

Neutral Citation No. [2011] NICC 43

Ref:

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 01/07/2011

THE CROWN COURT IN NORTHERN IRELAND

REGINA

v

WILLIAM WONG

HEARD BEFORE

HIS HONOUR JUDGE BURGESS

ON

1ST JULY 2011

AT

BELFAST CROWN COURT

Transcript supplied by: E Ward
Official Court Reporter
FROM FTR RECORDING

SENTENCE:

JUDGE BURGESS: If the defendant stands for me.

The defendant has pleaded guilty to the offence of possessing explosives with intent to endanger life or cause serious injury to property contrary to section 3(1)(b) of the

Explosive Substances Act 1883. I am therefore sentencing today under the provisions of the Criminal Justice (Northern Ireland) Order 2008. I will refer to it as the 2008 Order. In due course I will come to the first matter that the court will require to consider and that is whether the defendant satisfies the criteria as being a significant risk of serious harm to others in the future by reason of committing specified offences.

On the 11th of March of 2010, at approximately 9.20 pm, the defendant in the company of another person was walking along Nialls Crescent in Armagh. He was carrying a bag. When he was approached by the police he ran away, and in doing so threw the bag away and then he was apprehended. In the bag was found a pipe bomb, the components of which are described in the report of Mr Gerard Murray of the Forensic Science Service of Northern Ireland. The pipe bomb was constructed by means of steel piping, externally threaded at each end with a stop with a hole drilled in it with a fuse. Inside were 21.4 grammes of a mixed firework composition. The bomb was described in the comment to Mr Murray's report in the following terms:

"Pipe bombs are usually small, hand thrown or placed devices intended primarily as anti-personnel weapons. They normally comprise suitably modified lengths of steel pipe or plumbing components filled with low order explosive such as firework composition and/or small arms propellant initiated by a short length of burning fuse, frequently the fuse associated with the firework. The fuse which protrudes from one end or side of the device provides a short time delay between ignition and the device functioning. It can therefore be seen that this particular pipe bomb was constructed in accordance with those specifications and was a viable weapon ready for use. As stated, it is an anti-personnel weapon, it is lethal with the intention of maiming or killing."

In interview the defendant said nothing other than in relation to a lighter that was found on his person. At the very end of his interview a statement was produced and read by his solicitor on his behalf which stated and I quote:

"On arrival at Antrim I informed the police I had gloves in my pocket. When I was searched inside the gloves were in my pocket. I informed the police of this, the

gloves were extra pairs. On Thursday the 11th of March 2010 I was fixing my girlfriend's brake pads on her car and was using gloves to do this. They were then left in my pocket. The lighter is my property and is a present from my girlfriend. It has our initials and a date engraved on it, as well as a Celtic football club logo. I am a smoker and carry the lighter with me at all times. I wish to add that I am not a member of any illegal organisation."

That's end of the statement.

This is a self-serving statement in respect of two items for the use potentially of this bomb. One in the eradication of any fingerprints that might be used in its disposal or use and two, the presence of a lighter which may well have lit the fuse with the potential lethal consequences if thrown or placed. While the defendant is at pains to explain the presence of these particular items, and whilst he states he is not a member of any illegal organisation he proffers no explanation whatsoever as to why he would have in his possession a weapon linked to the murderous activities of such terrorists organisations, or where he was taking it. His actions, on seeing the police, that is in running and throwing the bag away, is evidence sufficient for this court to determine that he was not only aware that he had an explosive substance in his possession, but the nature of that. There were no other contents in the bag.

The pre-sentence report was sought but the defendant failed to engage initially with Probation. I pointed out to him through counsel, Mr McGrory, that in those circumstances the court would be left with no personal information in order to form a judgment it was required to make under the provisions of Articles 12 and 13 of the 2008 Order, that is the criteria of dangerousness which I have already set out. These require the court in respect of an offence of this nature to determine if he's a significant risk of serious harm to others in the future. Without more, the possession of such a weapon and the willingness of the defendant both to carry it and to refuse to give any information to police as to why it was in his possession, or from where it may have come, would evidence that the defendant would satisfy that criteria. The decision would be made by the court even in the absence of any previous relevant criminal record. At the request of Mr McGrory I have afforded the defendant the

opportunity of engaging with the Probation Service, as a result of which I obtained a report. However this advises me that given the nature of the offence that the Probation Service has not carried out an assessment for reasons which I fully understand. I have, however, been given some information regarding the defendant's personal background. There is obviously the question of his age of 22, which is relatively young. I have referred to the fact of the absence of any relevant record and I have seen references, which I have read this morning, indicating that in the opinion of the writers of those references the defendant in being engaged on this particular day was acting out of character. Nevertheless, his preparedness to engage in carrying such a lethal weapon, a viable weapon, quite clearly and virtually immediately available for use is a matter of considerable concern to the court and after anxious consideration I am satisfied that the criteria under Articles 12 and 13 are met and that the defendant is a significant risk of harm to others in the future by the committing of specific offences.

That then requires the court to determine the nature of the sentence that they pass. The choice is between an extended sentence or an indeterminate sentence. I am first obliged to consider if an extended sentence is sufficient for the protection of the public in the future or, if not, then to impose an indeterminate sentence. The legislation is drawn in mandatory terms that these are the only two options open to the court. Both have as their objective the protection of the public in the future - this has been referred to by the then Lord Chief Justice in R.v. Johnston & Others at 2007 1 CAR (S) page 112. There's a difference in the operation between these two sentences. For the purposes of an extended sentence the court would determine the commensurate sentence in terms of years of imprisonment. At the end of 50% of that term the defendant becomes amenable to be released but to release on licence subject to terms and conditions set by the relevant authority. The length of the licence will be up to eight years or the difference between 50% of the commensurate sentence imposed and the maximum term that could be imposed for the offence before the court. In short, the period of the licence does not affect the term of imprisonment to be served by the defendant, something that can occur when dealing with

determinate sentences. With indeterminate sentences the court, rather as with a life sentence, establishes a minimum period of custody but it is then a matter for the Parole Commissioners to make a decision as to when the defendant should be released, again on licence, a decision based on their satisfaction as to the protection of the public in the future. So what does one look for in the context of public protection as regards this defendant? I have concluded that the essential features one is thinking about must be: Am I satisfied this defendant understands the issues with which he is faced, is he minded to address those issues and are there programmes which accommodate that rehabilitation work, whether in prison and/or on release, from prison within the time scale that an extended sentence would allow. If I am not satisfied in relation to those guiding criteria then it seems to me the court is inexorably driven towards an indeterminate sentence, establishing a period of custody for the punishment and retribution of his actions but leaving it to others to decide at the appropriate time whether the release of the defendant will not represent a risk to the public in the future. I know little of the defendant or of his motivations in this particular case. It therefore seems impossible for me to decide whether or not during the course of any period of imprisonment or any such programmes on release from imprisonment, as I look at this matter today, would allow me to state with any certainty that the public would be protected. I have therefore determined that an indeterminate sentence should be passed.

Given the nature of this offence and the lethal nature of this weapon the concern of the court, as I have said, must be the protection of the public. In those circumstances the personal background and circumstances of the defendant while requiring to be addressed must give way to the interests of the public. It is an unfortunate fact that there are in our midst organisations who have not ceased to carry out murderous attacks on civilians and members of the police and security services. While others have chosen a different path these people are determined to continue their activities and display a willingness to use such indiscriminate weapons. The courts have adopted an approach in the past that sentences should be imposed that incorporate a deterrent factor to make it clear that those apprehended will face long and condign

periods of imprisonment. In the case of the Attorney General's reference number 3 of 2004 (the case of Hazlett) reported at 2004, Northern Ireland Criminal Appeals, Court of Appeal at page 20, the sentencing was shown on a contested trial to lie in the range of twelve to fifteen years, although the personal circumstances of the defendant would in some regards allow for that period to be reduced. I remind myself of course that this was a contest and in this particular case the defendant pleaded guilty at the first opportunity. I give him credit for that plea, but the amount of credit is necessarily modest given the fact that he was effectively caught red-handed. As I say, the matter that has given me greatest concern in relation to the age of this young man not to impose a sentence that is so crushing that it has potentially long-term damaging effects. But I do have to remember that the use of this weapon would have caused misery, death and loss to other families who would have then had to cope with that often on a lifetime basis. I have therefore determined that the indeterminate sentence, the minimum period to be served by the defendant is one of five years in prison. The pipe bomb presumably needs to be destroyed?

MR McCRUDDEN: Indeed.

JUDGE BURGESS: Very well. Anything else that I need to cover.

MR McCRUDDEN: No.

JUDGE BURGESS: Thank you very much indeed. Yes, take him down.