Twitter Thread by Damian Warburton



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1. Predictably, and I say this to no denigration of PC Young's experience, your article is written to inflame. It could have appeared in DailyMail.
You seek only to outrage; not to inform. While I cannot hope to do so with @barristersecret's finesse I will attempt to add balance.

> "Is it ok for me to be used as a punchbag?"
>
> PC David Young's faith in courts left shattered after a man who fractured his nose & cheekbone walked free with a suspended sentence. #ProtectTheProtectors
>
> Full story \u2b07\ufe0fhttps://t.co/wT9IR6XS4v@NYPFJBB @pritipatel @RobertBuckland pic.twitter.com/tKCUexn0Mt
>
> — Police Federation (@PFEW_HQ) December 5, 2020

2. The law requires the sentencing judge to adhere to the Sentencing Guidelines. This is an exercise in balancing a multitude of relevant factors.
Immediately, therefore, this means that your claim the offender escaped custody "thanks to glowing character references" is false.

3. The exercise begins, therefore, with the Guideline for the offence that has resulted in a conviction. If that offence is not serious enough for the facts then that is the fault of the CPS, not the judge, who cannot sentence more severely than for what is before him/her.

4. Offences have a max. sentence in law, and the Guidelines indicate a starting point, and range. While it is the law that judges must have regard to the Guidelines, they may go outside of the range (at either end) where circumstances so justify, but if they do they must say why.

5. PC Young's attacker was convicted of ABH. For that offence, there are 9 stages to the sentencing process, beginning, as always, with determining the offence category which is a combination of offender culpability, and the harm caused.

6. Once the category is identified the court knows what is the starting point at which a sentence should be passed (eg Cat. 1 starts at 18 months' imprisonment), and what is the range, which for Cat. 1 is 1 - 3 years'. Your article does not say into what category this case fell.

7. In deciding where in the range is correct, the judge must consider if any statutory aggravating factors exist, which move the sentence up the range. There are a variety, including whether the offender used a weapon, showed premeditation, or hostility based on hate, etc.

8. Next comes statutory mitigating factors, which move the sentence down the range. These do not excuse the offender, but show that in the context of all offences of this kind the offence under sentence is less serious than it could have been. Excessive self defence, for example.

9. Then the judge considers the offender's personal circumstances, and, again, there are issues that can increase or decrease the seriousness, which further feeds into where on the range the sentence should be passed.

10. Relevant previous convictions; attempts to conceal evidence; and the offence being committed under influence of drink or drugs are examples increasing seriousness. No pre cons; remorse; immaturity or low offender age reduce the seriousness. These are from much longer lists.

11. Steps 3-6 considers whether the offender assisted the prosecutor; is entitled to a reduction for a guilty or not (and if, so how much); whether the offender is especially dangerous; if sentencing for multiple offences, is the totality proportionate?

12. Step 7 requires the judge to consider ordering compensation; 8 requires that reasons for the sentence are given, and 9 is for the judge to consider whether to give any credit for time served on a curfewed bail. This only has effect where a curfew was for at least 9hr per day.

13. Where a sentence is of two years' imprisonment or less, the judge may suspend it. This will involve a balance of the need to punish, the need to protect society, the need to rehabilitate, and the impact on others of an immediate custodial sentence: dependants, for example.

14. The suspension period is specified in addition to what the sentence is that it relates to. Akin with most other relevant factors from PC Young's attacker's case, you haven't bothered to report what that is.

15. The suspension period is important because a new offence (any kind) committed in the suspension period ordinarily triggers activation of the suspended sentence which must then be served in addition to whatever sentence the new offence attracts. These are served consecutively.

16. There is a reason why victims are not involved in the sentencing process, or in deciding sentencing policy. They are not objective. With due sympathy to PC Young, who has clearly suffered a horrible experience, his views on sentence and the purpose of sentence are unhelpful.

17. In an age of record prison overcrowding, huge taxpayer cost for incarceration, and prisons rife with drugs and violence, imprisonment should always be a last resort. It destroys the lives of the offenders and their families, and that impact leads to subsequent reoffending.

18. While the law is that every sentence must have a punishment element to it, research proves that rehabilitation should be an equal top priority, because it is rehabilitation that best prevents reoffending and best promotes the useful reintegration

into society of the offender.

19. Suspended prison sentences allow for that opportunity while hanging a sword of Damocles over the offender, who must tread carefully.
As the sentence for PC Young's attacker was suspended, it was necessarily of two years or less. You don't bother to say.

20. Contrary to what you do say, a suspended sentence, especially with a curfew and unpaid work requirement is not "walking free". It is a huge encroachment on liberty, but imposed so that punishment is delivered that simultaneously affords opportunity to promote rehabilitation.

21. If you don't like that suspended sentences exist, the answer is to lobby your MP for a law change.
Be aware that to incarcerate everyone convicted of an offence for which prison is a possibility will require a massive funding increase to pay for additional prisons and staff.

22. Don't forget also the cost of significantly more additional police, unavoidably made necessary by the subsequent increase in crime consequential to the eventual release of larger numbers of offenders whose lives will have by then fallen apart.

23. Having spent prolonged periods housed in unpleasant and close conditions with other criminals; jobs and partners deserted them, and many of them rendered homeless, a repeat cycle of crime is what inevitably awaits many of them.

24. Every person properly informed can see that a Draconian attitude of "lock them up; throw away the key" is a recipe only for a society with more crime and more misery; whereas with rehabilitation as a top priority reoffending is reduced. I know which society I want to live in.

But hey-ho, don't you bother to report the full process of sentencing and the consequences that flow from the many different options the judge must carefully balance, as the law demands. You focus only the outrage of a judge being soft on criminals. That's what your readers want.

For those interested, here is the link to the Sentencing Council, which publishes separate Guidelines for use in the Magistrates' Court, and in the Crown Court.
https://t.co/qsvNipXvAH

No.11 has a typo.
"for a guilty *plea* or not, and if so..."

Pleading G at first opportunity normally attracts 33%;
-at the 2nd is 25%;
-maximum of 10% at start of the trial.
Why?
G pleas reduces costs and save victims' anguish, but without incentive why would a defendant plead?

I should add, before anyone adopts the Home Secretary's vitriol about "activist lawyers", that while I am a lawyer and unlike Priti Patel, I recognise the unassailable importance to our legal system of due process, I am also a former Constable.

I have every sympathy for PC Young.