



Aug 30, 2020

🔗 #41



Michael McMahon

Member

“On the mitigating factors in the case, Judge Keys stated that Ms Ziemann had pleaded guilty...”

<https://www.google.ie/amp/s/www.irishexaminer.com/news/arid-30995517.html?type=amp>

A guilty plea from the defendant can be a well-intentioned sign of cooperation. While it is a mitigating factor, I don't think it in and of itself equates to an apology. After all, a criminal could hypothetically boast about committing a crime to a judge. This would technically be a confession but it obviously wouldn't have the element of contrition. The lack of a confession would be an aggravating factor as it could be deceitful and time-wasting. I just think the emphasis should really be more about the apology rather than the confession.

Another aspect is favouritism. If an apology is a mitigating factor for a spur of the moment defence; then to be consistent it must be a mitigating factor for plainly premeditated cases. This is why legal precedence is so important.

Sep 26, 2020

🔗 #42



Michael McMahon

Member



That's just a facetious video link which shows an exaggerated version of a guilty plea bargain! In a similar way to there often being out of court settlements for financial compensation; perhaps a certain defendant offering to do a few weeks in jail for a low-level crime might be an optional small gesture of goodwill. They could even end up with an overall reduced sentence.



“In clinical and abnormal psychology, **institutionalization** or **institutional syndrome** refers to deficits or disabilities in social and life skills, which develop after a person has spent a long period living in mental hospitals, prisons, or other remote institutions. In other words, individuals in institutions may be deprived (whether unintentionally or not) of independence and of responsibility, to the point that once they return to "outside life" they are often unable to manage many of its demands; it has also been argued that institutionalized individuals become psychologically more prone to mental health problems.”

I agree with the idea of rehabilitating criminals back into society. The punishment in jail is usually spatial confinement. It's not like solitary confinement where they can't meet other people. Jails are sadly necessary when either remorselessness, the sheer severity of a crime or a deceitful recidivist crime puts a limit on how trustworthy an apology might be. While society must be forgiving it's still important to be streetwise. Some prisons in Scandinavia are great for reincorporating criminals back to civilian life. I think they're most effective when the criminal is genuinely contrite. Open prisons and house arrest wouldn't be suitable in the immediate aftermath of any particularly violent crime. I think they'd be more appropriate after a part of the sentence had already been served in another stricter jail.

Oct 10, 2020

#43



Michael McMahon

Member

A previous post had mentioned a killing in Louisiana:

“Father Who Killed Alleged Abuser on TV Avoids Jail

AUG. 27, 1985 12 AM

BATON ROUGE, La. — A father who shot and killed a man suspected of abducting and sexually abusing his son was sentenced today to five years' probation and ordered to perform community service work. Calling the shooting a tragedy, Judge Frank Saia suspended a sentence of seven years at hard labor for Leon Gary Plauche, who pleaded no contest on May 16 to manslaughter in the death of Jeffrey Doucet. Doucet, 25, was shot in the head at the Baton Rouge airport on March 16, 1984.”

- latimes

Such a vile killing is in and of itself terrible. But even if one sympathised with the distressed and upset father, there's still a big problem of a slippery slope. Any ill-intentioned, angry person or criminal could exploit and use this defence in court. There's just no definitive, scientific and consistent way of nationally regulating a spur of the moment excuse in a way that isn't somewhat arbitrary or preferential.

“Intense feelings of resentment trigger the initial retribution, which causes the other party to feel equally aggrieved and vengeful. The dispute is subsequently fuelled by a long-running cycle of retaliatory violence. This continual cycle of provocation and retaliation makes it extremely difficult to end the feud peacefully. Feuds frequently involve the original parties' family members or associates, can last for generations, and may result in extreme acts of violence. They can be interpreted as an extreme outgrowth of social relations based in family honor.

Until the early modern period, feuds were considered legitimate legal instruments and were regulated to some degree. For example, Montenegrin culture calls this krvna osveta, meaning "blood revenge", which had unspoken but highly valued rules. In tribal societies, the blood feud, coupled with the practice of blood wealth, functioned as an effective form of social control for limiting and ending conflicts between individuals and groups who are related by kinship..."

- Wikipedia

The court system obviously came about to stop such cyclic violence. So it would be highly counterproductive for a court to view spur of the moment self-righteous vengeance as a mitigating factor for a defendant. It would seemingly negate it's own authority in giving a sentence if it tolerates that very sentence being overruled by other people's spur of the moment whims of extrajudicial violence.

kangaroo court:

a mock court in which the principles of law and justice are disregarded or perverted.

"Although prisoners are first reviewed after seven years, in practise they are never released at this stage and often have to go through many reviews before release. Currently the average life sentence lasts 22 years.

The shortest term for murder in recent years was served by Stephen Doyle, who spent 13 1/3 years inside. The board released Mr Doyle because of his efforts at reform, including setting up an organisation while in prison to assist ex-inmates."

- Irish Times

The appropriate jail term for murder is a slightly different debate. I'm just saying that making a distinction between murder and spur-of-the-moment manslaughter can be very artificial. Unless there's an accidental factor that led to the killing, both charges are really just one and the same. So if someone were to say that manslaughter shouldn't be an automatic life sentence, then I suppose they'd also have to say that murder shouldn't carry a mandatory life sentence.



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