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IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE, BELFAST

THE KING

v

NIALL SHEERIN

SENTENCING REMARKS

FOWLER I

Introduction

[1] Niall Sheerin, on 11 May 2022, pleaded guilty to count 1 on the bill of indictment concerning possession of a firearm and ammunition with intent to endanger life, contrary to Article 58(1) of the Firearms (NI) Order 2004. The prosecution accepted this plea on the basis that his possession of the weapon and live ammunition were to enable their use by others. The remaining counts on the indictment were left on the court file with the usual order.

Factual background

[2] On 5 June 2020, police and army carried out a search of a field adjacent to Whitehouse Road, close to the Ballymagroarty area of Londonderry. While searching along the fence line, a member of the army search team recovered a .22 Hammerli X pistol and eight rounds of compatible .22 calibre ammunition from what appeared to be an animal burrow. The weapon and bullets were stored wrapped in plastic bin liners. Forensic examination of the gun located the defendant's DNA on the slide, magazine outer edges, magazine release and safety catch of the handgun.

[3] Ballistic examination found the gun to be in good condition with discharge residue in the barrel indicating it had not been cleaned since firing. It was test fired successfully with FSNI bullets and two of the bullets found with the gun.

Further forensic comparison tests were carried out on the test fired bullet casings and spent casings from terrorist related shooting incidents. The recovered handgun was found to have been used in five such incidents in Londonderry over the previous 21 months, including the murder of Lyra McKee. In all but one instance, the same brand and type of ammunition to that recovered had also been used.

[4] On 12 September 2018, the weapon was used in a paramilitary punishment style shooting of Ryan O'Reilly in the Creggan area. He was shot in both legs. Two spent cartridge casings were recovered. On 5 October 2018, Gerald Heaney was also shot in a similar attack, at his home in the Brandywell area. He was shot in both legs. He sustained a right femoral fracture, multiple entry and exit wounds to the left leg, compartment syndrome of the left leg (requiring emergency fasciotomies) and a left ankle fracture. On 1 December 2018, shots were fired in the Creggan shortly after 7:45pm. At 8:05pm, Neil Lowry presented at Accident and Emergency in Letterkenny with gunshot wounds to both knees. He refused to say how or where he had been shot, other than it had not occurred in the Republic of Ireland. Subsequent examination of a house in the Creggan revealed blood-stained pillows and towels in the living room, bullet strike marks on the floor and two empty bullet casings were recovered. On 8 March 2019, a Ciaran Burke was shot in an alleyway close to his home in the Bogside. Again, the shots were to his legs causing significant injuries. Spent bullet casings were recovered, enabling identification of the gun used.

[5] Finally, on 18 April 2019, at approximately 11pm, Lyra McKee, a freelance journalist and author, was shot and killed on Fanad Drive in the Creggan area of Derry. She had been standing near to police Landrovers, who were in the area because of a search being conducted at a nearby address, when four gunshots were fired in the direction of police. One of the bullets struck Ms McKee in the head. The shots were the culmination of orchestrated disorder that night, in the area of the crossroads between Fanad Drive and Central Drive, during which the police Landrovers had been attacked with petrol bombs and two stolen vehicles had been set on fire. The gunshots were fired by a masked man standing at the corner of Fanad Drive and the southern part of Central Drive. Spent casings were later recovered in the area from which the shots were fired and forensically connected to the recovered .22 Hammerli X pistol.

Arrest and interview

[6] The accused was arrested on 15 July 2020 and interviewed seven times that day making no comment to any questions asked by police. In his sixth interview, he provided a prepared statement denying involvement in any of the four punishment shootings or the murder of Lyra McKee. He said that at the time of the murder he was working at Ladbroke's which his employment records confirmed. He stated that he was "at a loss" as to how his DNA came to be found

on the handgun, claiming that he had never seen or touched the gun or any other gun in his life.

Basis of plea

[7] A basis of plea document was agreed between the prosecution and defence on 13 May 2022 which I attach to these sentencing remarks. This agreed document states that:

“The prosecution have accepted a plea to count 1 on the basis of second limb intent, namely that the defendant was in possession of the firearm with the intention to enable others to endanger life or cause serious damage to property.

The inference that the defendant had the intention to enable others to endanger life or cause serious damage to property is established by the fact that the defendant was aware that he was in possession of, and stored this weapon on behalf of, a terrorist organization, namely the nIRA in Derry. As a resident of Derry the defendant would have been aware of nIRA activity in this area and would have been aware that this organization carried out gun attacks including punishment shootings in the local area as well as the shooting of Lyra McKee on 18 April 2019.

It is accepted that the prosecution cannot establish beyond reasonable doubt that the defendant would have been aware of the specific history of this particular firearm.”

[8] This is the agreed factual matrix upon which I am sentencing. I must make it clear I am not sentencing the defendant in connection with the murder of Lyra McKee. Indeed, as just stated the prosecution cannot establish to the requisite standard that the defendant was aware of the specific history of this particular weapon. I am sentencing on the basis of his intention to enable others to endanger life by virtue of the fact he was in possession and stored this weapon for a terrorist organization he knew was actively engaged in gun attacks one of which had caused the death of Lyra McKee.

Antecedents

[9] The defendant has previous convictions for 15 offences, beginning in 2010 when he was 16 years old, including offences of disorderly behaviour, assault on

and resisting police, and offences of riotous behaviour, criminal damage, assault on police and possession of an offensive weapon, committed in July 2011.

[10] In a number of those incidents he has made sectarian or anti-police comments towards the police: on one occasion, when he was aged 17, shouting “Up the dissidents”; and in another, when he was 18 years old, “I hope you all get shot.”

[11] The incident in July 2011 concerned a time when stones and bottles were thrown into the Fountain Estate. When the police arrived, around six people started throwing stones at them. One of them was the defendant who was seen armed with a glass bottle and, on seeing one of the officers, ran towards him shouting “Black bastards”, throwing the bottle so that it narrowly missed his head. He was later seen to throw a missile which struck a police vehicle and another which hit a care home. CCTV footage later examined showed him throwing bottles at police, on foot and in vehicles and throwing bottles and stones into the Fountain Estate at close range over a period of 20 minutes.

Sentencing Framework – Statutory background

[12] The offence the defendant has pleaded guilty to is both a ‘serious’ and ‘specified’ violent offence for the purposes of the Criminal Justice (Northern Ireland) Order 2008 (“the 2008 Order”). In these circumstances an assessment of dangerousness is necessary. Whether an offender presents as a significant risk of serious harm requires a careful analysis of all the relevant facts in the case. This is as relevant in a case involving conviction for terrorist offences as in any other case. I bear in mind the observation of Morgan LCJ in *R v Wong* [2012] NICA 54 that:

“... in cases involving firearms and explosives, even with a terrorist background, the court should be careful not to make the assumption that the offender is dangerous. The risks posed by those involved in such offences can vary enormously and each case will be heavily fact sensitive.”

[13] The relevant statutory provisions dealing with dangerousness are set out in Articles 13 to 15 of the 2008 Order:

“13. – (1) This Article applies where –

- (a) a person is convicted on indictment of a serious offence committed after the commencement of this Article; and

(b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.

(2) If—

(a) the offence is one in respect of which the offender would apart from this Article be liable to a life sentence, an

(b) the court is of the opinion that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of such a sentence,

the court shall impose a life sentence.

(3) If, in a case not falling within paragraph (2), the court considers that an extended custodial sentence or a serious terrorism sentence would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences, the court shall—

(a) impose an indeterminate custodial sentence; and

(b) specify a period of at least 2 years as the minimum period for the purposes of Article 18, being (subject to paragraphs (3A) to (3E)) such period as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it.

...

(4) An indeterminate custodial sentence is—

(a) where the offender is aged 21 or over, a sentence of imprisonment for an indeterminate period,

(b) where the offender is under the age of 21, a sentence of detention for an indeterminate

period at such place and under such conditions
as the Secretary of State may direct,

subject (in either case) to the provisions of this Part as
to the release of prisoners and duration of licences.

...

14. – (1) This Article applies where –

(a) a person is convicted on indictment of a
specified offence committed after 15 May 2008;
and

(b) the court is of the opinion –

(i) that there is a significant risk to members of the
public of serious harm occasioned by the
commission by the offender of further specified
offences; and

(ii) where the specified offence is a serious offence,
that the case is not one in which the court is
required by Article 13 to impose a life sentence
or an indeterminate custodial sentence.

(2) The court shall impose on the offender an
extended custodial sentence.

(3) Where the offender is aged 21 or over, an
extended custodial sentence is a sentence of
imprisonment the term of which is equal to the
aggregate of:

(a) the appropriate custodial term; and

(b) a further period (“the extension period”) for
which the offender is to be subject to a licence
and which is of such length as the court
considers necessary for the purpose of
protecting members of the public from serious
harm occasioned by the commission by the
offender of further specified offences ...

(8) The extension period under paragraph (3)(b) or
(5)(b) shall not exceed –

- (a) five years in the case of a specified violent offence; and
- (b) eight years in the case of a specified sexual offence

...

15. – (1) This Article applies where –

- (a) a person has been convicted on indictment of a specified offence; and
- (b) it falls to a court to assess under Article 13 or 14 whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences.”

[14] The test for dangerousness under Article 13(1) of the 2008 Order is met where the offence is a serious offence and the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.

[15] In making this assessment, in accordance with Article 15(2), the court:

- “(a) shall take into account all such information as is available to it about the nature and circumstances of the offence;
- (b) may take into account any information which is before it about any pattern of behaviour of which the offence forms part; and
- (c) may take into account any information about the offender which is before it.”

[16] In *R v EB* [2010] NICA 40, the Court of Appeal approved the approach of the English Court of Appeal in *R v Lang* [2005] EWCA Crim 2864 on how the assessment of the risk of serious harm should be made under these provisions:

- “(i) The risk identified must be significant. This was a higher threshold than mere possibility of occurrence and could be taken to mean ‘noteworthy, of considerable amount or importance.’

- (ii) In assessing the risk of further offences being committed, the sentencer should take into account the nature and circumstances of the current offence; the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, details of which the prosecution must have available, and, whether the offending demonstrated any pattern; social and economic factors in relation to the offender including accommodation, employability, education, associates, relationships and drug or alcohol abuse; and the offender's thinking, attitude towards offending and supervision and emotional state. Information in relation to these matters would most readily, though not exclusively, come from antecedents and pre-sentence probation and medical reports. The sentencer would be guided, but not bound by, the assessment of risk in such reports. A sentencer who contemplated differing from the assessment in such a report should give both counsel the opportunity of addressing the point."

[17] Life sentences are reserved for a small category of cases that are so exceptional that they require the defendant to be imprisoned for the rest of his life see *Kehoe* [2008] CLR 728. I do not consider this case falls within the ambit of Article 13(2) requiring the imposition of a life sentence.

[18] Turning now to Article 13(3), I must consider whether an extended custodial sentence would not be adequate to protect the public from serious harm occasioned by the commission by the offender of further specified offences in this instance. In the event that it would not be adequate, I must impose an indeterminate custodial sentence.

[19] Of particular importance when considering the imposition of an indeterminate custodial sentence is the case of *R v Pollins* [2014] NICA 62. Morgan LCJ in this case at paras [26] and [27] observed that:

"[26] ... Apart from a discretionary life sentence an indeterminate custodial sentence is the most draconian sentence the court can impose. A discretionary life sentence is reserved for those cases where the seriousness of the offending is so exceptionally high

that just punishment requires that the offender should be kept in prison for the rest of his life. It is not a borderline decision. ... An indeterminate custodial sentence is primarily concerned with future risk and public protection. ..."

[27] However, in a case in which a life sentence is not appropriate an indeterminate custodial sentence should not be imposed without full consideration of whether alternative and cumulative methods might provide the necessary public protection against the risk posed by the individual offender. In that sense it is a sentence of last resort. The issue of whether the necessary public protection can be achieved is clearly fact specific. That requires, therefore, a careful evaluation of the methods by which such protection can be achieved under the extended sentence regime."

[20] The question therefore is whether an indeterminate custodial sentence is the only way of dealing with the future risk presented by the defendant or whether an extended custodial sentence would be adequate for the purpose of protecting the public.

[21] In determining whether the court should impose an indeterminate custodial sentence or an extended custodial sentence, it is necessary to consider the nature of an extended custodial sentence. An extended custodial sentence will be the aggregate of a custodial term and an extension period. The custodial term will be a commensurate sentence and will not make any reduction for a notional remission. This will be built into the release provisions. The extension period will be for such period as is considered necessary to protect the public from serious harm.

[22] The two aspects of the sentence serve different purposes. The first is to punish and the second is to protect. The protective element cannot exceed five years for a violent offence. The effect of this is that the defendant - after the he has served the relevant part of his sentence, the Secretary of State shall release him if the Parole Commissioners direct his release. They will do so only when they are satisfied it is no longer necessary for the protection of the public that he should be confined. Unlike a determinate sentence, a court does not recommend licence conditions to the Secretary of State when an extended custodial sentence has been imposed. The conditions are imposed by the Secretary of State after consultation with the Parole Commissioners pursuant to Article 24(5) of the 2008 Order.

[23] While I have no doubt that this was a serious and, indeed, a very serious offence, I am not satisfied that the defendant will remain a danger for an

indefinite period of time and, in my view, this case does not fall into the category requiring an indeterminate sentence. In these circumstances and given the protection which an extended sentence provides, I consider that it is the appropriate disposal.

[24] In terms of sentencing considerations, the leading authority on sentencing for possession of a firearm with intent to endanger life contrary to Article 58(1) of the Firearms (Northern Ireland) Order 2004 (“the 2004 Order”), in a terrorist context is Attorney General’s Reference No. 3 of 2004, where Lord Kerr stated that such an offence is, by definition, a serious offence. On that account, those convicted of such an offence must expect to and should receive substantial sentences and those sentences should contain a significant deterrent element. The deterrent component of the sentence should be enhanced when the crime has, as here, a paramilitary setting. Accordingly, so long as paramilitary violence continues in our society, those convicted of offences associated with that type of violence should, as a general rule, receive more severe sentences, than those whose crimes were committed in a non-terrorist context.

[25] We consider, however, that the range of sentences for this type of offence, in order to reflect contemporary conditions, should normally be between 12 and 15 years. This was a case in which the offender was convicted of first limb possession of a submachine gun and 30 rounds of ammunition with intent. He had been involved in the provision of the weapon and the planning of an attack on a house where the 30 rounds were fired into the house, in which a young girl was shot and seriously wounded.

[26] However, in regard to a second limb offence of possession of a firearm with intent to enable others to endanger life, the Court of Appeal in the case of *R v McGuigan* [2014] NICA 78 reduced a sentence of 12 years custody to 10 years after a trial. The court stated at para [40] that the sentence in any particular firearms case will be influenced by the fact specific circumstances of the case and a consideration of the factors set out in *R v Avis* [1998] 1 Cr App R 420.

[27] In *R v Avis* it was indicated that the appropriate level of sentence for a firearms offence will depend on all the facts and circumstances of the offence and the offender. That it is usually advisable for the sentencing court to ask itself four questions as follows:

- (i) What sort of weapon is involved? Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use (such as a sawn-off shotgun) will be viewed even more seriously than possession of a firearm which is capable of lawful use.

- (ii) What (if any) use has been made of the firearm? It is necessary for the court, as with any other offence, to take account of all circumstances surrounding any use made of the firearm the more prolonged and premeditated and violent the use, the more serious the offence is likely to be.
- (iii) With what intention (if any) did the defendant possess or use the firearm? Generally speaking, the most serious offences under the Act are those which require proof of a specific criminal intent (to endanger life, to cause fear of violence, to resist arrest, to commit an indictable offence). The more serious the act intended, the more serious the offence.
- (iv) What is the defendant's record? The seriousness of a firearms offence is inevitably increased if the offender has an established record of committing firearms offences or crimes of violence.

[28] In the present case the weapon involved was a pistol, easily concealed, together with appropriate live ammunition. Such a weapon, stored and readily available to terrorists, is to be viewed as dangerous and gravely concerning.

[29] In terms of the use to which the weapon has been put, it is clear it has been used in a repeated, premeditated and violent way by terrorists to further their ends. (Albeit I must sentence the defendant on the basis he did not know its specific history).

[30] Concerning the intention with which the defendant possessed this weapon. This is agreed - he possessed it with the intention to enable others to endanger life. He was aware he was storing this weapon on behalf of a terrorist organization which to his knowledge had carried out gun attacks including punishment shootings and the killing of Lyra McKee. However, there is no evidence before me that he had any organizational role within this terrorist group nor any involvement over and above storage of this weapon.

[31] I determine that this terrorist connection is an aggravating factor and treat it as such under section 30 of the Counter-Terrorism Act 2008 ("the CTA 2008").

Personal circumstances of the defendant

[32] The defendant is 29 years old and prior to remand in custody had been employed. He has a partner and three very young children. They rely on him for financial, practical and emotional support. It has been submitted on the defendant's behalf that his personal and family circumstances should be taken into account. While these are features to be taken into account, I bear in mind that in cases of this gravity a defendant's personal circumstances are of limited effect

in the choice of sentence, see *Attorney General's Reference (No 7 of 2004) (Gary Edward Holmes)* [2004] NICA 42 and *Attorney General's Reference (No. 6 of 2004) (Conor Gerard Doyle)* [2004] NICA 33.

[33] In terms of mitigating factors I identify the defendant's plea of guilty. He did not plead guilty at the first available opportunity and refused to answer questions in interview. While entitled to a reduction in sentence for his plea, he is not entitled to full reduction in light of the late plea and strong forensic case against him.

Conclusion

[34] In respect of the offence of possession of a firearm and ammunition with intent to enable others to endanger life, I am of the view had the defendant contested this matter the appropriate sentence would have been in the region of 9-10 years' custody. Taking into account his plea of guilty and very limited mitigation based on personal circumstances, I sentence the defendant to an extended custodial sentence of seven years' imprisonment with a five-year extension on count 1.

[35] The appropriate offender levy applies.

[36] Having determined a terrorist connection in this case under section 30 of the CTA 2008, the court is required to consider the notification requirements of Part 4 of that Act. In these circumstances, the defendant will be subject to and have to sign the Notification Requirements as set out in section 47 of the CTA 2008 for a period of 15 years as provided for by section 53 of the CTA 2008.