Mind the Step: A More Insightful and Robust Analysis of the Sentencing Process in England and Wales under the New Sentencing Guidelines

Jose Pina-Sánchez, Ian Brunton-Smith, and Guangquan Li

Background: Sentencing is a complex process. Multiple preliminary decisions are considered before the final sentence is imposed. However, quantitative studies on sentencing have relied mainly on univariate models, which assume that all case characteristics are considered jointly in a single stage prior to sentence, ignoring the sequential nature of the sentencing process. Here, we implement a multivariate multilevel approach to provide a more accurate and comprehensive understanding of the sentencing practice in England and Wales under 'step-structured' guidelines.

Methods: A sample of 2,851 cases of assault processed in 2011 in the Crown Court and recorded by the Crown Court Sentencing Survey is examined. Rather than focusing on the final sentence outcome we model judicial decisions regarding: i) the rating of the case seriousness (Step One), ii) reductions offered for a guilty plea (Step Four), iii) and the final disposal that was imposed. Each of those outcomes are measured as ordinal variables. Three levels are used to rank the *offence seriousness*, five for *guilty plea reductions* (going from 1%-10% to greater than 33% reductions), and four for the *disposal type* (discharge and fines, community orders, suspended sentences, and custodial sentences). Different ordered logit multilevel models are used for each of those three outcomes controlling for *most* - for Step One we control for *all* - of the case characteristics referred to in the guidelines. The multilevel part of the model is used to account for unwarranted between court disparities, which are linked under a multivariate specification to explore the correlation in those disparities across the three steps of the sentencing guidelines considered.

Results: We find little evidence of unwarranted between court disparities, accounting for 5% or less of the unexplained variability in any of the steps considered. Furthermore, the covariances between the random intercepts are also close to zero, indicating that court disparities are not carried through the sequence of steps. Most guideline factors are significant and operating in the expected direction (see Figure 1). However, the effect of the *offence seriousness* (established in Step One) in the final sentence is weaker than expected. E.g. it is smaller than the effect estimated for four of the Step Two aggravating factors (having four or more *previous convictions*, committing the offence whilst *on bail or on licence*, and *failure to comply with court orders*). Hence, some Step Two factors are not only used to 'fine tune' the final sentence within the given offence category, but instead they are used to select what that category will be. In addition, we find evidence of certain factors being considered multiple times across the step structure, in some cases directly contradicting the instructions in the guidelines.

Conclusion: In general, our findings demonstrate that sentencing in the England and Wales Crown Court is both highly complex, yet thoughtfully carried out and consistent across courts. However, our results also show that contrary to the instructions in the guidelines - which call for each step to be considered sequentially and in a non-overlapping fashion - many guideline factors are being unduly considered outside their specified Step. An important methodological implication follows from this finding: to assess the influence of relevant aggravating and mitigating circumstances on sentencing decisions correctly, account should be taken of both direct and indirect influences of each factor. Hence, we argue that univariate regression models need to be replaced by more realistic multivariate models (capable of investigating the complex network of intermediate decisions made throughout the sentencing process) as the default approach for the study of sentencing.

We propose four mechanisms which might explain the undue influence that some factors are having across the whole sentencing process, although it is possible that there are many more. First, some of the factors included in the guideline are either not sufficiently clear or legitimised. For example, the *location* of the offence is applied to account for very diverse settings without a clear guidance of which locations represent an aggravating factor. And there is considerable debate about the extent that being under the influence of *drugs or alcohol* should be used as an aggravating factor. Second, the treatment of *previous convictions* as a Step Two factor in spite of its vast importance in deciding the sentence severity seems to be something against which judges are rebelling. This is demonstrated by the fact that *previous convictions* was one of only two factors to have found to have an statistically significant effect on Step One, Four, and on the final sentence outcome. Third, guilty plea reductions seem to be affected by redeeming characteristics observed in the offender such as expression of genuine *remorse* or exemplary conduct/*character*. Fourth, Step Two factors related to domestic violence - such as victims being forced to *leave* their home or assault committed in the *presence of others* including relatives appear to be having an undue influence on the determination of guilty plea reductions and the level of seriousness. This suggests frictions in the application of the assault guidelines for cases of domestic violence.
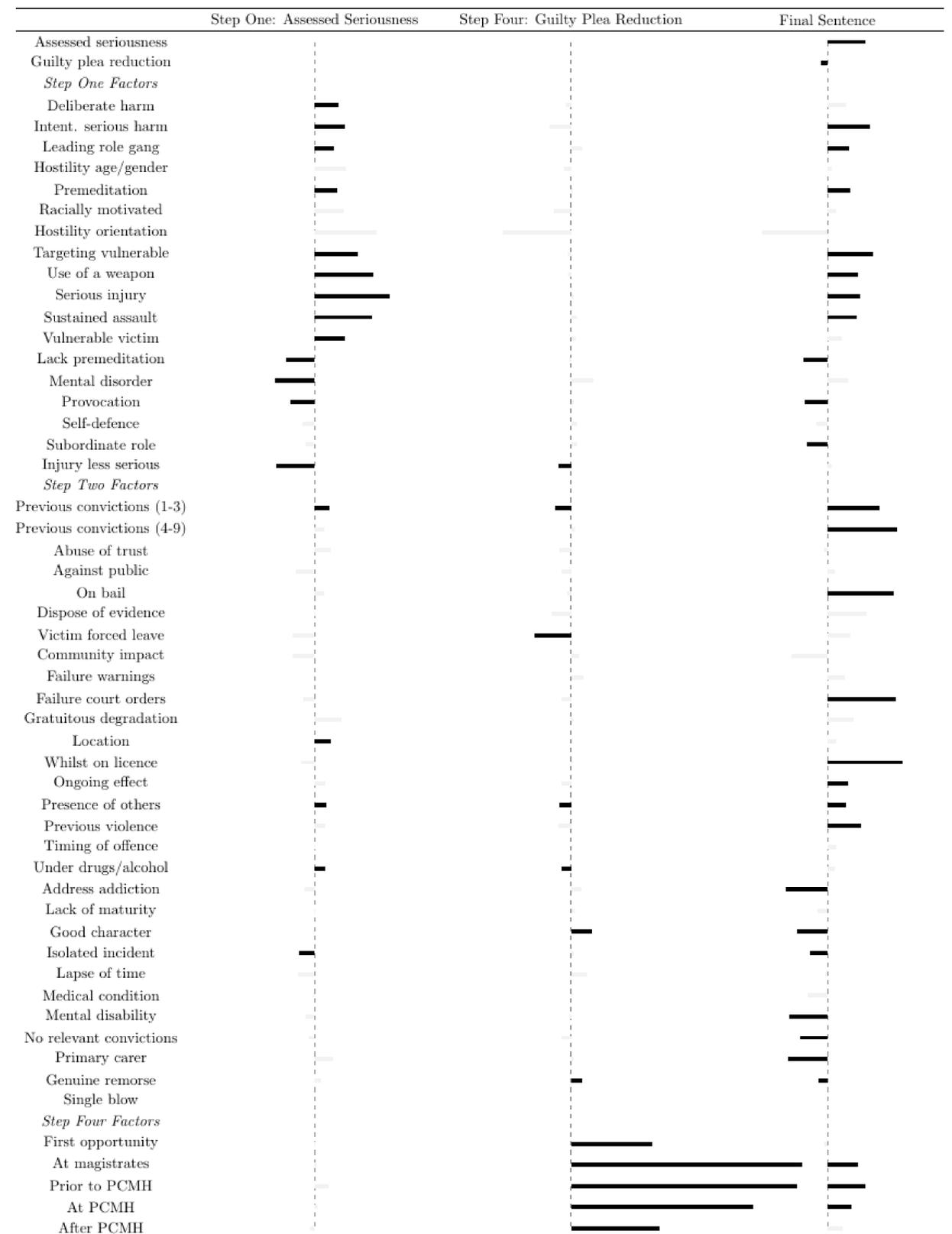

Figure 1: Results from the Multilevel Multivariate Model with Mediating Effects (response variables: seriousness category, level of guilty plea reduction, and disposal type sentenced)