

# Judicial Communications Office

8 March 2019

## COURT SENTENCES SEAN McVEIGH FOR ATTEMPTED MURDER OF POLICE OFFICERS

### Summary of Judgment

His Honour Judge Fowler QC, sitting today in Belfast Crown Court, sentenced Sean McVeigh to an extended custodial sentence of 25 years with an extension period of five years on licence for the attempted murder (“count one”) of two serving police officers by the planting of an under car improvised explosive device in Eglinton on 18 June 2015. McVeigh was further sentenced to an extended custodial sentence of 20 years and an extension period of five years on licence for the offence of possession of explosives with intent to endanger life (“count two”). This sentence is concurrent to count one.

#### Background

In the early hours of Thursday 18 June 2015, AB and BB, both serving police officers, were in bed asleep at their home at Glenrandel, Eglinton. Shortly before 02:45, AB for no obvious reason she can recall woke from her sleep and decided to look out her bedroom window. She observed a male person, the defendant McVeigh, crouching down low at the side of her husband’s car appearing to be working underneath it. She hammered hard on the window causing the male to look up and run to where a dark coloured VW Passat was parked outside the driveway.

It was discovered that an under vehicle improvised explosive device had been attached to the underside of the police officer’s car. The device comprised of approximately 322 grams of Semtex containing the explosive compound RDX. This particular device was the first time a UVIED has been recovered that incorporated a copper cone, the purpose being that on detonation the cone deforms into a rod shaped projectile capable of considerable destructive penetration.

Police responding to the incident observed this VW Passat and another vehicle involved in the attack, a Toyota Verso fleeing the scene and making their way towards Bridgend, Co. Donegal. Both cars had been stolen in Dublin less than two weeks earlier and had not been captured on any ANPR cameras until just half an hour before the attack. At this time they were seen to be crossing back and forth across the Foyle Bridge in convoy ensuring their eventual escape route was clear.

The defendant and two other suspects, Ciaran Maguire and Sean Farrell, were arrested outside Killygordon in the stolen VW Passat. The defendant’s clothing was seized and on examination the jacket and tracksuit bottoms were found to have RDX residue on them. Further, the jacket when compared to the jacket seen worn by the bomber in the CCTV footage of the incident was identified as the same make and model. The VW Passat was found to have RDX residue on the front passenger footwell. Gloves with the other two arrested suspects’ DNA and RDX residue were found on the road along the route AGS pursued the VW Passat. The second suspect car, a Toyota Verso, had virtually ran out of petrol and appeared abandoned in Lifford. When examined it was discovered to have RDX residue on the passenger front floor mat, glove box and front passenger footwell. The key to this car was found in the possession of the suspect Sean Farrell.

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The defendant in interview made no response to questions asked and failed to give evidence in court. The Court heard that he has 36 previous convictions including numerous resisting and assaults on police. He has no previous conviction for offences of serious violence or explosives. No probation report was sought by the defence in this case and no other reports were provided to the court on the defendant's behalf. The judge commented that this was entirely of the defendant's own choosing.

## **Impact on Victims**

The victims of the terrorist attack were two serving police officers targeted at their home, at night and while off duty. The judge commented that, unfortunately, police officers continue to be prime targets of Dissident Republican groups still wedded to violence in pursuit of their aims: "These victims were husband and wife and there was the potential for both of them to have been in this car and murdered. It was entirely fortuitous that the planting of the bomb was discovered and loss of life averted. I have no doubt this was a terrifying ordeal for both officers."

## **Sentencing Framework - Statutory Background**

The offences in this case are both "serious" and "specified" violent offences 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. The test for dangerousness under Article 13(1) of the 2008 Order is met where the offence is a serious offence committed after 15 May 2008 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.

In making this assessment the court shall take into account all such information as is available to it about the nature and circumstances of the offence; may take into account any information which is before it about any pattern of behaviour of which the offence forms part; and may take into account any information about the offender which is before it. 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". In assessing the risk of further offences being committed, the sentencer should also 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.

## **Assessment of Dangerousness**

The court did not have the benefit of a pre-sentence report in respect of the defendant nor any other form of defence report. The judge concluded that this was deliberate and for tactical reasons on the part of the defendant. Accordingly, the assessment of dangerousness had to be conducted absent any

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such information that would normally appear in a pre-sentence report and from a PBNI risk management meeting.

The judge commented that, while the defendant has 36 convictions they are for road traffic and other relatively minor offences. It was suggested by the defence that he is still a young man and while on bail in the Republic of Ireland showed no capacity for re-offending and his record does not demonstrate an ingrained pattern of serious offending. It was submitted that while he contested the charges and has shown no remorse, this was not a true measure of dangerousness or risk of serious harm. It was further submitted that he has not shown himself to be playing a leading dissident role within prison and there is nothing over and above the offence itself to justify a finding of dangerousness. It was also suggested there was no evidence to conclude this type of offence would be repeated or that the defendant continued to be committed to terrorism in the future.

The judge said that, while the defendant's record is for relatively minor offences it does reveal a pattern of antagonism towards police:

“It is clear from his active and enthusiastic participation in this murder attempt and his association with the other two suspects arrested with him that he is a committed Dissident Republican terrorist. He knew he was transporting and personally planted a well-designed and viable under vehicle improvised explosive device. Given the amount of high explosives and shaped nature of the copper cone, this device had one purpose only and that was to kill anyone unfortunate enough to be in the car under which it had been placed. There was considerable planning, preparation and premeditation involved in this attempted murder and the participants demonstrated significant forensic awareness by the use of plastic gloves and their eagerness to dispose of them when spotted by police. The defendant's central role in this attack demonstrates his high level of commitment to the Dissident Republican cause and his willingness to murder to further its ends without the slightest semblance of remorse.”

The judge said that having considered all the fact specific circumstances of this case he was satisfied the test of dangerousness had been met and found the defendant dangerous as defined by the 2008 Order. Having done so, the court is then required to consider the following sentences: a life sentence, an indeterminate sentence or an extended sentence.

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. The judge did not consider this case falls within the ambit of Article 13(2) of the 1998 Order requiring the imposition of a life sentence.

The court then had to consider whether an extended custodial sentence would be adequate to protect the public from serious harm occasioned by the commission by the offender of further specified offences in this instance and if not it must impose an indeterminate custodial sentence. The judge referred to the leading case of *R v Pollins* [2014] NICA 62 which states that:

“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. However, in a case in which a life

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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.”

The judge commented that the question therefore is whether an indeterminate custodial sentence is the only way of dealing with the future risk presented by the first defendant or whether an extended custodial sentence would be adequate for the purpose of protecting the public. 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 for which the offender is to be subject to a licence. 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.

The two aspects of an extended custodial sentence serve different purposes. The first is to punish and the second is to protect. The protective element of the sentence cannot exceed 5 years for a violent offence. The effect of this is that after the defendant has served the relevant part of a sentence, the Secretary of State shall release him if the Parole Commissioners direct his release when they are satisfied it is no longer necessary for the protection of the public that he should be confined. The relevant part of the sentence is one half under Article 28 of the 2008 Order. The Secretary of State, on the recommendation of the Parole Commissioners, can revoke the defendant’s licence and have him recalled to prison. Thus the offender may, in the events that happen and depending on his behavior, have to serve the whole or part of the extension period. Unlike a determinate sentence, the court does not recommend licence conditions to the Secretary of State where an extended custodial sentence has been imposed. These conditions are to be imposed by the Secretary of State, after consultation with the Parole Commissioners.

His Honour Judge Fowler concluded that, while he has no doubt that this was a very serious offence, he was not satisfied it falls into the category required for an indeterminate sentence given the protection which an extended sentence provides.

## **Sentencing – Attempted Murder**

The offence of attempted murder can cover a wide spectrum of offending and the circumstances in which it can be committed are infinitely variable. The judge noted the guidance given by the Court of Appeal in cases involving attempted murder of members of the security forces. In the case of *R v McCann* [1996] NIJB 225, the Court of Appeal reviewed a number of authorities involving sentences for attempted murder and observed that those who commit serious terrorist offences must receive very severe deterrent sentences, and attempted murder is one of the most serious offences which can be committed. The Court concluded that ‘... it is to be clear that the normal level of sentence for the attempted murder of a member of the security forces is in the region of 25 years’ imprisonment, and in some cases a sentence in excess of 25 years may well be proper.’

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His Honour Judge Fowler commented that there is nothing in recent cases to call into question the applicability of the guidance given in *R v McCann*:

“It is clear in my view the appropriate sentence for cases of terrorist related attempted murder in respect of police officers, after a trial, is 25 years. This guideline case is also flexible enough to give expression to any relevant aggravating and mitigating features which may reduce or increase the sentence in order to reflect a just and appropriate sentence.”

The judge identified the following aggravating features in this case:

- The planting of the bomb was an act of terrorism in furtherance of a Dissident Republican cause.
- Two serving police officers were targeted at their own home.
- The bomb was planted in a residential area and members of the public could easily have been killed or injured. There could easily have been multiple deaths.
- The bomb was a sophisticated device involving a copper cone and shaped Semtex charge, mercury tilt switch and timed arming switch.
- It was planted by this defendant beneath a vehicle and armed. He played a central and intimate role in this murderous attempt.
- The case involved considerable planning and the involvement of a number of dedicated and committed terrorists who demonstrated significant forensic awareness.
- Lack of remorse.

The judge said he considered the culpability of the defendant to be high and the harm intended to be devastating with the potential for multiple deaths. In terms of mitigating features relating to the offence, the judge was unable to identify any and personal mitigation is recognized as being of little consequence given the gravity of the offence. The judge concluded:

“Having regard to all the circumstances of this case I consider that the appropriate sentence on Count 1 the attempted murder charge is an extended custodial sentence comprised of a custodial term of 25 years and an extension period of 5 years. In respect of count 2 possession of explosives with intent to endanger life I impose an extended custodial sentence comprised of a custodial term of 20 years and an extension period of 5 years concurrent to count 1. “

## NOTES TO EDITORS

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://judiciaryni.uk>).

**ENDS**

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

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