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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 19/27592
	Delivered: 11/09/2023

**IN THE CROWN COURT IN NORTHERN IRELAND
SITTING IN NEWRY**

THE KING

v

**SHANE STEVENSON
and
PAUL McKERR**

**Mr Russell (instructed by the Public Prosecution Service) for the Crown
Mr Duffy KC with Mr O’Keefe (instructed by Phoenix Law Solicitors) for the Defendant
Stevenson
Mr Hutton KC with Mr Forde (instructed by Phoenix Law Solicitors) for the Defendant
McKerr**

SENTENCING REMARKS

HHJ KERR KC

Introduction

[1] Both defendants are to be sentenced on the indictment. McKerr was convicted by the court of two firearms offences. Stevenson, just prior to McKerr’s trial, had pleaded guilty to the firearms offences which McKerr was convicted of, and in addition, charges of attempting to possess information likely to be useful to terrorists.

[2] The background facts in relation to the firearms offence were set out in the judgment following trial. In essence, both defendants were in a van owned and driven by McKerr, which was stopped by the police. In the front passenger footwell where Stevenson was seated, a bin bag was found to contain a number of empty magazines suitable for use with an AK-47 assault rifle. The magazines were slightly rusted and oil type traces. Seventeen of them were functional. No explanation was offered by either defendant in interview and in his trial, McKerr remained silent. I will deal with

McKerr's sentencing first, as Stevenson's case requires consideration of different charges.

[3] Although McKerr has a criminal record, it is of some vintage. It does not contain any relevant convictions. It cannot be considered an aggravating feature. I have considered all the background evidence and do not consider there are any aggravating features present in his case.

[4] In any firearms case, the court should consider a number of questions:

- (a) What sort of weapon is involved;
- (b) what, if any, use has been made of the firearm;
- (c) what - with what intent, if any, did the defendant possess or use the firearm; and
- (d) what is the defendant's record - the seriousness of any firearms offence is inevitably increased if the offender has an established record of committing firearms offences or offences of violence.

[5] I was reminded there are no specific guideline authorities to the level of sentencing in Northern Ireland's Court of Appeal. I was referred to a number of cases giving Crown Court instances of sentences passed but was also reminded that the circumstances in each case can vary considerably.

[6] Dealing with the issues to be decided: These were magazines. They are essential component parts of a deadly weapon, but as found, did not contain any ammunition. There is no evidence before me that they have ever been used in any incident. There is no evidence of any particular intent by McKerr to use them. The only clear inference is that they were being transported. McKerr has no relevant history of firearms or relevant offences of violence.

[7] Having regard to those factors, I would place the level of sentencing at the lower end of the range identified by the authorities cited. It must be stressed, however, that any transportation of a constituent part or parts of a deadly weapon is serious and the proper starting point will inevitably be past the custodial threshold. I consider the starting point before consideration of personal mitigation in this case should be 18 months.

Mitigation

[8] The defendant is 54 years of age. He is married and has been for 18 years. He has three adult children. He has worked gainfully all his adult life as a painter and since 2000 he has been self-employed. The defendant's family finances are such that

should he be imprisoned, they will be unable to continue to pay the basics. The business is likely to fail.

[9] Further, the defendant is a daily carer for his sister and brother-in-law. The court has received a letter from his brother-in-law, David Keenan, and it encloses medical notes. It appears both he and his wife have disabilities. He has spondylitis, his wife has spina bifida and recently suffered a severe heart attack. They in turn have an autistic child who their condition prevents them from caring for without assistance.

[10] I have a letter from Gilford Amateur Boxing Club. The defendant is a voluntary coach and assists in fundraising. He has done so for seven years. He has gone through the Access Northern Ireland and child safeguarding courses.

[11] I have been referred to his record and the fact that he has not offended for many years. However, the reality is, the defendant is not a person of good character. The fact that there is a time delay, as here, has the effect of his record not being considered as aggravating; I do not think it is a separate mitigating factor.

[12] I have also been referred to the issue of delay in this case. The offending took place in February 2018, some five and a half years ago. The effect of delay has been dealt with in cases such as *Harrington Jack*, reported in the Northern Ireland Court of Appeal in 2020, page 1, where the court recognised that delay could be taken into account and that this should be done prior to any reduction for a plea. That, of course, is not relevant in McKerr's case. There is no set formula as to the calculation of a reduction for delay. I consider delay is a factor in this case and I intend to take it into account.

[13] It was submitted that the defendant was not dangerous as defined by statute, that is a significant risk of serious harm to the public, and I accept that submission.

[14] In deciding the proper reduction for mitigation in this case, I consider the personal mitigation to be significant, given the level of disruption to his family life, his business and responsibilities as a carer that will be caused by his imprisonment. I measure the reduction for personal mitigation as six months. I consider that this should be enhanced by reason of the delay in the case to nine months. Accordingly, the sentence for possession in suspicious circumstances will be nine months' imprisonment. Six months will be made concurrent for the other count, that is possession without a licence.

[15] I turn to Stevenson. In addition to the firearms offences, he has pleaded guilty to attempting to possess information likely to be useful to terrorists. The factual basis is that following the stop and search of the vehicle, the defendant's home was searched and they discovered two cigarette papers with handwriting on them. One of the notes was positive for fingerprint and DNA evidence to Stevenson. Handwriting was forensically examined but was inconclusive.

[16] Each note described a vehicle registration number and make described as being in the vicinity of Lurgan PSNI station. The registrations as recorded did not correspond to the make of car described. On the first note, JD6, the make of car does not correspond. If one digit was changed, it does correspond, but neither of the vehicles it corresponds to is connected to the PSNI. On the second, JD7, the number recorded did not correspond to the make. The car it did respond to was not related to PSNI. If, however, one digit was changed, then it would refer to the car of a PSNI officer's wife's car, both him and his wife were insured for the use of the car.

[17] These offences are within the terms of part 4 of schedule 2(a) of the 2008 Order and subject to the provisions of the Counterterrorism and Sentencing Act. They are considered to be terrorist offences and, although the sentencing provisions came into effect in April 2021, after these offences had taken place, the case is still subject to that sentencing regime.

[18] As the defendant has pleaded guilty to both firearms and information charges, consecutive sentences could properly be considered. If so, the principle of totality would be considered. Having considered the options, I consider the firearms offences should be considered an aggravating feature on the basis that, not only were there two distinct offences committed, but the information charges could be seen as more culpable if committed by a person who was also involved in the possession of firearms. Allowing for the fact that the charges are "attempts" and having regard to the totality principle, I consider a starting point for sentencing on the information charges with concurrent sentencing for firearms offences, should be three years' imprisonment.

[19] In considering this initial starting point, I considered the four relevant questions as to sentencing in firearms cases. I have not varied my view on the answers from those given in McKerr's case. Although in considering the potential use of the firearm, one might consider the possession of information by Stevenson as being more sinister. I have concluded in this case there is no evidence to support a connection between the two. Rather they are separate incidents of involvement of a potentially terrorist nature.

[20] Stevenson has no previous convictions. He has been on bail on strict conditions throughout the five year, six month delay. He has seven children but does not live with them. He sees them regularly. He lives with his parents. Both have poor health and he is a carer for them. His mother had time in a coma after sepsis. His father has heart issues. He tragically lost a child who died on 13 February 2019 at only one day old. He himself has suffered from illness, including being hospitalised after an accidental overdose. He has a good record from 15 years of age as a bricklayer and then in a meat factory. He has not been able to work recently as a result of mental pressures connected with his detection.

[21] It is submitted delay is a factor. I have accepted this in McKerr's case and I will do so in Stevenson's case. It is submitted that I should take into account onerous bail

conditions. I have been referred to the case of *McDonnell and Fearon* [2013] NICC, per Stephens J, as he then was. That case, and the English case based upon it, acknowledge a modest adjustment can be made in relation to bail terms. However, I consider absent any particularly onerous bail terms, that this matter is covered by a reduction in the sentence by reason of delay.

[22] I have been asked to reduce the sentence because the new sentencing regime is retrospective and that he is disadvantaged by the delay in a way his co-accused is not, as the firearms offences are not specified to be terrorist. I decline to do so. Parliament saw fit to make this retrospective. They could have decided to make it apply only to offending post-commencement but chose not to do so. It is not the court's role to decide that they were acting unfairly and to ameliorate their actions. In other respects, the provisions of the Act were considered by the Supreme Court in *Morgan & Others*, reported at 2023, UKSC 14, and although not directly on the same point, the court found that the provisions of the Order generally were not in breach of human rights relating to the specific challenge provisions.

[23] I do consider there is substantial personal mitigation in this case and I will reduce the provisional starting point by 12 months for personal mitigation. As in McKerr's case, I will reduce it by a further three months for delay. The provisional starting sentence therefore before reduction for a plea is 21 months' imprisonment.

[24] The plea in this case was late, just days before the trial was to commence. The evidence in the case was, in my view, strong. A full one third reduction is therefore not justified. Nevertheless, it is important to encourage pleas of guilty to such offences and court time was saved by that plea.

[25] In the circumstances of this case, I consider a reduction of 20% would be proper. As the division by five does not give a whole number, I shall round the reduction up to five months, leaving the sentence on the information charges as 16 months. There will be a 12 months concurrent sentence on the possession of a firearms in suspicious circumstances and six months without a licence - with six months for having possession without a licence. All of those offences will be concurrent.