

NOTES ON THE STYLE OF THE LAW

On sending the prisoner down

by

ELIJAH Z GRANET

21 March 2023; 1 Car III

≈ sentencing remarks ≈ dignity ≈ symbolism ≈
criminal law ≈ word choice ≈



SENTENCING must necessarily be a solemn affair, particularly where imprisonment is involved. It is an exercise of the coercive power of the state, in the name of the Crown on behalf of the community. The infliction of the deprivation of liberty and of the indignity of life in most English prisons (often fetid crumbling Victorian constructions) must never be taken lightly. Equally, the victims of crime must be shown that the State, in the person of the King's Justice, is working to bring some right to the wrong which has been done. The language, therefore, must carry with it the symbolism which establishes and constructs the authority of the Court, much as judicial dress and the Royal Arms work to do. This ritual and formality not only communicates the symbolic uses of justice,¹ but can serve to achieve better outcomes by ensuring 'a certain, careful process in every case'.² Thus, the language of sentencing should be both consistent and able to carry the necessary symbolism.

With the greatest of respect, the last sentence of the recent sentencing remarks in *R v Rule* given by Picken J fails this measure.³ Rule, who was convicted of committed both murder and attempted murder, was given a life sentence, with a minimum term of 35 years (along with a concurrent term with a minimum of 14 years for the latter offence). So far, so standard. However, at the end of the remarks, Picken J writes (and, we can presume, said in Lincoln Crown Court) 'You may go with the

¹ Compare M Edelman, *The Symbolic Uses of Politics* (University of Illinois Press, 1985)

² J Resnik 'Tiers' (1984) 57 So Cal L Rev 837, 854

³ *R v Rule*, sentencing remarks of 17 March 2023

officer.⁴

This is a most regrettable choice of words, and far worse than the traditional conclusion of “Take him down.”⁵ Let us consider, first, the point of formal consistency. Picken J has engaged in unilateral innovation, which is a very dangerous thing in legal style. Occasionally it can be justified, where no standard exists and where otherwise anarchy would reign.⁶ Here, we have a most excellently suited phrase which has been used in this country for a very long time. If the phrase is to be changed—and any change would need to find language equally capable of bearing ritual and symbolism—then it must be done as a collective standard, probably promulgated by the Judicial College or some other suitable body.⁷ The change, too, is radical, not least because it means that it ends with direct address to the prisoner, rather than a general comment. This should not be a matter for wide variance. Formality and ritual’s function as guardians of consistent and careful procedure mean that Picken J’s unilateralism is simply unacceptable.

Let us turn now to the question of symbolism and ritual, particularly in the individual context of this case. The prisoner, Rule,⁸ is a wicked murderer, whose crime is shocking and brutal. There are no good murders, but this is certainly a worse murder, as shown by the bloody detail in Picken J’s discussion of the crime. The high tariff of the sentence reflects this. As Rule is 46 years-old, the 35 year term means he is very likely to die in prison. The State has thus in practice permanently deprived a man of his liberty. This is the most serious possible sentence, for the most serious possible crime. The most solemn language is called for.

The purpose of the sentence is, in part, to do right and honour the dignity of the deceased victim and of the surviving victim. The ritual in court, the last point of the painful process of seeking justice, should end with a clear indication to the families of the victim, and the surviving victim himself, that justice has been done. When Picken J addresses the prisoner in the second person, and structures the address in terms of voluntary action (‘you may go’), and in the language of gentle lying euphemism (‘with the officer’), His Lordship fails to discharge this purpose. The language should be clear that the sentenced person has been deprived of his liberty and is now under the physical control of the State, likely until his death. The traditional language, by shifting away from the second-person address, makes clear that the judge has no interest in conversing with the prisoner anymore than is necessary

4 This is also presented in an unsightly underline, and using an underline for emphasis is a typewriter habit which ought to be avoided. However, there are only so many errors this publication can examine at length, so with regret we must let this go for now.

5 Of course, women can be prisoners too, but it would not quite fit my practice of defaulting to the female as epicene if in doing so I created a false plague of epicene female criminals!

6 For an example where this publication engaged in unilateral innovation to fill a vacuum see ‘A Proposed Standard for the Uniform Abbreviation of Privy Council Jurisdictions’, Note of 15 April 2022.

7 Any such body seeking an eager rapporteur for matters of style is most welcome to contact this publication’s editor, who will eagerly prepare a lengthy analysis at no charge.

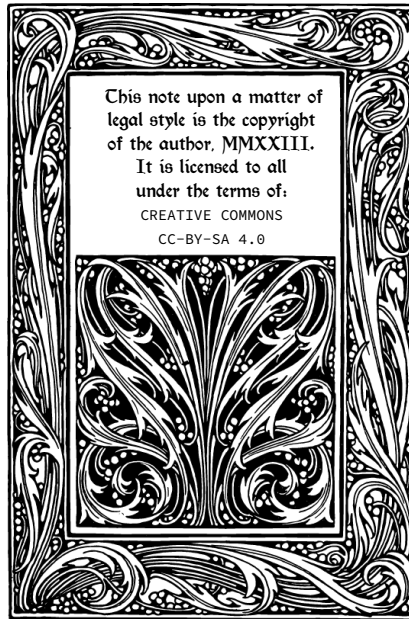
8 As has been often discussed on this blog, the criminal forfeits the courtesy of an honorific.

for the sentence, and that matters are finally finished.

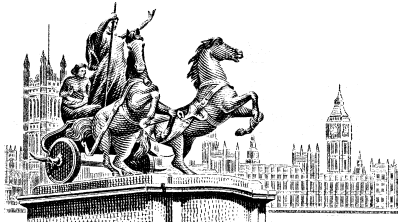
‘Take him down’ is such a perfect ending to sentencing remarks, because it reminds us that the imprisonment is an order the judge gives to another arm of the Crown to confine someone. The order to the custody officer is the order which carries out the sentence. It also makes clear that being taken off to prison is precisely the deprivation of autonomy in determining where one may go or live. We should confront the harshness of this punishment, and fully understand what it is to imprison another. Dismissing the prisoner as if he were a naughty schoolboy being sent out of the headmaster’s office simply will not do. The language of sentencing should be unique to sentencing, and by its strangeness (accompanied by its historic weight), we make clear that a court is a distinct space where, unlike all the world outside it, justice is done.

In other words, sentencing remarks ought to end with ‘Take him down.’





Published in the



City of Westminster
by



GRANET PRESS
LIMITED