOREHAM J.:** On November 5 1990, in the Crown Court at Inner London, before Her Honour Judge Negus, the appellant pleaded guilty to robbery. He was then 14 years of age. Sentence was postponed in order that an up to date social inquiry report might be obtained. That was done. On December 3, before His Honour Judge Pryor Q.C., the appellant was sentenced to two years' detention under section 53(2) of the Children and Young Persons Act 1933. He now appeals against sentence by leave of the single judge.

The facts of the offence of robbery can be shortly stated. They were unpleasant. They were these. Just before midnight on June 5, 1990 a Mrs. Demowbray, aged 60, parked her motor car and was walking to her home along a street in West London. The appellant had been lurking between two other parked cars, obviously lying in wait for some such victim as this lady. He jumped out in front of her. He was holding in his hand a kitchen knife, which the victim described as being about eight inches long. He was wearing a mask which covered his face. He stood quite close to her, about two feet away. He pointed the knife in the middle of her body and said, according to her: "Give me your money or I will kill you." Not surprisingly, she was very frightened. She therefore took her purse out of her bag and gave it to the appellant who then ran away. She followed him for a short while but then lost him. The purse contained £5.

It so happened that nearby there were three police officers on duty in a police vehicle. They saw the appellant running along the street. They were suspicious, so they stopped him. He said he was going home and that he was running rather than walking because he was late. At that point a message came over the radio, and so the officer tackled him in this way. He said: "Where is the knife you threatened this woman with?" The appellant said: "What knife?" He denied that he had threatened any woman. Another officer found the knife and the missing purse nearby.

The appellant was arrested; on the way to the police station he admitted that he was the culprit. When interviewed, he said that he left home at about 10.30 that

night, taking the kitchen knife with him. He admitted that he had threatened the lady with the knife and he admitted saying: "Give me your money." He denied that he had threatened to kill her if she did not. We interpose to say that the court proceeded on the footing that in this particular regard what he said was right, namely, no threat to kill her. Not surprisingly, he found it difficult to offer any explanation as to why he had done what he did.

As we have said, the appellant was 14 years of age when he appeared before the Crown Court. He was born on July 2, 1976. It follows therefore that he was within a little less than a month of his fourteenth birthday at the time of this robbery. At that time he lived with his father and his stepmother in a flat at Lime Grove. By the time he came to the Crown Court he had one conviction recorded against him for burglary. That was recorded on August 29, 1990. It was not an offence which had been recorded by the time he committed the robbery. In respect of that offence a supervision order was made.

There was before the Crown Court a number of reports. There was a social inquiry report which had been prepared for the hearing before the justices in August 1990. That report, as do the other reports, sets out what can only be described as somewhat unfortunate home circumstances; difficulties in his relationship with his father and the difficulties which his father and stepmother were having in coping with his behaviour. It was hoped that a place at a special school could be found because there was concern about his behaviour, his attitude and attendance at normal school. The appellant had lived with an aunt for about nine years up to the age of 11. That had been a thoroughly unhappy experience. He himself said that he had feelings of anger which he found difficult to control. He told the probation officer on that occasion that he wanted to apologise to the victim, and the probation officer recommended an alternative to detention. As we have said, the magistrates felt able, in the circumstances, to accede to that suggestion. A supervision order was made.

The Crown Court had before it a psychiatric report. It was prepared on behalf of the defence. It is unnecessary to go into the detail of that report. It is sufficient to say that the consultant psychiatrist concluded that this young man had behavioural and personality problems and difficulty in conforming, which led to the further conclusion that this appellant required what was described as a structured and well-disciplined environment in order to teach him to conform in a sensible way. There was also an assessment report from a group which had been set up by the Dr. Barnardo's authorities in partnership with Hammersmith and Fulham Social Services. They suggested that any sentence of detention would introduce the appellant to considerably more sophisticated offenders than himself. They recommended a supervision order with what is called a specified activity programme, which is outlined in the report.

The judge felt unable to accede to the suggestion made that there could be an alternative to custody. He came to the conclusion that this offence was so serious that a custodial sentence was necessary.

The single judge, in giving leave, directed that prison and medical reports should be obtained. It is sufficient to say of the medical report that it discloses no medical problems as far as this young man is concerned. His health is satisfactory. The house report observes that he still has serious personality and behavioural problems. It would be of no advantage and would only add unnecessarily to the length of this judgment to cite in detail from that report. It is clear that those who have had him in their care since he was sentenced, regard him as a young man immature for his age, who still lacks self-control and who needs to come to terms with the problems which face him.

That said, the report is encouraging. It is quite clear that he has made substantial progress, albeit he has some distance to go, since December 1990, which is still a comparatively short period of time. He is a young man who has a talent for sport, and in particular for soccer. It is unfortunate that up to now the regime in which he has been held had been unable to provide the sporting facilities which would clearly do him a lot of good and which might contribute to further improvement in his behaviour and further resolution of those outstanding problems, to which reference has been made. It is clear that those who have him in their charge are alive to this problem. The approval of the Home Office has been sought in the hope of obtaining a place in what is referred to as an open unit, where the sort of facilities to which I have made reference will be available. That is the up to date situation.

When the single judge gave leave he said that he did so on the basis of a short paragraph in the application for bail which had been made to him. It reads in this way:

"That as a 14 year old and never having been in custody before or indeed sentenced for any offence, he is suffering trauma whilst in custody of sufficient seriousness that the authorities have contacted his solicitor indicating that they would support the appellant in being sentenced in any way other than deprivation of liberty."

This must have come about as a result of a misunderstanding because in the course of her submissions to this court, Miss Spier has made it clear that she no longer relies upon that because certainly the reports before us do not support it. We mention it only because it was mentioned and relied upon by the single judge. Ground one of the grounds of appeal put forward on behalf on this appellant can be dealt with equally shortly. That, too, was clearly based on a misunderstanding. It suggested that Her Honour Judge Negus, who first dealt with this matter by way of adjournment on November 5, 1990, had indicated at that time that a custodial sentence was not uppermost in her mind. When one comes to the transcript, it is clear that she intended something entirely different. In those circumstances Miss Spier no longer relies on that.

Miss Spier, to whom we are grateful for her very careful and realistic submissions to this Court, accepts this was a very serious offence involving the use of a knife against a lady of mature years who was making her way home at night; thus, consideration clearly had to be given to stern punishment. On the other hand, as Miss Spier has pointed out, although the victim must have been very frightened, no physical harm was done to her. No physical violence was applied to her, no doubt because she was frightened enough to hand over the money. There it is. The appellant is entitled to rely upon the fact that he did not lay hands on her. Miss Spier further concedes that an immediate custodial sentence was inevitable. She puts the matter in this way; if the appellant had been 16 years of age, why then, she could have made no complaint on his behalf about the sentence of two years' detention. But she reminds us that we are dealing with a young lad, now 14, and only 13 at the time he committed this grave offence.

Miss Spier submits that the judge has really deflected himself, if not misdirected himself, in two ways. The first was this. The judge said, when sentencing the appellant, "I am quite satisfied that nothing but a substantial custodial sentence could possibly be justified in this case." No complaint is made of that. He then went on to say: "If you were over 21, you would certainly be going to prison for some period between 5 and 10 years for this grave offence and you qualify for a custodial sentence because the offence to which you pleaded guilty is so serious that a non-custodial sentence cannot be justified."

There is no complaint made of most of that passage. What is suggested by Miss

Spier is that the judge chose the wrong starting point. She submits that he set the starting point for an adult in a case such as the present too high. In support of that contention she has referred us to a number of comparatively recent decisions of this Court, where sentences of a substantially lower order have been confirmed in cases akin to this. We hope we do no injustice to, or show no lack of respect for, either her industry or her arguments, if we do not refer specifically to those. It has been helpful to be reminded of them. As counsel knows, no two cases are alike, and one can glean from other decisions no more than a general trend or a broad indication of what the appropriate starting point should be.

At all events, we are prepared to assume that in taking a figure of 10 years as a starting point, the judge would have been setting it too high, but, in our judgment, the judge was not speaking of a starting point of 10 years for this young man for this offence. Had it been otherwise, one cannot help but think he would have imposed a sentence longer than two years. He was merely demonstrating to the appellant the gravity of the offence by pointing out to him what, in his view, would have been an appropriate bracket for an adult offender in circumstances such as these.

The second comment which Miss Spier submits is open to criticism was made a little earlier in the sentencing remarks, where the judge clearly indicated that in his judgment an element of deterrence was necessary in the sentence he imposed. Miss Spier conceded that the language of section 53(2) of the Children and Young Persons Act is wide enough to allow a deterrent sentence to be passed. Her point is this. It is one thing to talk of deterrence when one is talking of people of 16 and upwards. It is an expression which such persons would understand and in respect of such persons it might have some effect. She contends that it is not appropriate when dealing with an appellant who was 13 at the time he committed the offence, and who is now only 14. She supports that submission with the observation that there is no evidence here that there were other 13 years olds lurking in the locality, ready to carry out the sort of offence for which this young lad was being sentenced. That is true; but deterrence is not necessarily aimed at identified persons or groups or gangs. Deterrence is intended to have a more general effect.

We are unable to accept the criticisms which have been levelled at the judge. It seems appropriate, albeit this was a young offender, that a substantial sentence with a deterrent element should be imposed.

Finally, Miss Spier suggests that insufficient weight was given by the judge to a possible alternative and, in particular, that if no other form of sentence was appropriate, as the judge found, why then, this appellant's rehabilitation did not require that he should serve as long as two years. Miss Spier submits that a shorter period would have sufficed to meet the gravity of the offence and to serve the interests of the appellant. She has, helpfully, called before us a Mr. Williams, a social worker, who knows this young man and who has kept in contact with him since he has been detained. He was able to say, and we accept, that the experience so far gained by the appellant has had a salutary and deterrent effect upon him; in other words, that which the judge sought to achieve is being achieved. That, after all, is what is reflected in the up to date report to which reference has been made.

Mr. Williams, understandably, would prefer that the alternative put before the judge be accepted by us, namely, a supervision order coupled with a specified activity programme. That is an alternative to which this Court feels wholly unable to accede. This offence was too serious to allow us to take that course.

We turn to the last question we have to decide which is, having decided that the sentence imposed was correct in principle, was a period of two years too long? In any circumstances, to get the sentence exactly right, is often difficult. To have to sentence a young lad of 14 for a very serious offence must be among the most diffi-

cult of sentencing exercises. On one side is the gravity of the offence and the aggravating circumstances, and on the other are the sympathy evoking mitigating circumstances; the plea of guilty, his acknowledgement at an early stage to the police of his guilt, his extreme youth, and his unhappy background. In our judgment, the judge has applied himself with great care and with great understanding, to the sentencing of this young appellant. He came to the conclusion, based upon the reports before him, and in particular upon the consultant psychiatrist's report, that a period of two years was appropriate.

Having considered those matters and having considered them in the light of the more up to date report which is before this court, we consider that no criticism can properly be levelled at the decision that he reached.

The appellant will know, and no doubt his family and those who advise him will know, that the period of two years is not a fixed period. It is the maximum period for which he can be held. His future and the length of time he serves in detention is very much in the hands of the Home Secretary. Moreover, one knows from experience that the Home Secretary has available to him a range of facilities and different regimes to which this young lad might go. We have already indicated that there are moves afoot to send him to a more open regime where his love of sport, and in particular soccer, can be indulged. The up to date reports before us really confirm the propriety of the sentence imposed by Judge Pryor. Current signs are encouraging. It seems to us that that which Judge Pryor hoped to achieve is beginning to come to pass. We can only hope that in the succeeding months even greater success will be achieved. This could only be to the advantage of the appellant and of society.

Having given this matter long and anxious consideration, we have come to the conclusion that there are no grounds, despite Miss Spier's attractive presentation, which would entitle or persuade us to interfere with the sentence imposed. In those circumstances, this appeal is dismissed.

---

## MARTIN BRAY

COURT OF APPEAL (Lord Justice Watkins, Mr. Justice Boreham and  
Mr. Justice Tucker): April 11, 1991

*Detention in a young offender institution—unlawful wounding—unprovoked attack with weapons—whether custodial sentence justified.*

Eighteen months' detention in a young offender institution upheld for unlawful wounding in the form of an unprovoked attack with weapons.

The appellant pleaded guilty to unlawful wounding (his plea of not guilty to wounding with intent to do grievous bodily harm was accepted). The appellant and a co-defendant were driving in a car when they saw a young man walking with two young women. The appellant attacked the young man with a metal bar, and his co-defendant attacked him with a sawn-off billiard cue: the victim was struck a number of times and received a head wound which penetrated to the skull. Sentenced to 18 months' detention in a young offender institution.

**Held:** this was gratuitous unprovoked violence: the sentencer was right to conclude that a non-custodial sentence could not be justified in the circumstances, and he had found the right level of sentence.