

Using sentencing guidelines

I am going to explain how I use sentencing guidelines when determining a sentence using a burglary case as an example. Here the defendant has pleaded guilty.

Around three quarters of defendants in the Crown Court plead guilty at some point in the process.

This defendant is a 24 year old man, he's employed as a car mechanic, he lives at home with his parents. He developed a drug habit and fell into debt after his girlfriend broke up with him about nine months ago.

After a night out drinking with workmates he returned home, collected a crowbar and broke into two houses in an affluent area not far from his home. No-one was in at the time he broke in. He was looking for money to buy drugs.

Nothing was taken from the first house but £180 in cash and a watch worth £500 was taken from the second. He was recognised by a neighbour, who telephoned the police and he was arrested the next morning. The watch was recovered.

Before going into court I look at the case papers - the witness statements, records of what the defendant said to the police after his arrest, his antecedents, that is his previous convictions, the pre-sentence report prepared by the Probation Service and any victim personal statement.

Key facts I am looking for are the age of defendant at the time of the offence, the type of burglary, is it commercial or domestic and the defendant's antecedents. Was the offence committed on bail or in breach of a court order? If this is his third domestic burglary since 1999 I am required by law to pass a minimum sentence of three years imprisonment.

The first step is to identify the harm caused by the offences and the culpability of the defendant. This determines the category of offence.

Factors indicating harm include the value of what was taken, whether economic or sentimental; damage done in the course of the burglary; the effect on the

victim (this is where the victim personal statement will play an important role); whether anyone was at home or violence was used or threatened.

Factors indicating culpability include deliberately targeting the victim due to their vulnerability or hostility; a significant degree of planning; carrying a knife or other weapon or if the defendant was equipped for burglary. If the defendant committed the offence on impulse or was being exploited by others this would indicate lower culpability.

Applying the harm and culpability factors to determine the category of offence gives me the starting point and range.

In this case there were two burglaries so I would start by looking at the more serious one first. It was a domestic burglary that was of lesser harm because not much was taken and no damage was done) but greater culpability because it was planned and the defendant had a crowbar, so this would be a category 2 offence which gives a starting point of one year's custody and a range from a high level community order to two years' custody.

The next stage in the sentencing process is to take account of any aggravating features that increase the seriousness of the offence and any mitigating features that reduce it. A list of such factors is set out at step two of the guideline.

This defendant has two previous convictions including one for domestic burglary three years ago which is particularly relevant. The current offences were committed whilst he was under the influence of alcohol and they were committed at night. These all are aggravating factors that increase the seriousness of the offence.

On the other hand the defendant has shown genuine remorse - he is making voluntary reparation to the victim and taking steps to work his way out of debt and confront his drug problem. These factors reduce the seriousness of the offence and reflect the personal circumstances of the defendant.

Now I believe on balance these factors increase the sentence from a starting point of one year to 18 months' imprisonment.

In most burglary cases, including this one, the offence is so serious that the custody threshold will have been passed, in other words a prison sentence is required.

As it is a sentence of less than two years' imprisonment it could be suspended for up to two years and I could attach requirements to address the cause of offending. Now I look to see whether there should be a reduction in sentence as a result of any assistance given to the police or prosecution, that's unusual, or for a guilty plea. A guilty plea at the first possible opportunity will earn a reduction of one third on the sentence; later guilty pleas receive less of a discount, down to 10 per cent on the day of trial.

This defendant has not given any assistance but he pleaded guilty at the first opportunity so his sentence is reduced by one third from 18 months to a year's imprisonment.

Where the defendant is guilty of more than one offence and the dangerousness of the offender to the public is not an issue, I then decide if the sentences for the individual offences should be served concurrently or consecutively, that is at the same time or one after the other.

In this case the two burglaries are in short succession, they arise out of the same facts so the sentences will be concurrent; but I will still sentence him separately for each of the offences.

By following all these steps I now have preliminary view of the right sentence, that's eight months custody for the first burglary, 12 months for the second to run concurrently. But before I pass any sentence I will listen to and consider the arguments of the advocates for the prosecution and the defence in.

When I come to pass sentence I have to explain the reasons for the sentence in plain language. I shall apply the relevant guideline unless the interests of justice require otherwise; and I must explain to the defendant how I have applied them. Sentencing Council guidelines make the sentencing process open and transparent. Whilst every case is different and judges and magistrates apply their judgment and experience to each individual sentence, the guidelines mean there

is a consistency of approach and outcome irrespective of which judge or magistrate is imposing the sentence.

I hope that this explanation has assisted you in your understanding of the Sentencing Council guidelines,