Judicial Communications Office

22 March 2024

COURT FINDS SENTENCE FOR TERRORISM OFFENCE TO BE UNDULY LENIENT

Summary of Judgment

The Court of Appeal[1] today found the sentence imposed on Gavin Coyle for terrorism offences to be unduly lenient and increased it from six years to eight years' imprisonment. In accordance with the Counter-Terrorism and Sentencing Act 2021, the sentence must comprise two thirds to be spent in custody and one third on licence.

Background

Gavin Coyle ("the appellant") pleaded guilty to the offences of:

- membership of a proscribed organisation contrary to section 11 of the Terrorism Act 2000 ("the 2000 Act").
- providing property to be used for the purpose of terrorism, contrary to section 15(3) of the 2000 Act.

The offences related to a terrorist attack on 11 May 2008 when the appellant's car was used in the deployment of an under-car bomb beneath the car of a serving police officer. The bomb exploded causing substantial and serious injuries to the officer's legs. Responsibility for the bomb was claimed by the Tyrone Brigade of the Real IRA on 13 May 2008. The appellant was arrested on 15 May and 19 November 2008 but was not charged with the offences until 3 December 2015. The basis of his plea to the offences was that he provided his car to others knowing that it was to be used for the purposes of terrorism but was not aware of the precise nature of its use when he provided his car.

In the intervening period, the appellant was arrested in 2008 for unconnected matters and was the subject of covert recording in February 2010. In 2011, a search was conducted of premises at Mountjoy Road, Coalisland where a large cache of weapons and explosives were recovered. The appellant pleaded guilty to offences of possession of firearms and explosives with intent and membership of the IRA in respect of this find ("the Mountjoy offences"). In January 2014, he was sentenced to a determinate custodial sentence of 10 years' imprisonment for the Mountjoy offences.

On 6 October 2023, the appellant was sentenced to six years' imprisonment for the offences relating to the car bomb attack in 2008. The Director of Public Prosecutions ("DPP") brought a reference to the Court of Appeal that the sentence was unduly lenient. The appellant also brought an appeal that the sentence was manifestly excessive. The court, in these unusual circumstances of considering a reference and an appeal at the same time, identified four core issues to be determined:

---

[1] The panel was Keegan LCJ, Horner LJ and Kinney J. The LCJ delivered the judgment of the court.

- Whether the 12-year starting point for both offences was correct.
- Whether maximum credit should have been given by the judge for the plea.
- Whether there was culpable delay in this case for which a deduction from the sentence should have been made, and if so, the extent of that.
- Whether the sentence was commensurate with the principle of parity.

Methodology

The recommended methodology is to determine the correct notional starting point for the offences. Then consideration should be given to whether there should be any reduction for totality and delay. After any reduction is made it is then that a reduction should be made for the guilty plea.

The starting point

The appellant was charged under section 15(3) of the 2000 Act of providing property to be used in terrorism which carries a maximum sentence of 14 years' imprisonment. There was debate about whether the starting point would be different if he had been charged under section 57 of the 2000 Act (possession for terrorist purposes) which carries a maximum sentence of 15 years. The court said that if this case involved a single offence under section 15(3) of the 2000 Act the appropriate starting point would be 10 years but given there was also a membership charge (where the maximum sentence is one of 10 years), the judge was entitled to raise the starting point before reduction for the plea to 12 years.

Totality

The trial judge reduced the sentence to be imposed by two years to include totality and delay. The prosecution accepted that the court was under an obligation to consider the issue of totality given that the appellant had been sentenced for the Mountjoy offences but said he also failed to engage in multiple opportunities to clean the slate and bring these proceedings to a head at that time. The court adopted the circumstances outlined in *R v Green* [2019] EWCA Crim 196 that judges should consider in deciding what, if any, impact the previous sentence should have when the new sentence is passed. It said the trial judge was led into error by the agreed question that was put to her and said that the correct question should have been "taking into account the fact that the appellant was sentenced for similar offences which post-date the current offences should there be some reduction for totality." The trial judge found there should be some modest reduction for totality. The court said she was correct but that only a marginal downward adjustment was appropriate of between one to two years in all the circumstances of this case.

Delay

The court noted the appellant was not immediately charged with the offences in 2008 and said the covert recording in February 2010 was a key part of the decision to prosecute. This recording was analysed by experts between 2012 and 2016. After arraignment on 21 June 2017, the trial was adjourned on three occasions at the request of the defence for valid reasons. Between September 2018 and October 2019, the appellant was tried along with a co-accused of blackmail and intimidation and acquitted which caused delay in this case. Thereafter this trial was vacated on two occasions with it finally concluding on 17 April 2023 when pleas to an amended Bill of Indictment were entered.

The court referred to its decision in *DPP's Reference (No.5 of 2019) Harrington Legen Jack* [2020] NICA 1 which sets out the following principles on the "reasonable time" requirement for criminal cases in accordance with domestic law and article 6 of the ECHR:

- The threshold of proving a breach of the reasonable time requirement is an elevated one, not easily traversed.
- In determining whether a breach of the reasonable time requirement has been established the court will consider the complexity of the case, the conduct of the defendant and the manner in which the case has been dealt with by the administrative and judicial authorities concerned. The first and third of these factors may overlap.
- Particular caution is required before concluding that an accused person's maintenance of a not guilty stance has made a material contribution to the delay under consideration.
- If there is a breach of the reasonable time requirement the remedy should be effective, just and proportionate, depending on the nature of the breach in all the circumstances including the rationale which is that a person charged should not remain too long in a state of uncertainty about his fate. The appropriate remedy should take into account not only the impact of the delay on the offender but also the requirement that offenders are realistically punished for their offences. In relation to the impact of the delay, this must be established in evidence by the offender and must take into account that usually the offender has been at liberty throughout the period of the breach. Frequently, a public acknowledgment of the breach will be sufficient.

The decision in *Harrington Legen Jack* recognised the variety of factual circumstances in which delay may arise and declined to give prescriptive guidance except to observe that in cases involving hardened recidivists who must be impervious to concern, in the case of vile and heinous crimes or in the case of dangerous criminals who pose a significant risk to members of the public of serious harm the appropriate response would be a public acknowledgment without any reduction in the penalty as the public could not have confidence in a criminal justice system that first caused delay and then as a consequence unleashed a dangerous criminal on the public.

The court commented:

> "Self-evidently this is a case where we think the public would not have confidence in the criminal justice system if a disproportionate view were taken of the delay. On one side of the balance is the highly complicated nature of the investigation, the seriousness of terrorist crime and the appellant's lack of cooperation. It would be an invidious outcome if police were not allowed adequate time to investigate such crimes and offenders gained credit from failing to cooperate. One the other side of the equation are the systemic issues which caused delays in getting the case into shape for trial. The voice analysis issue clearly required painstaking expert opinion as the judge pointed out. However, she also points out that no explanation has been given for the initial delay of two years from the secret recording in February 2010 until the first report by Professor French in February 2012. A further period of two years elapsed before the second report in March 2014. It was October 2015 before the fifth report based on a recalculation of timings was received and the charging of the defendant in December 2015.

> Within this factual matrix to our mind the judge did correctly decide that the question of culpable delay between 2010 and 2015 does have to be considered. However, ultimately, she thought that a public acknowledgment was sufficient. We agree with this analysis in large measure save to say we think some deduction should have been made for delay in this case. We appreciate that these are complicated cases, however, they have frankly been taking too long within the criminal justice system and this must change.
>
> Our analysis does not change the outcome in this case as ultimately, we consider that the judge's analysis of a two-year deduction to encompass both totality and delay was entirely appropriate along with a public acknowledgement that there was culpable delay in this case."

Reduction for the plea

The trial judge allowed maximum credit for the plea of guilty. Article 33 of the Criminal Justice (Northern Ireland) Order 1996 ("the 1996 Order") provides that in determining what sentence to pass on an offender who has pleaded guilty to an offence, a court shall take into account the stage in the proceedings which the offender indicated his intention to plead guilty and the circumstances in which this indication was given. The court cited the decision of the Supreme Court in *R v Maughan* [2022] UKSC 13 which discusses the application of Article 33 of the 1996 Order. The broad principles which are well established in this jurisdiction are that maximum credit is usually reserved for a plea at an early stage or at arraignment and this is one third. Thereafter, credit will reduce usually to a maximum of around 20%-25% at the door of the court. This is all with the caveat that sentencing judges retain a discretion to apply a greater or lesser reduction at a later stage if the circumstances dictate it and are explained. The court commented:

> "In this case it is important to bear in mind that the appellant made no admissions in respect of any act or offence in the course of his many police interviews. He contested committal proceedings resulting in protracted magistrates' court proceedings. He pleaded not guilty to all offences upon arraignment. He filed a defence statement which made no admissions as to any act. He failed to identify ownership never mind provision of the vehicle or in respect of attempts to obtain information. He denied membership of a proscribed organisation. These are all important background factors.
>
> When the case was ready and listed for trial, following the provision of a draft opening note for the purposes of trial that] the appellant invited the prosecution to consider pleas to the offences to which he ultimately entered guilty pleas. As is apparent, the more serious offence of attempted murder was not proceeded with. However, within this factual matrix the question is whether the judge was justified in allowing the maximum credit of a third for the appellant."

The prosecution submitted that this amount of credit is inappropriate and should have been in the region of 15% meaning that the appropriate term after credit for the plea was between 10 and 10½ years. Counsel for the appellant submitted that the plea was only available after the prosecution did not proceed with offence of attempted murder and so could not have been given until after the indictment was amended. The court, however, said the reduction in a charge did not fully assist the appellant. Further, it could not see a valid rationale for allowing the maximum reduction for the guilty plea in this case. It considered that the correct credit for the plea in the

particular circumstances of this case should have been in the region of 20%: "That remains a substantial credit for a plea of guilty at such a late stage but also reflects the fact that the plea was not entered at the earliest stage in the proceedings."

Conclusion

In respect of the appellant's appeal, the court said the sentence reached by the trial judge of six years could not on any reading be said to be manifestly excessive for serious terrorist offending of this nature.

The only valid question was whether this was an unduly lenient sentence. The threshold for a reference to succeed is high in that a sentence must not simply be lenient it must be unduly lenient. Applying the relevant principles and upon a careful analysis of the case, the court considered that the sentence in this case was unduly lenient for offending of this nature. It considered that if the starting point was 12 years with a reduction of 2 years for totality and delay, the sentence should have been in the region of 10 years before reduction for the guilty plea. An appropriate reduction for the plea was 20%. Therefore, the final sentence should have been one of eight years rather than six years' imprisonment.

The court therefore substituted a custodial sentence of eight years for the sentence imposed by the trial judge. The sentence will be comprised of two thirds period in custody in accordance with the Counter-Terrorism and Sentencing Act 2021.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (https://www.judiciaryni.uk/).

ENDS

If you have any further enquiries about this or other court related matters please contact:

Alison Houston
Lady Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 5921
E-mail: LCJOffice@judiciaryni.uk