

The wrong prescription

Removing the restrictions on judges' sentencing powers would give drug addicts more opportunities to undertake rehabilitation and reduce the risk of reoffending, says **Lucy Corrin**

WHAT APPROACH SHOULD we take with recidivist domestic burglars? The Court of Appeal has firmly reinforced that there is a line beyond which these offenders may not tread; if they do, they can expect substantial custodial sentences even if their drug addiction is amenable to treatment. This arguably defeats the purpose of drug rehabilitation and sends the message that a certain category of offenders are beyond help.

In *Bastow* [2009] EWCA Crim 1834, an application was made by the Attorney General under section 36 of the Criminal Justice Act 1988 for leave to refer a sentence as unduly lenient.

Bastow had been sentenced to 12 months' imprisonment suspended for 18 months. The period of suspension was subject to a number of conditions: a requirement of supervision, a drug rehabilitation order for six months, and a requirement that he complete a programme to address his drug-related offending.

The victim of the burglary was an elderly widow, who suffered from Alzheimer's disease. She was not present at the time of the burglary, but discovered her purse, bank card, bus pass and about £20 in cash were missing.

The appellant was 29 years of age and represented the very definition of recidivism. He had 38 previous convictions for a total of 131 offences, 74 of which were offences of dishonesty. The court acknowledged that they were acquisitive crimes committed to fund a long-standing drug habit. Among those offences, eight were domestic burglaries. Four separate burglary convictions were recorded against him since November 1999. On the most recent occasion, eight further burglary offences were taken into consideration when sentence was passed.

The courts had shown a sympathetic approach before; no doubt for that reason, and almost certainly for that reason alone, from time to time the courts had taken a constructive approach. In the Court of Appeal's words: "Just about everything has been tried, without success."

The Court of Appeal was unimpressed by Mr *Bastow*'s latest efforts:

"Maybe the habit makes it impossible for him to resist the temptation to commit burglary, but there is here no sufficient evidence



Drug addiction: the prescribed custodial sentence is not always the correct remedy

to justify the conclusion that the time has come to anticipate real, genuine improvement, or that the habit of resorting to dwelling-house burglary has at last been broken, or even that there are serious positive signs that it has been broken."

Certainly it cannot have endeared the Court of Appeal to Mr *Bastow* that he was not receiving glowing reports in relation to his drug treatment. By the time of his appeal, he had also been arrested again and once more charged with another dwelling-house burglary.

Particular circumstances

There are two restrictions on a sentencing judge's discretion; first, the prescribed custodial sentence for a third domestic burglary conviction under section 111 of the Powers of Criminal Courts (Sentencing) Act 2000; and secondly, the new-style suspended sentence which must be 12 months or less. Those most in need of drug rehabilitation are likely to be facing sentences well in excess of 12 months.

There is a statutory discretion not to impose the minimum three years for a third domestic burglary conviction. Subsection (2) requires the court to "impose an appropriate

custodial sentence for a term of at least three years, except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances".

Unfortunately, in this instance, the judge did not explicitly refer to the test; albeit it can be a difficult one to fulfil. Genuine efforts to conquer addiction that have been marred by personal tragedy is a specific example where the three-year term might be reduced. However, what happens to those who simply take longer to rehabilitate? Relapse is undoubtedly a factor in rehabilitating any addiction. Should an offender only receive one chance? One might feel that there are real and practical steps that can be taken to reduce the risk of reoffending long-term and that the particular offender is amenable to treatment. Whether it would be unjust to impose a three-year sentence is perhaps too restrictive in circumstances such as these.

Perhaps we now need a specific exception that places discretion back in the hands of the judges to offer addicts the opportunity to undertake rehabilitation in the community. Alternatively, is there good reason to prevent judges from suspending longer terms of imprisonment? Certainly the new regime does limit judges from imposing suspended prison terms unless the offence is sufficiently low-level to fall beneath the threshold. With pressure remaining upon prisons to accommodate an ever-burgeoning population, an extension of these powers may be helpful, just and pragmatic.

Both of these measures would arguably have a greater impact on recidivism than longer custodial sentences. To follow through the logic of the Court of Appeal, there comes a point at which we must write people off; usually after a certain number of years, offences and efforts to help.

In many instances, those addicts who are mature, ready and amenable to treatment are those who have a long history of offending, instances of relapse and a tarnished relationship with probation and support services. There will never be a perfect candidate.

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