Neutral Citation No: [2022] NICA 41	*Ref:* **TRE11890**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **30/06/2022**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

v

PAUL CAMPBELL

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Before: Treacy LJ, Maguire LJ and O'Hara J

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Orlando Pownall QC and Joseph O'Keefe (instructed by Phoenix Law, Solicitors) for the Appellant
Ciaran Murphy QC and Philip Henry (instructed by the PPS) for the Prosecution

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TREACY LJ ***(delivering the judgment of the court)***

Introduction

[1] The appellant has been unsuccessful in his appeal against conviction for causing an explosion likely to endanger life or cause serious injury to property, contrary to section 2 of the Explosive Substances Act 1883. He now appeals against his sentence.

Background

[2] The court below imposed a determinate custodial sentence of 7½ years, divided 50/50 with three years eight months custody and three years eight months licence.

[3] The co-accused, Gareth Doris, although not prosecuted on the same indictment, received a sentence of 10 years imprisonment in 1998. He, like the appellant, contested the case at trial. Taking into account the various circumstances of this case, the then Recorder allowed a discount of 2½ years in comparison to Mr Doris. In terms of culpability, there is no distinction between them.

[4] In order to succeed in this appeal against sentence, the appellant must satisfy this court that a sentence of 7½ years after trial for taking part in the terrorist bombing of a police station in a busy town centre is manifestly excessive or wrong in principle. The thrust of the appeal appears to be that the sentence ought to have been suspended.

The Function of the Appellate Court

[5] This court's function on appeals concerned with sentencing is one of review. In this jurisdiction the appellate court does not conduct a re-sentencing exercise, ie impose whatever sentence the Court of Appeal would have imposed if sentencing at first instance.

[6] The Supreme Court considered this issue in *R v Docherty* [2017] 1 WLR 181. At para 44(e), Lord Hughes, who delivered the unanimous judgment of the Supreme Court, explained:

> "Appeals against sentencing to the Court of Appeal are not conducted as exercises in re-hearing *ab initio*, as is the rule in some other countries; on appeal a sentence is examined to see whether it erred in law or principle or was manifestly excessive …"

[7] This approach has been described in other authorities as one of restraint, marshalled by the correcting only those sentences that are manifestly excessive sentences or wrong in principle. It is not enough that the appellate court might have sentenced differently.

[8] The review exercise described above does not mean the appellate court examines the original sentence as the Judicial Review Court would. In *R v Chin-Charles* [2019] EWCA Crim 1140, Lord Burnett CJ stated at [8]:

> "The task of the Court of Appeal is not to review the reasons of the sentencing judge as the Administrative Court would a public law decision. Its task is to determine whether the sentence imposed was manifestly excessive or wrong in principle. Arguments advanced on behalf of appellants that this or that point was not mentioned in sentencing remarks, with an invitation to infer that the judge ignored it, rarely prosper. Judges take into account all that has been placed before them and advanced in open court and, in many instances, have presided over a trial. The Court of Appeal is well aware of that."

[9] This restrained approach was reiterated recently in *R v Cleland* [2020] EWCA Crim 906 at para [49], as well as in *R v A* [1999] 1 Cr App (S) 52**,** at para [56].

[10] This court is therefore not concerned with what it would have imposed had it sentenced at first instance, but the rather different exercise of whether the sentence imposed was manifestly excessive or wrong in principle.

[11] A sentence is manifestly excessive if it falls outside the range of appropriate sentences for a particular type of offending, making adjustments for the particular circumstances of the case.

Relevant Sentencing Authorities

[12] As already noted the offending took place in 1997, but the appellant was not convicted and sentenced until 2019.

[13] The prosecution furnished an Appendix identifying a number of authorities which they say make it clear that sentences of in or around 20 years were being imposed in bomb-related cases previously, and seldom were sentences of less than 15 years imposed on foot of guilty pleas. By contrast, Doris received a considerable reduction when he received 10 years in 1998. We have reproduced this Appendix as an annex to this judgment.

[14] Taking into account the older and more recent sentencing authorities which provide guidance on the appropriate range in explosives cases, there is no merit in the suggestion that 7½ years was manifestly excessive in a case where the case was contested at trial.

Aggravating Features

[15] The court below found that the terrorist nature of the offence was the only aggravating feature.

[16] The prosecution suggested the following factors are relevant:

(i) The defendant was motivated by terrorism;

(ii) The potential victims were police officers carrying out a public service;

(iii) The defendant fled the jurisdiction after the offence and in then again the years before his arrest; and

(iv) Members of the public were put at risk during the commission of the offence.

[17] This was a serious episode of terrorist offending.

Appellant's Grounds

[18] The appellant argues the fact that terrorism was treated as an aggravating feature in an explosives case is duplicitous. We reject that submission. Not all explosions are caused by terrorists. That brand of motivation is not an ingredient of the offending and cannot therefore be suggested to be duplicitous. We agree the authorities are clear that terrorism offending requires a significant element of deterrence in sentencing.

[19] The appellant submits that a suspended sentence ought to have been imposed. We agree, as the prosecution submitted, that it is wholly unrealistic to suggest that a suspended sentence is within range in this case.

[20] In *DPP Ref Nos 13, 14 and 15* [2013] NICA 63, Morgan LCJ observed that although there is no statutory requirement in this jurisdiction to find exceptional circumstances before suspending a sentence, a sentence should only be suspended in "*deterrent sentence*" cases in "*highly exceptional circumstances as a matter of good sentencing policy.*" At para [11], Morgan LCJ said:

> "11. … Where a deterrent sentence is required previous good character and circumstances of individual personal mitigation are of comparatively little weight. Secondly, although in this jurisdiction there is no statutory requirement to find exceptional circumstances before suspending a sentence of imprisonment, where a deterrent sentence is imposed it should only be suspended in highly exceptional circumstances as a matter of good sentencing policy. …"

[21] This principle must apply *a fortiori* in a terrorist offence where deterrence is an important factor.

[22] It would be a wholly exceptional course to suspend a sentence where the appropriate range for sentencing is in and around 10 years, particularly when the case was contested and there has been no expression of remorse.

[23] The Recorder considered the request for a suspended sentence and we agree that he was right to reject it.

[24] The only potentially exceptional feature in this case is delay. In a case where the appellant is the original author of the delay, we agree that it would be ordinarily wrong and very surprising if he was then to benefit, highly exceptionally, by way of a suspended sentence.

[25] The position on delay is now as set out in *DPP's Reference (No5 of 2019)* [2020] NICA 1 paras 40-52. This court made it clear that delay, even delay amounting to a breach of the Article 6 requirement for a trial within a reasonable period of time, ought not to automatically lead to a discount in sentence. The court said that in most cases, public acknowledgement of the delay will provide satisfactory relief.

[26] Nonetheless, the prosecution takes no issue with a reduction in sentence in this case to reflect the delay between the offending and the imposition of the impugned sentence. However, while the State authorities are responsible for a latter portion of the overall delay, it must be borne in mind that the appellant was the original author. He left the jurisdiction to avoid trial. Had he not done so, he would have stood trial in 1998 alongside Doris and is likely to have received 10 years if convicted.

[27] In fact, the discount afforded by the Recorder was considerable, amounting to a 25% of the sentence that would have otherwise been imposed.

[28] The appellant argues that his personal circumstances were not adequately reflected in the sentence imposed. He points in particular to starting a family since the offending. However, the effect of sentencing upon the family of the defendant and personal circumstances generally are of little moment in a case of this magnitude.

[29] In *R v Raymond Gerard Quigg (1991) 9 NIJB 38* Hutton LCJ stated:

> "In cases which have a link with terrorism (and particularly where the accused has himself been a gunman **or a bomber** or has been an active participant in the storing or transporting of guns or explosives) **personal circumstances can very rarely permit a judge to reduce the deterrent sentence which otherwise should be passed**."

[30] Similarly, in *McCorley* [1991] 7 BNIL 152, Hutton LCJ said (p269 of authorities bundle):

> "Having regard to the nature of the offences, the appellant's family and personal circumstances cannot operate to bring about a reduction in the sentence he should receive: see *R v Cunningham* and Devenney."

[31] That is not to say that personal circumstances are ignored or count for nothing, but the more serious the offending and the greater the need for deterrence, the less mitigating force they carry.

[32] There are extreme examples, although very much the exception, where sentencers have departed from the appropriate range and imposed a non-immediate custodial sentence as an act of mercy. This area was discussed by this court in *AG's Reference (No1 of 2006)* [2006] NICA 4 – see in particular paras [36]-[41]. It is unnecessary to set out these paragraphs in this judgment since the commentary therein confirms that there are instances where acts of mercy are possible but they are truly exceptional. The appellant's family circumstances fall far short of what would be required to justify such a course.

[33] The appellant relies on his age at the time of offending.

[34] In *R v Wootton and McConville DPP Reference (No's 2 and 3 of 2012),* Morgan LCJ said that, while a young man's age can be taken into account when sentencing in a terrorism case, as he had reached his majority and voluntarily participated in a serious act of terrorism, the mitigating effect of his age was lessened. At para [8] Morgan LCJ said:

> "[8] In relation to Wootton, the judge noted that the starting point given in McCandless for the tariff for an offender aged under 18 was 12 years. He noted that Wootton had a clear record and that his role in the murder was more peripheral than that of McConville. Whilst it could not be proved that he removed the gun, the evidence did show he co-operated in being the driver of a getaway car which had also been used in connection with other offences and showed that Wootton was committed to the terrorist campaign. The learned judge said that some allowance must be made for the fact that Wootton did play a more limited role. **Although his age had to be taken into account, it was necessary to have regard to the gravity of the offence and his knowing and willing involvement in playing a role in helping to remove at least one key participant from the crime scene. In those circumstances the learned judge fixed the minimum term at 14 years."**

[35] By the time this appellant offended, while a young man, he had reached his majority and he took an active part in a terrorist operation. Mr Doris, who was of equivalent age, received a sentence of 10 years.

[36] The fact that the appellant may be eligible for release under the Northern Ireland (Sentences) Act 1998 is not a matter for this court. He should be sentenced in the normal way.

[37] The TJ properly considered *Barrett* [2004] NICC 28 at para 16 and Hutton LCJ in *Murray* [1995] NIJB 108, wherein this court said that the likely early release of a defendant should not be factored into the sentencing exercise.

Conclusion

[38] A starting point of 10 years after a contest was appropriate for an offence of this nature. This was a serious terrorist offence targeting a public servant building with in or around half a kilo of commercial/military grade explosive in a busy town centre.

[39] The appellant received 25% discount, even though he contested the case, in order to reflect delay and his personal mitigation. That was adequate and possibly generous in the circumstances, given that he was the original author of the delay that grounded that reduction in sentence, which was motivated by the appellant's desire to avoid prosecution and the potential punishment that flowed from it.

[40] The sentence imposed was not manifestly excessive or wrong in principle.

[41] Delay is clearly a factor in this case. Given the seriousness of the offending, delay, taken alone or cumulatively with other mitigation, is not sufficient to warrant a suspension of the prison sentence, particularly in circumstances where he was the original author of that delay because he fled the jurisdiction to avoid trial.

Postscript

The appellant has raised an issue about the jurisdiction of the lower Court to impose notification requirements which does not feature in the Notice of Appeal and was not argued before us. This does not appear to be an issue about the sentence being manifestly excessive but rather about the court's power. If the matter is to be pursued the PPS are to furnish a position paper within 3 weeks on the issue raised in the appellant's position paper.

APPENDIX

1. The authorities summarised below provide an overview of the sentencing for bomb-related offending in and around the 1990s and into the 2000's.

(i) *Connolly* [1994] NIJB 226 - terrorist related; mortar bomb components; explosives; detonators; rifles; ammunition; timing devices; found hidden in home; the appropriate sentence was described as 20-25 years (p207 H).

(ii) *McCorley* [1991] 7 BNIL 152 - making pipe bombs, though a danger, are not as serious as sophisticated bombs; on appeal 22 years was held to be "*in no way excessive*."

(iii) *Breslin* [1990] NI 23 - possession of drogue bomb, firearms and ammunition with intent; ready for use; sentences of 18 years concurrent were considered "*entirely proper.*"

(iv) *R v O'Reilly* [1989] NI 120 – the defendant was a willing participant; caught by police in transit; large quantity of explosives; 17 years was upheld on appeal and the court said that 20 years plus was possible in such cases. The final paragraph of the headnote dealing with the appeal against sentence says:

> "(6) Where a person was convicted of possession of explosives B with intent and it was clear that he was actively and willingly involved, in the absence of any exceptional circumstances a heavy deterrent sentence should be passed. In a case such as this involving a large quantity of explosives, a sentence of 20 years and upwards was appropriate, and accordingly, a sentence of 17 years was not manifestly excessive (see page 134G)."

(v) *Payne* [1989] 9 NIJB 28 - possession of range of firearms and explosives; element of duress from criminal gang; co-operation with police in mitigation 25 years not excessive; 19 upheld on appeal for plea of guilty:

> "In our opinion the sentence imposed on Payne was clearly not manifestly excessive. He was in possession of a very large arsenal of deadly weapons and. explosives for use by a paramilitary organisation with the intent to enable members of that organisation to endanger life. If the weapons

> and. explosives had been used in the province the extent of the loss of life could have been enormous. Therefore, this was an offence of the utmost gravity and this court is of the opinion that a sentence in the region of twenty five years would not be excessive for an accused in a contested case who played a significant role in the possession of such a large and deadly load of firearms and explosives."

(vi) See also *Donnelly & McCafferty* [2005] NICC 27 [2006] 3 BNIL 112 (Weir J) - pipe bombs hidden in house 5 years plus 2 probation; and *Taylor and Neilly* [2008] NICC 9 [2008] 6 BNIL 122 (Deeny J); 4½ years.

2. Some of the more recent authorities dealing with explosives are reviewed below.

(i) *McKenna Toman & McConville* [2009] NICC 55 [2010] 1 BNIL 91 (Treacy J) - the Crown Court said, having regard to the cases in neighbouring jurisdictions, possession with intent, 15 years should not be regarded as the top sentence on a guilty plea in future.

(ii) *McNally* [2012] NICC 22 [2012] 6 BNIL 64 (Judge Burgess) – an extended custodial sentence of 11 years custody with 5 years licence for possession of a pipe bomb with intent, contrary to s.3(1)(b); pleaded guilty on re-arraignment. *McNally* put a lethal explosive device (can containing broken blades, broken glass and firelighter material) on the window sill of a cross-community worker. It partially exploded and she woke to find flames. He had loyalist paramilitary sympathies and objected to cross-community work. 50 previous convictions.

(iii) In *R v Wong* [2014] NIJB 171, the Court of Appeal imposed an indeterminate custodial sentence with a minimum term of 5 years in custody (the equivalent of 10 years determinate, split 50/50 custody/licence) for possession of a pipe bomb with intent; the device had not been used. This court confirmed that those who facilitate the commission of terrorist crimes must expect deterrent sentences when apprehended.

(iv) *R v Christine Connor* **(**a first instance judgment that is presently subject to appeal) - sentence of 15 years on a fight in respect of causing an explosion).