

## Case Law update

### R v Bassaragh [2024] EWCA Crim 20 and Pregnancy as an exceptional circumstance in avoiding mandatory minimum sentences.



by Tobias Collins

This was an appeal against the imposition of the mandatory 5-year minimum sentence after the appellant pleaded guilty to possession of a prohibited firearm. This mandatory minimum may only be avoided if exceptional circumstances related to the appellant, or her offence justify the imposition of a lesser sentence.

#### The Offence

The appellant was found with a loaded semi-automatic handgun which she had been holding for her boyfriend before being discovered. She entered an early guilty plea and was co-operative with authorities throughout. At the time of sentencing, nobody was aware she was pregnant, but this became discovered at a routine health check as she entered HMP Bronzefield.

The Court of Appeal found that the fact of her pregnancy alone was insufficient, though exceptional circumstances were found when coupled with other

factors. The Court was mindful of the conditions of mothers and new-borns in prison, the effect of separation, and this appellant's risk in particular of having a stillborn due to her ethnicity.

However, the Court was also clear that finding that exceptional circumstances were made out was not akin to determining that a sentence should be suspended. These are two separate considerations, and practitioners must then turn to the relevant guidelines to persuade the Court that a suspended sentence would be appropriate.

Importantly, the Court also confirmed that the sentencing council's guidelines on exceptional circumstances are the leading authority, discouraging reference to any pre-guidelines caselaw and confirming that there is a single test when considering exceptional circumstances: Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence (as stated at paragraph 9 of the guidelines).

## Criminal Law Developments

R v Butt and Jenkins [2023] EWCA Crim 1131, update on procedure following R v Clark [2023] EWCA Crim 309 regarding sending errors from the Magistrates Court.

*"If the Crown Court concludes that there was a "resulting error" and is satisfied that the magistrates made a correct order despite the terms of the Court Extract, then it may proceed to deal with the case. This applies where the magistrates committed for sentence, but the record shows that they sent for trial"*

In contrast to Clark, which has now been determined as being wrongly decided, a resulting error from the Magistrates Court will no longer require rectification by the Divisional Courts.

## 9SJS in the news

Philip Barnes prosecuted [this murder case](#) with Nick de la Poer KC of New Park Court Chambers.

Beth Caunce was successful in the Court of Appeal on [this appeal against sentence](#).

Vanessa Thomson and Philip Barnes prosecuted [this sexual abuse case](#).

Emma Clarke prosecuted [this drug dealing case](#).

In determining whether this single test is made out, the Court endorsed the approach as set out in the guidelines; clarifying the issues which Judges will be considering when counsel invite them to go below a mandatory minimum sentence:

- i) all the circumstances of the individual offence and offender must be considered together (paragraphs 6 and 11);
- ii) the court must ask whether the circumstances are truly exceptional to ensure that the deterrent purpose of minimum sentences is not too readily undermined (paragraph 10);
- iii) the existence, or a totting up, of multiple mitigating factors is not enough (paragraph 12); and
- iv) there is a single ultimate test, as stated in paragraph 9, viz. whether the imposition of the

## Team News

■ Congratulations to Alison Heyworth and Matthew Curtis, who have both recently been promoted in their teaching roles.

■ Alison Heyworth is now the Academic Manager at the University of Law, while Matthew Curtis is now the Head of Law (Manchester and North West) across all programmes at BPP University.

■ Isabelle Haddad, Katie Walden and Tobias Collins are all now CPS Level 2 Panel Advocates.

statutory minimum sentence would, in all the circumstances of the individual case, result in an arbitrary and disproportionate sentence.

[Read the full article here](#)

## Advocacy tip:

“When you are about to question a witness, try to understand the person you are dealing with. Learn as much as you can about any vulnerabilities or social circumstances to make sure your communication is properly tailored to them and any needs they may have. Accept that you may need to modify the type of questions that you have to ensure they give their best evidence. In turn, this will assist you in obtaining the answers you need. This applies equally to cross examination: Not recognising a person’s needs and being seen to take advantage of them will not reflect well on you or your client.”

– Vanessa Thomson

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Bulletin edited by Helen Longworth and Emma Clarke

