

What Do the Punished Think of Punishment?

**The comparative experience of short
prison sentences and community-based
punishments**

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BACKGROUND AND RATIONALE FOR THE RESEARCH

Despite a substantial knowledge base about experiences of prison, there is scant research on the most common penal experience in Scotland – doing a short prison sentence (but see Criminal Justice Forum, 2003). Short prison sentences are one of the characteristic features of imprisonment in Scotland, where the vast majority of custodial sentences issued in a year (ranging anywhere between 75% and 80%) are for six months or less (Scottish Government, 2010). The current Government is pursuing an agenda to reduce the short sentence culture in Scotland, by expanding the use of community-based forms of punishment and creating a legal presumption against the use of very short stays in prison. In addition, there is also growing belief that bringing the voices of ‘users’ into policy deliberations and development are essential for the effective design and delivery as well as the credibility of public services (Weaver, 2010). Prisoners and offenders – like victims, communities, and criminal justice professionals – are a key user group of criminal justice services, and the Government has expressed interest in learning more about the perspectives of various users.

In light of these developments, we sought the views of people experiencing typically brief jail sentences as well as the views of those who have experience of community-based sanctions, the intended alternative. This research was proposed to begin filling our gap in knowledge as well as to provide relevant information to policy makers and others involved in or affected by the current reform programme. This report highlights emerging themes of the analysis with a particular focus on the experience and effects of imprisonment. A forthcoming research report will focus on the experiences and effects of community sanctions. We are continuing to review interview transcripts as well as explore the relevant theoretical frameworks being used to interpret the voices of offenders and would be happy to present this work to interested groups.

METHODOLOGY

The project involved qualitative interviews with 35 people falling into one of two groups: those currently serving a short prison sentence of six months or less (n= 22; the 'prison sample'), or those currently serving a community-based sanction (probation, community service) who also had some past experience of prison to which this might be compared (n=13; the 'community sample'). The overarching research questions guiding interviews of both groups were:

1. What are the *characteristic features* of the experience of prison and community-based punishment such as probation or community service?
 - What aspects of the experience are felt to be useful or not useful?
 - What emotions do the respective experiences engender: anger, boredom, hope, fear, comradeship?
2. How do offenders *compare the experience* of prison and an analogous community-based sentence?
 - What makes one or the other feel like the 'harder' punishment?
 - What makes one or the other more or less useful for providing an environment in which desistance is a possibility?

We used these research questions to design a semi-structured interview tool, seeking to trigger conversations, rather than elicit discrete answers to self-contained topics, about the experience of prison, including its positive and negative impacts, its purpose as punishment (is it punitive, rehabilitative, deterrent, something else?), and whether and how it would be preferable to probation and/or community service. While our focus was on how prison or community punishments 'work' from the perspective of those doing these sentences, many other issues arose spontaneously in interviews relating to family and children, drink and drugs, and work. Through review of interview recordings and transcripts, key themes were identified and analysed.

Prison participants were all recruited over a period of about two weeks during March 2010 with the assistance of Scottish Prison Service staff. Prisoners were all resident in a single prison with a substantial population of short-sentenced prisoners. Interviews of the prison sample were conducted at the prison in Links Centre interview rooms and their open-ended nature meant they ranged in time from about 20 minutes to over an hour. The community sample was recruited through and interviews conducted at Criminal Justice Social Work offices in three local authority areas of Scotland with interviews conducted between February and May 2010. The community sample interviews ranged between 45 minutes and 2 plus hours long.

Features of the Sample

- **Gender and age breakdown.** In the prison sample, we spoke with 16 men (ranging in age from 19 to 49 years) and six women (ranging in age from 22 to 55 years). The community sample contained three women (two in their early 30s, one of unknown age) and 10 men (ranging in age from 19 to 44 years old).
- **Offence types.** All but one of the prisoners were imprisoned for at least one of the following offences: breach of the peace, shoplifting, drugs, assault (none was on a stranger), knife possession, or breach of an order (e.g. curfew order, probation) arising out of one of these offences. The offences precipitating the imposition of probation and/or community service for the community sample were similar in type to those of the prison sample but more widely included shoplifting, assault, reset and fraud, theft, possession of offensive weapon, domestic assault, willful and reckless conduct, road traffic violations, robbery, and breach of the peace.
- **Sentence lengths and types.** The prison sentences of women in the prison sample were slightly longer than for men: 120/140/180/180/180/190 days for women while the men were serving sentences in the range of 60/90/120/180 days.¹ In the community sample, respondents were on probation, a community service order, or a mixed probation/community service order (often referred to as a section 229).

For the community sample, their experience of, or the duration of the time spent serving their *current* order ranged from a minimum of four to a maximum of 18 months; two of the 13 participants had commenced their community based orders in 2008, while most were placed on their orders in the second half of 2009. The lengths of community service were generally sentenced to between 120 and 300 hours.

- **Prior experience of prison.** In the prison sample, there was only one first timer among the 16 men (in for 120 days for possessing a knife), and only one of the women had never been to prison on remand or sentence before her current period of imprisonment. For those who had been to prison before, the vast majority had been to prison many times before, to the extent that previous experience of prison was described in terms of frequencies rather than absolute numbers. *'I'm in and out of here two to three times a year'* or *'I haven't been out a whole year since I was 16, and I'm 29 now'*. Most of the people who had been to prison before had had numerous relatively short sentences (e.g. of 12 months or less), and two people reported doing a long-term sentence (4 years or more).²

Because we wanted to probe the comparative experience of prison and community-based punishment, recruitment of the community sample screened in only those

¹ We draw no conclusions about sentencing severity and gender from this, as the sample sizes are too small to do so. There are also possible technical explanations for why women on longer sentences might show up in a sample of this kind.

² We refer to people on short sentences of 6 months or less as 'short sentenced prisoners' to distinguish it from the phrase 'short term prisoner' which has the specific meaning in the Scottish criminal justice system of prisoners serving less than four years.

who had prior experience of a prison sentence. The community sample was similar to the prison sample in generally having had multiple experiences of prison, though in general (but not always) the number of their prison sentences were of a lower magnitude – a handful rather than scores of sentences as was more typical of the prison group. For example, *'A whole load of remands and two sentences.'*

- **Prior experience of other sanctions.** For the prison sample, almost all had had some past experience of a community-based sanction, but this past experience tended to amount to only one or two prior sentences of community service and/or probation. In the community sample, nine of the 13 had had a previous community-based sanction, but this experience also tended to be limited. Moreover, this minimal experience of a community sanction in both samples tended to be in the distant past, and a pattern across both samples emerged of people reporting that they had been given one or two chances on a community sanction early in their offending careers, often breaching it but not always. After this those in the prison sample had only ever received a short prison sentence upon conviction.
- **Drugs and alcohol.** Despite not asking any questions about drug or alcohol use in interviews, 17 of the 22 people in the prison sample independently volunteered information about a drug and/or alcohol problem, as did 10 of the 13 people in the community sample. Moreover, many of those who did not disclose an addiction issue mentioned use of alcohol in the context of their offences. The pervasiveness of this issue across the sample groups would be almost impossible to overstate.
- **Offending history.** Unsurprisingly, given the extent of alcohol and drug dependency as an issue, most of the prison sample reported significant offending histories which were either directly connected by the interviewee or self-evidently related to an addiction problem. Dozens of and even over a hundred prior convictions were reported, most typically shoplifting or petty theft or breach of the peace. Whilst this finding was true for some of the community sample, there was more diversity in relation to the level of prior involvement in the criminal justice system amongst the community sample.

FINDINGS

1. The abiding feature of people serving short prison sentences is the presence of a serious drug and/or alcohol problem.
2. It is the cumulative effect of doing many short sentences, more than the experience of any single sentence, which carries the largely negative impacts of short-term imprisonment.
3. Imprisonment seemed to have positive and even life changing effects for some people but in a way that would be impossible to anticipate.
4. Prison time often is passive time.
5. The impact of community sentences was rated positively compared to the impact of prison.
6. Given a choice, almost everyone would choose a community sentence over a prison sentence.
7. People in prison felt they were being sentenced on their criminal histories to the exclusion of any progress they were currently making in their lives, and this negatively affected their sense of fairness and penal legitimacy.
8. Family relationships were important to nearly everyone.
9. Offenders with chronic substance abuse and offending problems were generally active and organised while in prison, and hoping for a life of work and family stability outside of it.

1. The abiding feature of people serving short prison sentences is the presence of a serious drug and/or alcohol problem.

The 'typical' short sentenced prisoner has a serious, long-term issue with drugs and/or alcohol and this is directly linked to the pattern of offending (offending to finance an addiction, fighting with partners and friends while intoxicated) and history of involvement with criminal justice agencies. Those in the prison sample who did not fit into this type were few in number: they were in for the first time on minor assault or weapons possession and did not report or appear to have an addiction issue (though alcohol use was discussed in all but one case as part of their offending). These exceptional respondents were generally also the youngest people interviewed, leading us to wonder whether they might become the typical short sentenced prisoner of the future (see discussion in the next section). Drug and alcohol dependency is such a pervasive issue across the sample that it runs through almost every other theme of this research. For example, preference for a community- or prison-based sentence was often influenced by whether the respondent was high or not, with imprisonment seen as a place to dry out and gain respite from particularly intense periods of drug use. (Most said drugs were available in prison but that it was easier to stay away from

them on the inside than the outside.) The dominance of addiction issues in the lives of most people in the prison sample raises fundamental questions about whether it is crime or addiction that the criminal justice system is being used for, given short prison sentences are issued routinely to punish low level but persistent offending linked to drug or alcohol dependency and where prison provides a main opportunity to link up with addiction services.

*It's basically just eh, people basically come here through drug addiction or alcohol addiction. People think they are murderers or evil, basically they are just normal people, cause of the addiction it turns us into bad people. **55 year old woman, 120 days, breach of ASBO (PS22)***

*Em, well the positives things is basically just being in here and being drug free for a couple of months. Gies ye a chance to kinda think about things know what I mean? **30 year old man, 120 days, assault (PS05)***

*(Sighs) I was drug user ...all my convictions are to do with drug use. And if I hadn't gotten jail I'd probably be deid, so that's the only positive. It's the only place I keep clean. I never take anything in here. I know that sounds stupid, but I don't. I've got MDTs over 17 year ...I've never failed one. It's just the regiment, it's so regimented. I can function better when I've got that, If I no got that, I just lose the plot. **35 years old man, 180 days, breaking and entering (PS10)***

The implications of a 'criminal justice' approach to addiction are considered below in the conclusion.

2. It is the cumulative effect of doing many short sentences, more than the experience of any single sentence, which carries the largely negative impacts of short-term imprisonment.

Next to the pervasiveness of drug and alcohol problems, a second theme stands out as equally important for understanding the effects of short prison sentences – the experience of short sentences as a regular life activity. As noted in the description of the sample, most people we spoke with had done more than just several, but tens, dozens and scores of prison sentences, so many sentences in fact that many people answered the question about prior prison sentences not with a number but a frequency. This respondent from the community sample gives a flavour of this pattern:

*hundreds of times I been in. I couldn't say. It's easier to say how much I been out. In a good year I'll be outside for four or six months and in for the rest and it's been like that for years. **29 year old man, probation, shoplifting (CS09)***

This raises a novel research problem in that sentencing impact research tends to focus on the effect of only a single sentence. What we began to sense during the course of our interviews was that the true impact of imprisonment on people's lives plays out over a long period of time and in a cumulative manner.

In the following series of interview excerpts we trace a trajectory of sorts from a young man who is in prison for the first time, to one in his twenties for whom regular imprisonment has become a familiar part of life. We then move to a couple of prisoners in their late 30s and 40s, respectively, with long-term experience of short prison sentences.

A 19 year old man:

*[What expectations did you have about being in prison?] You mean what I thought it'd be like? Thought it'd be worse than this. [How long are you in so far?] A few weeks. [Purpose of your sentence?] Don't know. [Did the Sheriff say anything about why?] Nah, just sentenced me. Didn't say much. [Do you feel the prison sentence is having any impact on you?] Nah. **120 days, knife possession (PS13)***

A 25 year old man:

*[Purpose prison?] Phhheww, don't know to be honest with you. [To punish, help, etc.?] Meant to help you but it disnae. To be honest I think I'm a lot worse since I been coming in here. To tell the truth I've got a lot worse since I started coming in the jail, been in and out three times every year at least, know what I mean. I know every one of the members of staff in here, know what I mean (laughs). Every time I come through the door it's like 'All right, B__?'. Get me outta here man. If I'm not working just sitting up here watching telly, drinking tea like. [Are you working now?] Nahhhh, it's cause I'm only in 30 days I'm no wantin a job, [Just watching tv?] aye [Do you have access to things like the library or gym?] Aye, if I wanted aye, but I'm not bothered. I just want to get it over and done with. **60 days, shoplifting (PS02)***

A 35 year old man:

*[Tell me about the experience of prison?] Sucks. But at the end of the day it's nothin. It's nothin now. It's not punishment anyway, it's a joke. Plus the fact if you're doin less than 6 months you get nothing. By the time you get in on your sentence you're getting out. [What do you feel is the purpose of your prison sentence?] (Laughs) I cannae even say what that means. I don't know....[What advice would you give to a Sheriff trying to decide a sentence in your case?] Look at my previous convictions. If you're so sure these fucking paltry sentences are doing me any good, look at my previous convictions. If I had gotten just one big one at the start I probably wouldn't be here. **180 days, breaking and entering (PS10)***

A 49 year old man:

*I've got to the attitude where I just don't give a shit. Pardon my French, but I don't, I just get on with it, I do it. ... I'm goin out here with basically nothing you know? I'm better off in here. I'm better off in here, honestly! That's the way I look at it. Cause I'm not really, it's not really a punishment, I'm not punished in here, it holds no fear. **180 days, breach of the peace (PS06)***

These different 'stages' are represented in the voices of different prisoners, giving a sense of the progressive effects of multiple prison sentences. There was a consistent pattern among those at the older end of our scale, from the mid-30s to 50s, to express anger and hopelessness about finding themselves in prison once more. The younger prisoners, in their 20s, seemed less angry but many had reached a level of resigned acceptance that going back and forth to prison on short sentences had become a routine activity for them. For all these prisoners, including the first timers, there was no fear of prison, though those in for the first time were the only ones to say the experience made them not want to come back again. However, one wonders given the long-term track record for so many of our respondents how often a desire never to come back translates into its realisation.

These excerpts begin to display the lack of engagement with imprisonment as a punishment for a specific act of wrongdoing, and this lack of engagement seemed to harden over time into a hostility and perceived illegitimacy of the criminal justice system itself. It is important to point out, though, that respondents were not distancing themselves from their own culpability for their wrongdoing; to the contrary, a sense of accountability, and a recognition of the harmfulness of their persistent offending appeared in many accounts, as in this one:

[What do you think is the purpose of a sentence like yours?] Well, safe-guarding shopkeepers. I'm nae entitled to walk oot to shops and jist help myself. I realise that I've got to be punished for daein it. ... [What impact has being in jail had on you?] Made me worse [Can you tell me about that...?] It's just because when I get out I dinnae like police, I dinnae like any form of authority, like I'm anti-authority now. Cause I've been locked up quite a while. It makes ye like that. Especially if you drink.
55 year old woman, 120 days, breach of an ASBO (PS22)

But interview comments suggest that prisoners saw their sentence more as obstacle than opportunity to getting their lives together. If these offenders are in a race for their lives, short prison sentences were experienced as getting yanked off the track to sit out a lap, thrown back in, only to be pulled off again and again. The result of this appeared to be a person's sense of responsibility for wrongdoing is becoming ever more detached from the penal intervention triggered by the wrongdoing.

3. Imprisonment seemed to have positive and even life changing effects for some people but in a way that would be impossible to anticipate.

When we asked people in the prison sample which sentence, prison or community-based, had made the most difference to their lives, most people said prison, and mostly they meant in a negative way –

Well, to be honest with ye, wi ma life an the the way I've been in noo, probably prison had made mair ae a difference because I've always been in prison. But it's in a kind of negative way. **30 year old man, 120 days, assault (PS05)**

I lost my college place and I lost ma hoose. 24 year old man 180 days, breach of probation (PS19)

But there were two situations where people identified prison as making a positive difference. The first of these situations is when the prison sentence was for a relatively longer period of time allowing for sustained participation in programmes:

the wan that's done the maist fir ma life is the prison sentence when I got the longest, the 13. [The 13 month sentence?] Aye. [And it made the most difference why, because you had time to do a programme or work on your issues?] Aye. 29 year old man, 90 days, breach of the peace (PS12)

See my worst [i.e. longest] sentence, that was one of the best sentences I coulda done. It was only 8 months but I done a Constructs course. I know I'm back in but I stayed away from everything for two months. 25 year old man, 60 days, shoplifting (PS02)

In the second situation, two people in the prison sample said the prison sentence was the best thing that ever happened to them because it was during this sentence that they had gotten off of drugs and felt they achieved the resolution to abstain permanently:

I was addicted to heroin, been on methadone for fifteen years and today's the first time I've come off it. [So this stay in prison you got off drugs entirely?] Yeah because basically I knew that I had a good chance of coming off in here because I don't get drugs in prison. I usually only use em outside. After thirteen years it's been a long time comin you know....[So what's the purpose of your prison sentence?] I was gonna say rehabilitation there but it cannae take six months to rehabilitate a prisoner. Eh but there's a good viewpoint [about prison] I would like to bring up and that's my drug addiction's been addressed. That's only from one participant, and that's only if the prisoner's willing to do something about the addiction. 35 year old man, 180 days, shoplifting (PS11)

I was a heroin user for thirteen years before I come in here and [hope] that doesn't get back to them but this is the best thing that ever happened to me, honestly, um when I was out I was put on a methadone programme, doing methadone and heroin and in here I've come off it and thinking that I never will go back on it again, it's the best thing that ever happened to me. Don't like to admit it but (laughs...). 37 year old man, 60 days, breach of the peace (PS09)

In one of these cases, the person was in prison for only the second time (and the first time was for seven days) and felt the prison sentence served as a wake-up call that a serious problem he had managed to keep largely hidden was now exposed and required addressing. In the other case, the person had been in and out of prison multiple times over the course of nearly 20 years. The difficulty for integrating such feedback into policy is obvious – why does one person have an epiphany after two short sentences while for another it happens only after 20 years of such sentences?

4. Prison time often is passive time.

Boredom and routine are entrenched features of being in prison on a short sentence:

*getting you up, feeding you, getting you back to the cell, locking you up, it's just a routine that goes on and on. **49 year old man, 180 days, breach of the peace (PS06)***

*it's a long weekend (yeah) quarter to 5 on a Saturday then go for breakfast at quarter to 11 on the em Sunday and then it's the same Sunday, get yer dinner out at quarter to 5 and then your back in your room and that's you [locked up] til the next morning again again ... see the boredom in the rooms it would absolutely knock ye off yer head. Just locked in a room. **39 year old woman, 170 days, 'domestic' (PS07)***

*basically you jist have to wait about you know?[Just hang out in your cell?] Aye ye sit in the cell but you got to like, rec and ye get exercise but a lot of people, boys ma age won't go to them, mostly young boys y'know. **29 year old man, 90 days, breach of the peace (PS12)***

*It's really boring and can be quite depressing at times, aye. (What's depressing..?) The depressing part is, well it depends on each individual prisoner I suppose but things like no getting to see yer family and stuff like that, and just bein locked up all the time. **30 year old man,120 days, assault (PS05)***

A sentence of six months means a stay in jail of only 90 days. This is not enough time to be assessed or considered for programmes, to get a regular job (unless you are in and out frequently), or obtain educational credits. For women, who may be inducted at Cornton Vale and then moved to a local prison and possibly moved back, a six month sentence could mean spending only a handful of weeks at any one establishment.

*Aye its pointless aye, its pointless cause yer no really getting the chance tae dae anythin, cause yer no doin as long yer no allowed to go to education ye canny dae this ye canny dae that so basically ye just go through that, yer the bottom of the pile. **29 year old man, 90 days, breach of the peace (PS12)***

Even for those who take up the limited activities available, most of the time of a short sentence is waiting time. Waiting for a sentence to end can allow for time to contemplate one's actions:

*These days I think I've no slept I've slept like two hours a day. All you do is think, constantly think, who you've hurt, what you've done. All you've got time to dae is think. **37 year old man, 60 days, breach of the peace (PS09)***

Sittin, see like you've got mair time tae think about things, know, like wastin yer life away on drugs an drink an that, that's how I don't want to go straight back onto the street because obviously 45 days isnae enough time tae deal wi problems y'know? [Yeah] By the time you are startin to feel better, you're getting back out onto the street basically, you know, so you're not...you're jist startin to feel better you know.
29 year old man, 90 days, breach of the peace (PS12)

As the second excerpt shows, while a spell in prison is an opportunity to reflect upon how one would like things to change, it is not also an opportunity to *act* on these positive thoughts, nor is their time to get services in place on release to build on, in the community, the cognitive work done in prison.

5. The impact of community sentences was rated positively compared to the impact of prison.

In both the community and prison samples, positive experiences and impacts of punishment were more frequently attributed to community-based sentences than to prison sentences. The community sample tended to prefer the form of community sanction they were already on (i.e. if they were on probation they tended to state a preference for probation), and commonly stated that a main benefit of a community sanction was keeping them out of prison. For the prison sample, many singled out community service as preferable to probation because it provided the routine of work and schedule, a direct sense of paying back to the community for harm done, camaraderie and a sense of accomplishment:

there was like a big burn and there was loads of rubbish and stuff flung in it so we cleaned it aw. [Did you enjoy that?] Aye it was, it was pretty good, and meetin new people and stuff like that as well. Plus it was getting us, it was getting me into a routine of, it was kinda like workin know what I mean so? **30 year old man, 120 days, assault (PS05)**

Community service was the business, brilliant. Excellent, Really really good group of boys. The guy that was taking was just like us boys, wasnae official in any way, had a right good carry on, plus the fact it was gardens I was doing. It was great, it was a right good laugh and you felt a lot better doing something. Especially gardens cause you knew you were doing it for people who couldnae do it for themselves so you knew you were making a difference instead of being fucking stuck in a stupid wee 12 by 8 and doing nothing for naebody. **35 years old man, 180 days, breaking and entering (PS10)**

Aye like helping people, people that are on benefits wi kids an that, like single parents an that know what I mean? You're helping people like that basically. **29 year old man, 90 days, breach of the peace (PS12)**

*It wis brilliant, I loved it. It was, I was getting something out of it, see efter the programmes done, and we done it I look back, an I wis in the papers and aw that and we done this park fir a nursery, it wis a nursery school, eh, and we ripped the park right back to its four walls an rebuilt it, and see if ye could see this man, it wis beautiful an that, it wis something else, big flowerbeds, everythin, know. We put our heart and soul in it. There wis 20 of us that put our heart and soul into it. **35 year old man, 180 days, breach of the peace (PS14)***

The negative views of community service were few in number and can be grouped into three kinds of comments:

- resentment at not getting paid (*you're daein unpaid work everyday ... and you're no getting nothing oot it. **PS16***);
- inadequate provision for women (*I think they should maybe have something for the girls know what I mean? See, when yer wi a bunch ae guys an some ae them don't actually speak to you nice an, know what I mean, like sexual gestures an that ... its jist, ye could be the only girl in there and its jist about wi 50 guys **PS07***); and
- illicit activities continuing during its operation (*I've seen people drinkin at community service, takin drugs at community service. **PS07***)

Probation received mixed reviews from the prison sample; as a group they were less inclined to see it as beneficial. Those in the community sample were almost uniformly positive about it.

Interestingly, positive and negative views of probation flowed from similar experiences of how it works. That is, everyone saw it as a one-on-one experience where a social worker inquires into your state of mind and evaluates how well offending and other issues are being addressed. This triggered for some a negative reaction to its intrusiveness and perceptions of the tendency to exploit power in the relationship. Others saw this much more positively as getting the full attention of somebody with whom you have developed a relationship of trust and providing a meaningful opportunity to talk over problems and get specialist help.

The personal interaction of the community sanctions also meant that personal relationships were central to its perceived usefulness and desirability. Getting along with a community service supervisor or a social worker were essential to a positive disposition towards the punishment and commitment not to breach it.

Positive views of probation included:

*helps you sort ur head out, gets you away from the wrong state of mind, you need to take a bit of responsibility, and it sets you apart fae the daft things you're doing, it helps you become more mature. **32 year old man, combined probation and community service order, domestic assault (CS03)***

probation makes you really stop and think about what you are doing, that you need to stop offending and what's going to happen if you don't. Community service is

alright, I'll probably miss it cos I been doing it for 18 months, cos you get a good laugh, and I like the routine. 19 year old man, combined probation and community service order, RTA (CS04)

probation's given me chance to turn my life round about and community service is keeping me busy cos I go out twice a week and I've got probation once a week. 33 year old woman, combined probation and community service order, willful and reckless misconduct (CS05)

Probation was more helpful [than jail], aye, aye [my social worker] P____, I 've known P____ for a good few years, sometimes he's too nosy, and my family with us when I had my kids, eh, but apart from that. I always go back to P____ because he knows me that well and he does put in good reports for me. 23 year old man 60 days, breach of a curfew (PS01)

because obviously its [probation] keeping ye out of jail, and some probation officers help you. Help you with housing, and getting your social money, eh, you need a bit of back up when you get oot of jail I think. 55 year old woman, 120 days, breach of ASBO (PS22)

gettin short sentences like this it's basically, basically you're just, you're just in the door and yer back oot the door jist the same. Yer no in long enough to get the help you need and its basically I think, things like probation an that, there's mair chance ae getting the help ye need. 30 year old man, 120 days, assault (PS05)

Negative views included:

Wasn't much help, wasn't much help at all. trying to analyse my offending, the reasons I was offending and...it was just in one ear and out the other, I can put that down to age but as you get older you start to realise you need to start doing things for yourself, no one else is going to do it. I was pretty immature basically. 35 years old, male, 180 days, shoplifting (PS11)

[Positives of probation?]Nothin. Ye don't get anything out it know what I mean? Its like, ye just feel like a kid sittin there know what I mean? Talkin tae this person you don't even know. And if you don't turn up they make a big thing, put a warrant out for yur arrest, turn up to your Mum's and embarrass ye, take ye away in handcuffs. 39 year old woman, 170 days, 'domestic' (PS07)

Intensive probation was all right because it wasnae social workers, was NCH Action for Children, But CJSW, nah, not at all, don't like them, would even go so far as to say I fucking despise them, they are nosy nosy nosy bastards. ... they just scurry above your heid. 35 years old man, 180 days, breaking and entering (PS10)

6. Given a choice, almost everyone would choose a community sentence over a prison sentence.

Even where people had strongly negative things to say about community sentences, no one said prison was preferable on the grounds that it was more useful, helpful or meaningful as punishment. In fact, with one major caveat, almost everyone in the community and prison samples stated that had they been given the choice between a prison or community sentence they would choose some form of community sentence. That caveat has to do with drugs and alcohol. A preference for jail over community as a place to serve one's punishment was, with the exception of one case, down to the phase of one's addiction. The following quote is representative of many similar statements from those in the prison sample:

*[If given a choice about where you would serve your sentence, would you choose prison or community?] On this occasion I'd say a prison sentence. It all depends where my life is. If I was working and I was happy in my environment then I would obviously choose probation or community service. If I was homeless or had a rampant drug addiction, then I'd use prison. Does that make sense? **35 years old, male, 180 days, shoplifting (PS11)***

The only person to state they preferred jail over probation or community service for non-addiction reasons was a first time prisoner who gave the reason that a prison sentence would take less time to serve. This is interesting in that the international literature on sentence preferences shows a general preference for a short jail sentence over a longer community sentence, a preference, in other words, expressed by only one of the 35 people we spoke with (Petersilia & Deschenes, 1994; Petersilia, 1990; Payne & Gainey, 1998; Wood & Grasmick, 1999; Searle et al., 2003).

In other elaborations of this research we are exploring in more detail explanations for preferences of one kind of community sentence over another and how this relates to the concept of payback (check www.sccjr.ac.uk for latest research briefings). Here, we only have space to note a general distinction in the perception of how probation compared to community service 'works' as punishment – the value of the former was in *getting help* and the value of the latter was expressed as (paying back by) *giving help*.

7. People felt they were being sentenced on their criminal histories to the exclusion of any progress they were currently making in their lives, and this negatively affected their sense of fairness and penal legitimacy.

The kinds of offences committed by the people in our samples – shoplifting, assault or breach of the peace among acquaintances, breach of an order – would not typically result in a sentence of imprisonment for first-time offenders. Offending history is a common factor in the determination of sentences, and most sentencers would give a shoplifter with a hundred

prior similar convictions a more severe sentence than someone appearing before the court on the charge for the first time. Most respondents felt that they had been given jail because of their lengthy history of offending, and this became problematic once they came to feel their record would always overshadow any present evidence of success.

*They expect young people to get better, and live a decent life and get on and work and that, but we can't with a history following us all the time. It's like your past is always in front of you, no matter what you do to better your life the past will always catch up with you. ... So you are not getting sentenced for what actually happened, you are getting sentenced because the judge seen your name too many times or, I mean for instance I'd stayed out over two years and done really well but he wasn't interested in that, you know? **29 year old woman, 180 days, assault and breach of the peace (PS08)***

*If you're a reoffender you're not going to get a chance again, and then it's just bang bang bang. Fair enough, I'm a serial offender but you think they'd, they're supposed to be smart people. They just looked at my previous and seen jail jail jail jail jail. Jail is doin nothin, you'd think they'd try another course of action. They're nuts. **35 years old man, 180 days, breaking and entering (PS10)***

*Nine times out of 10 if you've been in jail the past say year, the chances of you going back to jail is 90% say maybe 80% but you're never thrown a lifeline. **35 years old, male, 180 days, shoplifting (PS11)***

8. Family relationships were important to nearly everyone.

All but two people in the prison sample mentioned family as important, whether in relation to why it was hard to do the sentence, or as a motivating factor to try and stay out of prison or deal with an addiction issue, or as the trigger of an offence (or even sentence). Young children and sick parents made it hard to be in prison, siblings and extended family also in prison made it a more sociable but bittersweet experience:

*I lost my brother last year when I was in the prison [that's hard] aye and he died of septicaemia, blood poisoning, 42 he was [Did you go to the funeral?] (In) handcuffs eh... and I lost my mate, my best mate, he died of a heart attack at 36. He was a taxi driver in G _____. He's left two wee boys, know? I look after the weans now and again but I've got two daughters myself. **35 year old man, 120 days, assault and breach of the peace (PS14)***

*My Mum and Dad are very ill at the minute, and they have been, so that was the main reason that I did get my act together and come off drugs and that yeah, but, to look after my family. **29 year old woman, 180 days, assault and breach of the peace (PS08)***

*I've got a really volatile relationship with my parents and me and my Dad had had a pretty heated altercation the night before and I had a black eye. And I think [the Sheriff] looked at me and I had bruises on my face, a fresh black eye, I was up for assault, I was in police custody and I think ... he presumed I'd been in another altercation [and that's why I got jail]. **23 year old woman, 140 days, assault and breach of the peace (PS04)***

9. Offenders with chronic drug and alcohol and offending problems were active and organised while in prison, and hoping for a life of work and family stability outside of it.

Nearly all of those we spoke with who had prior custodial sentences had accumulated significant educational or work experience over the course of their many short prison sentences. The most prolific offenders who self-reported dozens or even hundreds of prior convictions regularly had taken up opportunities of purposeful activities while in prison and expressed the desire to be involved in work and/or education on release.

*[What are you doing while in here?] I usually go to education, I was in last year, but for example, I was going to education I was doing my maths education, art, music. [What will you do when you're out?] Seeing my kids, was supposed to start a plumbing course just before I came in here. **23 year old man, 60 days, breach of curfew order, more than 10 prior prison sentences (PS01)***

*[What are you doing while in here?] Education. Aye, just finished my psychology today and start sociology, I do computin, then maths. [What will you do when you're out?] I'll hopefully get a college place...social science...on a pretense of being a drug worker. Cause I know people will talk to me before they'll talk to anyone else because I've been there... [And in two years' time?] Hopefully getting a phone call saying I can do the third year right in the university which is something I never thought I'd say because, cause I didn't picture myself as a very bright person. **35 year old man, 180 days breaking and entering, estimated 38 prior prison sentences (PS10)***

*[What are you doing while in here?] Eh going to education I'm doing art and education, maths, trigonometry and algebra so I can go to college next year [to study] PC repair networking. [And] I work in the pantry, preparing food. [And in two years' time?] In two years hopefully I'll be settled down in a half decent job, with my house decorated! hopefully drug free and in a relationship. That's it. I... I can only try. I can only try. **35 year old man, 180 days, shoplifting, eight prior prison sentences (PS11)***

This finding may appear to be inconsistent with the finding above, that prison time is often passive time. How can it be that prisoners are both doing mostly nothing, and getting lots of things done? The answer lies in the cumulative effects of short prison sentences. During any given short sentence, prisoners are locked in cells most of the time. According to our

respondents one can get up to two or three days per week where perhaps two hours of these days are spent out of cells in education or meeting a service provider. During a single short sentence of, say, 120 days, there might be time to meet with an addictions specialist only once or twice. After ten or twenty years of doing short sentences, though, a person will have had available one or two thousand hours to devote to education or working on other issues, but also experienced tens of thousands of hours of isolation in a cell. It is the latter experience of being locked in a cell which became the defining sense of the experience of imprisonment for our respondents.

CONCLUSIONS

We conclude by drawing out by way of conclusion several implications of these identified themes.

The defining influence of drugs and alcohol. Dealing with drug and alcohol addiction seems to be the main issue for both offenders and the penal system. For offenders with drug and alcohol issues, offending is almost entirely connected to this. Ironically the lengths of prison sentences that chronic drug/alcohol users are most likely to receive are also precisely the sentences where it is least likely help in addressing addiction can be provided. The short sentence mainly seems to be used by prisoners as a drying out session, which does allow a person some sober time to reflect on the direction of their lives. This reflection rarely develops into a sustained period of staying off drugs, however, and using prison essentially as a detox facility is an expensive proposition.

For the penal system, drug and alcohol problems appear before it as a raft of chronic, petty offending that individually may not cause serious harm, but collectively degrades community life. Prisoners expressed the sense of Sheriffs' frustration and exasperation dealing with them individually and the problem of this type of offending in general, so that a short prison sentence was often described as being 'the only sentence possible'. Providing communities brief respite from this type of offending is occasionally proffered as the justification for the short sentence. This research suggests that short sentences tend to get in the way of people's efforts to deal with addiction, and so are likely to delay the point at which a person fully abstains from substance abuse and therefore offending. A 60 day period of peace today may be coming at the cost of years of continued offending. At the same time, the sense of having no options when it comes to dealing with this kind of offending is real. That most offenders would prefer prison over community-based sentences if they were in a period of heavy substance use, suggests that this group would have a high breach rate on community-based sanctions. Current plans to expand such sanctions through the Community Payback Order (Criminal Justice and Licensing (Scotland) Act 2010) will allow a drug treatment requirement as part of the order, though how this will be implemented is still left open. Attaching a drug treatment requirement to the community order also presents the continuation of a 'criminal justice' model as a strategy of dealing with a societal problem of addiction. Also, methadone was a controversial strategy amongst our respondents, with

some seeing it as a stepping stone to recovery, while others saw it as part of an addiction problem.

How punishment works: time to get help, time to give help and time to kill. This research exposed offender perceptions of the meaning of different forms of punishment. The comparisons of probation, prison and community service showed each having effects on attitudes and behaviour, but in different ways that are distinctive to their particular setting and conditions. Although many prisoners took up classes, work and services while in prison, they mainly described doing a short prison sentence as dominated by the need to kill time waiting out their release date. Being active is not a requirement of being in prison, but is one strategy adopted to take the edge off the inherent boredom of being confined. By contrast, respondents in both the community and prison samples saw probation and community service as punishments that required their active input. For probation, this meant attending meetings, going to services and opening up one's mind to a social worker. For community service, this meant physical activity, the routine of work, and participating constructively in teams.

Positive and negative features were identified for all three types of punishment. The negatives of prison are the boredom and sense of pointlessness; the lack of services and programmes available for those on short sentences; the disruption to one's community-based efforts to get sober; and the amplification of all these negatives over time as one spends years in and out of prison. The positives of prison were that it is not particularly hard to serve a short sentence – there was no fear of the prison setting and staff were viewed positively; and there are useful services available for those on the longer short sentences (e.g. eight to 12 months).

What may be seen by an offender as a negative aspect of punishment does not necessarily mean it is an *undesirable* aspect of punishment. Punishment by definition involves a degree of discomfort, and in a retributive system of sentencing the severity of a penalty is in proportion to the harm caused through crime. What we found in the prison sample, however, is that part of what was felt to be 'hard' about punishment is not what is meant to be hard about it. Boredom from lack of activity and interfering with an individual's effort to become law abiding undermine retributive, deterrent and rehabilitative aims of punishment. Moreover, what is perceived to be 'easy' about a short sentence, that one can get through any single time without much effort suggests that the desired pain of imprisonment – the pain of losing one's liberty temporarily – is not happening either. There is certainly a sense of pain and loss in being separated from one's family and surroundings, but it struck us as being both ineffectively brief and disproportionately excessive given the offence for which most people were in prison. For any single sentence, the pain is not great enough to cause most to reflect on and change their ways. But the cumulative effect of doing many short sentences, a pattern characterising much of our sample, has had the consequence that most respondents had served the equivalent of a life sentence as a result of drug addiction and minor offending, with strongly negative effects on their lives. Families were broken up, education plans were stalled, employability and employment progression were reduced, and

sentences and the criminal justice system overall came to be viewed as pointless and vindictive.

By contrast, what we heard about the pains of probation or community service suggests it is hard in the way that normative theories of punishment want it to be hard – requiring offenders to *do* something like showing up on time to appointments, opening up to counsellors, carrying out building improvements. These were pains that respondents recognised, accepted and generally concluded as having a meaningful impact on changing habituated thoughts, behaviour or both. This is not to say that community-based punishments do not have their problems and pathologies, but the experience of them generally seems to be much more closely aligned to their intended purpose than prison. Given this, it is important to note a perception of a ‘one strike and you’re out’ policy on community penalties. Many in the prison sample had had minimal experience of community sanctions before beginning a long series of prison sentences, and had experience of these sanctions as young people when they were least able or willing to enter into them with a sense of commitment.

‘Hopeless’ cases and room for hope. We expected that the people we spoke with would have long histories of offending and being caught up in the penal system. What we did not expect was just how lengthy and entrenched these histories turned out to be. Even more surprising, though, is that despite overwhelming evidence of deeply disordered and interrupted lives, we found that persistent offenders are also persistent learners, workers and hoppers. Respondents valued education and aspired to be in stable employment. Most wanted to have strong and healthy relationships with family, and received strong support from them. Finally, the narratives of these offenders made clear that they are and see themselves as citizens of the communities in which they live – concerned about education, crime and the future. What can be drawn from this, we think, is that even in the case of those with the most apparently intractable problems there is much to work with and use to motivate and support people’s reflections on the harm they have caused and their journey out of the criminal justice system.

Respondents felt that being sentenced to prison was the result first of their criminal record, and second of the frustration of a court system that had given up on offenders who appear not to be learning anything from their punishment. In fact, offenders we met acknowledge the destructiveness of their offending behaviour, know what they need to do to stop it, and in general want to become law abiding citizens. The irony is that the cycle of short prison sentences is perceived by most people most of the time as an interference to acting on these, and the justice system itself comes to be seen as part of the problem, just as addiction is. The fact that some people described their short prison sentence as being the catalyst for real change is important but caution should be exercised in using this revelation to guide policy making. A prison sentence is not an unlikely place for someone to reach their personal rock bottom and resolve to change for good. That this might happen for only a few, and even then for some after one or two sentences while for others only after ten or twenty makes clear that prison is an expensive and unpredictable technique for triggering reflection and change.

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