

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

-v-

DENNIS CUNNINGHAM

GILLEN J

Charges

[1] Dennis Cunningham you have pleaded guilty to an offence of professing to belong to a proscribed organisation contrary to Section 11(1) of the Terrorism Act 2000 in that on 15 January 2002 you professed to belong to a proscribed organisation namely the Ulster Freedom Fighters.

Facts of the case

[2] The facts of the case arise as a result of the police obtaining via a court order a number of video tapes from the BBC. You took part in a BBC Panorama documentary entitled "Gangsters at War" in which you acted as a spokesperson for the Ulster Political Research Group. Another of the video tapes from the BBC Panorama programme depicted a man dressed in black and white wearing a balaclava representing the Ulster Freedom Fighters at a press conference. You were that masked man who appeared as a member of the UFF. Independent forensic imaginary analysis and voice analysis has been carried out on the tapes by experts indicating your involvement.

Criminal Justice (NI) Order 1996

[3] I have considered Articles 19-21 of the Criminal Justice (NI) Order 1996. I have obtained pre-sentence reports pursuant to Article 21. I consider that this offence is so serious that only a custodial sentence is justified. My reasons for so concluding are that crimes of this kind pose a grave danger to the rule of law where perpetrators are brought to justice, which in itself is often a difficult task, severe deterrent and exemplary punishment is usually merited. I have taken into account all the information before me about the

circumstances of the offences, the information contained in the pre-sentence reports and what has been said so ably on your behalf by counsel. Pursuant to Article 24(1) and having formed the opinion that a custodial sentence of more than 12 months is necessary, I have considered whether it would be appropriate to make a custody probation order. I consider that there is no evidence before me that you are likely to benefit from a period of probation supervision given your background and current circumstances as set out in that probation officer's report. You have no personal problems or issues which probation could specifically work on with regard to further offending.

[4] Pursuant to Article 33 of the 1996 Order, I have taken into account the plea of guilty in your case. I wish to make it clear that I intend to impose a punishment on you that is less severe than the punishment I would otherwise have imposed had you not pleaded guilty and had there not been the mitigating circumstances that I shall now set out:

Mitigation

- (i) You have pleaded guilty in this matter at an early stage.
- (ii) I have been provided with ten references which speak forcefully of the community and cross community work in which you have been engaged in the past years. The Rev. Father Aidan Troy, the rector and parish priest of Holycross has written how you played a substantial part in exploring areas of co-operation in the interface separating people of differing traditions in Ardoyne in North Belfast. Others speak of your community development role within the Shankill area including your efforts to combat racism and reduce community tensions. You are clearly one of the leaders in your local community.
- (iii) You do have a criminal record with six previous convictions. However four relate to driving matters between 1980 and 1996 for which you were fined. In addition you have a conviction for possession of a class A drug with intent to supply and possessing an ammunition without a certificate for which you were dealt with at Belfast Crown Court and fined £1,500 in relation to a business event, £2,000 for possession of ammunition without a certificate and a suspended prison sentence for the drug offence. In 1996 you were convicted of driving whilst under the influence of alcohol. I do not consider that these offences are particularly relevant to the charge now before me.
- (iv) I recognise that this offence stands on its own and it is not accompanied by other equally or more serious offences.

Guideline cases

[5] Following the authority of R v Pepper and Others (Times, 28 April 2005), prosecuting counsel has drawn my attention to two sentencing guidelines which might assist me when sentencing you. These are R v

Crossan [1987] NI 355 and R v Moore (an unreported decision of Hart J). In looking at these cases I recognise that comparisons of sentences in other cases must be carefully undertaken since they are usually highly fact-specific and cannot therefore provide an infallible guide to the appropriate sentence even where circumstances are similar, (see Kerr J (as he then was) in R v Kernaghan [2003] NICA 52). Both of those cases, where membership of illegal organisations resulted in sentences of seven and five years respectively, they were accompanied by other more serious offences.

[6] Nonetheless, I regard this as a very serious offence. The grotesque spectacle of a masked man aggrievedly pre-striding the television screen speaking on behalf of an illegal organisation disfigures our whole society. It is easy to discern the gathering sense of public anger and frustration that such illegal organisations still pervade some parts of our local communities. If not halted, such criminal activity fosters a culture of disrespect for the rule of law and a sense of helplessness in those too weak and vulnerable to combat it. Efforts to roll back this rule of terror and restore the rule of law must be relentless. If, as I believe it does, this requires severe prison sentences on those who maintain a headstrong deafness to current public alarm, then the courts will not be found wanting. Happily, as in this instance, modern advances in forensic science mean that it is increasingly likely that men such as you will be held to account for such criminal activities but those developments must be translated into condign punishment. Public confidence in the criminal justice system is to be preserved. Although apparently being a leader in this community, you choose to challenge your influence and example into an illegal organisation. In the circumstances the least sentence that I can impose upon you is one of 2 years and 6 months imprisonment.