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IN THE COURT OF APPEAL  
CRIMINAL DIVISION



CASE NO: 2021 02993 A1  
[2022] EWCA CRIM 853

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 12 May 2022

Before:

LADY JUSTICE SIMLER

MR JUSTICE GARNHAM

RECORDER OF WESMINSTER  
HER HONOUR JUDGE DEBORAH TAYLOR

REGINA

v

MOHAMMED SHAKIEL YASIN

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MR G AHMED appeared on behalf of the Applicant

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**J U D G M E N T**

## LADY JUSTICE SIMLER:

### Introduction

1. On 16 July 2021, in the Crown Court at Leeds before His Honour Judge Bayliss and a jury, the applicant was convicted of three counts of disseminating a terrorist publication, contrary to section 2(1)(a) of the Terrorism Act 2006 (counts 2, 3 and 5). He was acquitted of a separate count (count 1) on the same indictment, and counts 4 and 6, which were alternative counts.
2. On 24 August 2021 HHJ Bayliss sentenced the applicant to a Special Custodial Sentence of seven years, pursuant to section 279 of the Sentencing Act 2020. That sentence comprised a custodial term of six years and an extended licence period of one year on each of the three counts to run concurrently. Relevant ancillary orders were made.
3. The applicant now applies for an extension of time of 12 days in which to renew his application for leave to appeal against sentence and for a representation order after refusal by the single judge. Mr Ahmed appears on his behalf on a *pro bono* basis and has advanced submissions with focus and clarity, and we are particularly grateful to him.

### The facts

4. The facts giving rise to the offences are fully described in the Criminal Appeal Office summary and we do not repeat all that is set out there. In summary, the applicant sent two videos through WhatsApp which sought to encourage the recipient watching the videos to commit acts of terrorism. Count 2 related to the first video (referred to as the “knife video”), sent to Mohammed Sahil Khan at just after midday on 20 November 2018. It depicted the applicant sharpening two knives and speaking in Arabic the words, “May the peace, mercy and blessings of Allah be with you, brother Sahil. You know what this is for, don't you, that's one, Allahu Akbar.”
5. Counts 3 and 5 related to the second video, the “meat cleaver” video. It was sent on 20 November 2018 to both Mr Khan and to the applicant's daughter, who was 18 at the time. It depicted the applicant wearing a headband with Arabic script whilst holding a meat cleaver. In the video the applicant recited an Arabic verse from the Quran, translated as,

“Those who disobey the Prophet, peace be upon him, or think they know better and their opinion is better than the Sunnah, they need this.”

6. On 21 May 2019 the applicant was arrested on suspicion of terrorist offences. His phone and his daughter’s phone were confiscated by police and analysed. He had deleted the videos from his mobile phone, but the meat cleaver video was found on his daughter's mobile phone. There was evidence that he had been in frequent contact with extremist Islamic preachers and travelled regularly to Jordan to meet them. Whilst in Jordan, the applicant mixed with people known to be Islamic terrorists. There was evidence he had spoken in social media posts and WhatsApp messages in admiring terms of those who had killed themselves in the name of Jihad. After his arrest by the police, the applicant denied the offending.

#### The sentence

7. The applicant was born on 2 August 1972. He was 49 at the date of sentence. He had five previous convictions for eight unrelated offences dating back to the period 1991 to 2000. Those offences included an offence of battery in 2000 arising from an assault on his wife while she was heavily pregnant. He had no convictions for terrorism or related offences.
8. The judge had a detailed pre-sentence report. We too have read that report, together with character references about the applicant which were also available to the judge.
9. The Sentencing Council's Definitive Guideline for Terrorism Offences applies to all offences falling to be sentenced on or after 27 April 2018 irrespective of their commission date and applied to all three offences. The judge explained that the offending in count 2, where the jury concluded that they could only be sure that the applicant had been reckless as to the consequences, was properly characterised as culpability C - defined as cases where characteristics of categories A or B are not present. The video did not “encourage specific terrorist activity endangering life” and had a limited audience, so the judge found that the offence fell within category 2 for harm. That produced a starting point of 2 years’ custody and a range of up to three years.
10. Counts 3 and 5 were much more serious, as the judge found. He concluded that these were

category 1A in the guideline. The meat cleaver video was a clear incitement to terrorist activity, which placed it in category 1 for harm. There was culpability A because the applicant intended to encourage the recipients of those videos to engage in terrorist activity. He was in a position of trust, authority or influence over them. He abused that position to encourage them. Those conclusions reflected both the verdict of the jury that there was intentional encouragement and the clear assumed role as a religious leader amongst the group of whom Mr Khan was a part. It also reflected the applicant's influence on his daughter's religious development and the reality that she was his daughter and therefore in a relationship of trust, and the video provided instruction for specific terrorist activity endangering life.

11. The starting point identified by the judge was one of five years' immediate custody. The judge recognised that the count 2 offence had a lower starting point of two years' custody but said that the video reflected in count 2 had to be viewed in the context of counts 3 and 5 and the much more serious nature in counts 3 and 5 had to be reflected. He said that he would pass concurrent sentences that reflected the whole of the criminality and accordingly identified the five year starting point for all three counts notwithstanding the difference between counts 2 and counts 3 and 5.
12. There were aggravating features, including the fact that the offences were motivated by and demonstrated hostility based on the religious beliefs of the intended victims; the audience was specifically targeted, and, so far as count 5 is concerned, vulnerable and impressionable. Samir Yasin (the applicant's 18 year-old daughter) was subject to intervention, having been referred to the Prevent Programme in March 2015 as a result of posts suggesting an aspiration to be a Jihadi bride. Pro-Islamic state images had been found on her telephone in October 2017 at Liverpool Airport and the applicant had himself expressed concern about her radicalisation to the police.
13. The judge also referred to the deliberate use of encrypted communications to facilitate the commission of the offence or avoid or impede detection, and also to the deliberate removal of videos and chats surrounding that sending in order to cover up the applicant's activities.

14. So far as mitigation is concerned, the judge expressly noted the applicant's limited recent or relevant convictions. He noted the evidence of good character, including from witnesses and from the applicant's extensive charity work. He recognised that the applicant was a family man with family responsibilities, and that there would be emotional and financial consequences, including so far as the applicant's wife, parents and children were concerned. Finally, the judge recognised the impact of the Covid pandemic on prison conditions. The judge concluded, nonetheless, that the aggravating features outweighed the mitigation factors in the case and warranted an upwards adjustment of one year from the five year starting point to produce a custodial sentence of six years on all three counts.
15. By virtue of sections 279 and 306 of the Sentencing Act 2020, offences contrary to section 2 of the 2006 Act are specified terrorism offences within Part 3 of Schedule 18. This is determined by the date of sentence irrespective of the date of the offence, and the judge therefore considered the question of dangerousness within the meaning of sections 254 and 255 of the 2020 Act. He took into account whether the automatic operation of the provisions of section 278 of the 2020 Act would mean that an extended sentence was unnecessary. He concluded that it did not result in that conclusion. He concluded that the applicant was dangerous and sentenced the applicant to a Special Custodial Sentence of seven years, comprising the custodial term of six years and the extended licence period of one year to which we have referred.

#### The appeal

16. In written grounds of appeal developed orally by Mr Ahmed four arguments are advanced to support the overall contention that the total sentence was manifestly excessive in this case. First, in writing, Mr Ahmed submitted that the judge was wrong to conclude that the applicant was dangerous; this was contrary to findings in the pre-sentence report and to the overall impact of the evidence before the court, including the absence of any relevant previous convictions. Secondly, the starting point of five years was too high for the offences on each of the counts. Count 2 had a starting point of two years, so to identify a five year starting point was plainly too high in respect of that count. But so far as counts 3 and 5 are

concerned, there was no evidence that either of the two people who were sent the video actually watched it. There was no specificity in what was encouraged. Nobody was targeted or identified; and the videos themselves were sent to only two people. Moreover, the use of WhatsApp is common. Mr Ahmed accepted that it is encrypted, but that is very different from the use of an encrypted format such as EncroChat or other similar means.

17. The third argument advanced is that the aggravating features did not justify the increase to six years. There was no particular evidence of any position of trust. Moreover, the judge effectively double counted by using the same factors that reflected culpability and harm to increase from a five year starting point to a six year custodial element. Finally, so far as mitigating factors are concerned, he submitted that the judge paid insufficient regard to the multiple mitigating factors in this case, not least the fact that there had been no previous incidents and nor were there any repeated incidents since the commission of these offences in the short period in 2018. For all those reasons, Mr Ahmed submitted that this was not the worst kind of offending and certainly did not warrant a custodial sentence of six years, which was manifestly excessive for all those reasons. Nor was an extended sentence necessary or warranted.

### Discussion

18. Dealing first with the challenge to the finding of dangerousness, it seems to us that this is not arguable. There was ample evidence available to the judge to support his conclusion. He presided over the trial and was therefore in the best position to make this assessment and to consider the risk that the applicant posed. The evidence included the applicant's known association with terrorists and individuals associated with terrorist organisations. It included the video footage itself depicting him brandishing particularly dangerous weapons and it included Islamic extremist mindset evidence. The evidence also included clear support for and glorification of the actions of those killed fighting the Syrian government for Islamic extremist groups, describing them as martyrs and seeking to arrange marriages for their widows or other members of their immediate families. It included a direct familial link to a UK citizen who died performing as a suicide bomber on behalf of al-Qaeda in

Syria in 2014 - an act the applicant continued to seek to justify at trial. It included his own evidence at trial that he had not disavowed his beliefs and either sought to depict the evidence as taken out of context or admitted that his support for terrorist actions in Syria was undimmed. The evidence also showed that he had sought, with some success, to assume a role of religious leadership among his contemporaries in the UK and on the international stage. He had recorded speeches to his followers which incorporated a phrase that he cited often, "We love death like you love life; and also put questions on behalf of others to senior Islamic scholars, including a scholar known as al-Maqdisi. There were several examples of him seeking to influence the religious education of his daughter, including praising her for sending him a quote from Abu Qutada.

19. There was also the pre-sentence report by Gail Wilson. She noted that the applicant continued to maintain his innocence and referred to his need to seek approval and acceptance which led to him ignoring the risks of associating with extremist individuals. She observed that he held a rigid point of view in religious terms and regarded it as a matter of grave concern that he had knowingly associated with extremists. She recorded that he held deeply unpleasant extreme views for which he sought approval and confirmation from any available and potentially disreputable source. She said that any assessment of future risk had to be approached with caution. It had to take account of nuanced issues and the insidious nature of terrorist offences. She concluded that there was a low risk of reoffending but a high risk of serious harm and that the applicant remained susceptible to further radicalisation, a risk not limited to his presence in a custodial setting. He remained prepared to meet with people who represented a proscribed group or organisation, and to seek to influence others.
20. We are satisfied that there was an ample evidence base for the conclusion that the applicant was dangerous and that the contrary is not arguable.
21. As for the challenge to the six year custodial element of the sentence, again we consider that the judge's assessment was well within the range of assessments for cases of this kind and not arguably manifestly excessive or wrong in principle. The judge properly regarded

counts 3 and 5 as reflecting culpability A. As we have said, that reflected both the verdicts of the jury in finding there was intentional encouragement and the applicant's clear role as a religious leader amongst the group of whom Mr Khan was a part, together with his influence on his daughter's religious development.

22. So far as harm 1 is concerned, it seems to us that the fact that there was limited distribution of this video is immaterial. Harm here was properly assessed by reference to the fact that there was a statement or publication providing instruction for specific terrorist activity endangering life. That was a conclusion well open to the judge given the video was a clear incitement to attack apostates with a meat cleaver or similar weapon. While there was no evidence of recipients of either video having acted on or been assisted by the encouragement to carry out activities endangering life, this would have been a different factor indicating high harm and the absence of such evidence is not determinative. Here, moreover, one of the recipients was vulnerable and had been, at least partially, radicalised.
23. It seems to us that the challenge to the aggravating factors identified by the judge is equally unarguable, save perhaps so far as Mr Ahmed's criticism of the judge's conclusion that the use of WhatsApp reflected a use of encrypted communications. We recognise the force of this criticism and the difference between WhatsApp and other encrypted communications, but do not consider it to be material in the context of this case. Even ignoring this feature, there was undoubtedly a relationship of trust between the applicant and his daughter. She viewed her father as an authority figure, with a significant role in her life, not least in the context of her religious education. There was also evidence that he was a prominent figure in his religious community. He was older than Mr Khan and the overall thrust of the evidence did not compel a conclusion that Mr Khan had derided or mocked the applicant. The judge was entitled to conclude that Mr Khan (like others) viewed the applicant as a prominent figure in the religious community and this was a relevant aggravating factor.
24. Moreover, the judge was sentencing for three offences, two particularly serious. He made clear that he was reflecting the whole of the criminality for all three offences in concurrent sentences on all three counts. That was an entirely orthodox and appropriate approach.



25. Having regard to the facts of these three offences, which are paradigm examples of offences contrary to section 2 of the 2006 Act of particular gravity, we have concluded that it is not arguable that the sentence as a whole did not properly reflect the overall criminality involved in this course of offending, and/or that it was manifestly excessive.
26. In those circumstances, notwithstanding the compelling submissions made on the applicant's behalf by Mr Ahmed, who has said all he could possibly have said, we refuse leave. Since no purpose would be served in extending time given our conclusion, we refuse to extend time also.

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