

BELFAST CROWN COURT

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R. v. MARIAN McGLINCHEY
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SENTENCING

His Honour Judge Kerr Q.C.

1. The defendant has pleaded guilty to two offences under the Terrorism Act 2000. In relation to bill 11/084938 she has pleaded guilty to providing property for the purpose of terrorism. The offence took place on 8th March 2009. In bill 13/084509 she has pleaded guilty to aiding and abetting addressing a meeting for the purpose of encouraging support for a proscribed organisation. The offence took place on 25th April 2011.

2. The parties handed into court an agreed basis for the plea in bill 11/084938. I do not intend to read that out in full but rather set out the essential elements. The offence took place the day after dissident republicans had murdered soldiers at Massarene Army base. The evidence showed that the defendant purchased a mobile phone. That phone was activated and within a period of less than an hour it was used to claim responsibility for the attack. A number of calls were made to the media not only claiming responsibility for the attack but also attempting to justify it and threaten further attacks. Those calls were made by a male. The agreed facts make clear that I am sentencing in the following context:

- (a) there is no evidence that the defendant was involved in any way with the Massarene attack;
- (b) there is no evidence that the defendant was present during the phone calls made or knew the content of the calls that were to be made using it; and
- (c) the criminality of the defendant was purchasing a phone which she knew was to be used by a person or person connected to a terrorist group.

3. The factual background to bill 13/084509 is that on 25th April 2011 an Easter Rising Commemoration took place in Londonderry City Cemetery. The meeting was

addressed by a person who during the course of his address promoted the aims of the Real IRA and advocated and encouraged the commission of terrorist acts. The defendant was present and held the document containing the address whilst the speaker read out the content. In that way she aided and abetted the speaker.

STARTING POINT.

4. In determining the appropriate sentences I must consider the proper starting point which represents a sentence on the basis of a contested case for a defendant with no previous convictions. I should have regard to the seriousness of the offence and any aggravating or mitigating features relating to the offence.

5. I do not find there are aggravating or mitigating factors in either offence individually. However there are two relevant matters; this defendant has a significant conviction for terrorist activity. On 15/11/1973 she received 2 life sentences for causing explosions and 20 years concurrent for conspiracy; in addition I have regard to the fact that I am dealing with two incidents.

6. I consider that the correct starting point for each of these offences is a term of imprisonment having regard to both of those features.

7. For aiding and abetting a meeting I consider the proper starting point is 12 months.

8. For providing property I have regard to the agreed statement of facts. Had it been established that the mobile phone provided was used in a violent offence then a significant period of imprisonment would have been justified. The agreed statement of facts makes it clear that it was used for propaganda purposes only. I consider the proper starting point to be 18 months for this offence.

MITIGATION

9. The defendant has pleaded guilty. She is entitled to credit for that. It is acknowledged that a plea of guilty in a terrorist case has significant value. The plea was however not at the earliest opportunity and the defendant did not co-operate with the police. The evidence against her was also compelling.

10. The defendant's health is poor and deteriorating. I have a folder of medical reports both physical and psychiatric. The latter issue is dealt with most fully by Dr O'Kane in reports dated 2nd December 2012 and 18th December 2013. Dr O'Kane reports that the defendant is undergoing intensive psychiatric treatment. She is vulnerable to repeated episodes of severe depression. She suffered one episode of severe psychotic depression. This has been exacerbated by recent significant bereavements. Dr O'Kane's opinion is "Given her history that on each occasion she has been incarcerated she has developed a severe mental illness, it is inevitable that if Mrs McGlinchey is imprisoned that she will become severely mentally ill and require hospitalisation again. Each time she becomes mentally ill the prognosis for

the future is worsened. By this I mean that she is at increased [risk] of developing more and worsening bouts of depression as she gets older.”

11. Her physical condition is dealt with in the report of Dr Pendelton dated 17th December 2013. She has severe erosive psoriatic arthritis. This is now longstanding and progressive. She has reduced hand and foot function. She is at high risk of exposure to infection due to immunosuppressive therapy. She will always be at risk of reactivation of tuberculosis. She is at risk of progressive loss of function in both small and large joints. There is no doubt she has significant medical problems.

12. It is to be noted that due to her medical and psychological state I had earlier ruled that the trial in the case would only sit for two hours per day two days per week. I based that ruling on earlier reports I had read.

PRE SENTENCE REPORT

13. I have considered the PSR. It sets out her family background. It is clear from that that she has limited social life. Her husband has given up work to help to care for her. She spends nearly all her time in the house and receives home care. Due to the nature of the case the Probation Board will not assess likelihood of further offending or dangerousness.

14. In relation to re-offending I consider she is a low risk. Firstly because of her current and potentially progressive medical and psychiatric condition. Secondly I note in a report from Dr O’Kane dated 25th February that the doctor records a history of her “political involvement”. Having set out a full chronology of her offending she told Dr O’Kane that she was no longer interested in political activities. When these two factors are combined with her plea I am satisfied she presents a low risk.

THE LICENCE

15. The convictions are in breach of her licence for the 1973 offences. It is not my function to deal with that. That is a matter for the Parole authorities. My role is to sentence her on these cases. There are two relevant matters that do arise. The first is that the defendant was returned to custody when charged with the first of these offences. I am informed she has spent two years in custody. Whilst it is clear that that period relates to the breach of licence in my view I am entitled to have regard to that when considering the proper sentence in these cases. Secondly she has been released by the Commissioners and that is relevant as in so doing they must have determined that she no longer represented a significant risk of serious harm to the public. In view of all the evidence I agree with that assessment.

SENTENCE

16. Allowing for the plea of guilty I consider the proper sentences in these cases are on bill no. 11/084938, 12 months and on bill 13/084509, 9 months. These shall be concurrent. Having regard to my assessment of the defendant as a low risk of re-

offending, her current and deteriorating medical condition and the fact that she has served a period of custody in respect of the breach of her licence, I consider it proper to take an exceptional course and suspend these sentences for a period of three years.