| | |
|---|---|
| **Neutral Citation No: [2023] NICC 12**<br><br>*Judgment: approved by the court for handing down (subject to editorial corrections)** | *Ref:* **OHA12170**<br>*ICOS No:* **19/083239**<br>*Delivered:* **17/05/2023** |

**IN THE CROWN COURT IN NORTHERN IRELAND**
**SITTING AT BELFAST**

---

**THE KING**

**v**

**FIONNGHUALE PERRY**

---

**Mr R Steer (instructed by the Public Prosecution Service) for the Crown**
**Mr D Hutton KC with Ms A Macauley (instructed by Phoenix Law, Solicitors) for the defendant**

---

**SENTENCING REMARKS**

---

**O'HARA J**

*Introduction*

[1] On 15 March 2023 I found the defendant guilty of collecting or making a record of information likely to be useful to a terrorist, contrary to section 58(1)(a) of the Terrorism Act 2000. The details of the offence were that on a date unknown between 16 September 2015 and 21 February 2018, when her home was searched and documents found, she collected or made a security debrief, about the recovery by the police of firearms, ammunition, and explosives. The police find of the weapons was in the Ballymurphy area of Belfast on 17 September 2015.

[2] This ruling on sentencing should be read in conjunction with my judgment of 15 March. At para [23] of that judgment I set out my findings about the defendant's handwritten notes and at para [42] I gave my reasons for rejecting her account of why and how the notes had come to be written. Then at para [44] I set out why, in my judgment, the notes were of direct benefit to terrorists.

[3] I now come to sentence the defendant, having received considered and detailed submissions on my sentencing powers and on the correct approach to

sentencing in this particular case. I am grateful to counsel for that assistance. All their submissions and authorities have been considered.

[4] The crime committed by the defendant is, on any view, a serious one. There are dissident republicans who after all these years of violence and so many deaths and lives ruined are still committed to more deaths and more lives ruined. For every individual who transports or fires a gun, or makes or plants a bomb, there have to be more people who support and enable them. The defendant is one of those people. In terms of recording or collecting information it is possible to think of worse cases. For instance, collecting the addresses and movements of police officers or other people on the grim list of so-called legitimate targets. But the type of information written and kept by the defendant is sinister and of great concern.

[5] Every time the police find weapons and explosives, they land a blow on those who are committed to violence. The dissidents then respond by trying to work out what went wrong, whose fault it may have been and what steps need to be taken next time. The defendant who is now 65 years old played a role in that response in order that violence can continue.

[6] To make matters worse she has a criminal record which shows that even in her teens she was committed to violent republicanism. In December 1976 she was convicted of hijacking a motor vehicle in February 1976 and of the possession of a firearm with intent to carry out the hijacking. She was also convicted of membership of a proscribed organisation between May 1975 and February 1976 when she was 17-18 years old. For those offences she was sentenced to three years' imprisonment.

[7] The recent offending comes depressingly more than 40 years later and is in the same vein.

[8] In terms of mitigation there is one major factor which is that the defendant suffers from multiple sclerosis. I have received a number of reports about this which confirm that the disease is progressing and has an increasingly negative effect on her in terms of her mobility and her ability to look after herself. To her credit she has continued in her regular employment though with reduced hours. I note and accept that her multiple sclerosis brings with it fatigue, stress, and depression. For her, prison would be particularly challenging.

[9] Against that background it was submitted on her behalf that the appropriate sentence would be a suspended sentence rather than immediate custody. With all due respect, that submission is entirely unrealistic. It fails to acknowledge the seriousness of her offending, her criminal record from 1976 or the fact that having fought the charge she loses any prospect of being given credit for pleading guilty.

[10] She and other dissident republicans have to realise that as they continue with their efforts to murder, maim, and disrupt, they will face harsh consequences if and when they are caught, convicted, and sentenced.

[11] I will make some allowance in the sentence which I impose on the defendant for her multiple sclerosis as a mitigating factor. That allowance is made despite the fact that on the authorities, personal circumstances such as ill-health carry only a limited value in terrorism cases, if they carry value at all.

[12] In all these circumstances, I impose on the defendant a sentence of five years in jail which I reduce to four years in light of her multiple sclerosis and the consequences that has for her.

[13] I was presented with lengthy submissions about the effect on sentencing in this case of the provisions of the Counter-Terrorism and Sentencing Act 2021 ("the 2001 Act") which amended Article 15 of the Criminal Justice (NI) Order 2008 ("the 2008 Order"). Some of the changes in the sentencing regime have already been considered by the Supreme Court in *Morgan and others v Ministry of Justice* [2023] UKSC 14.

[14] Prior to the changes the 2008 Order provided that:

- The judge would sentence a prisoner to a term of imprisonment – Article 7.
- The judge would then specify how much of that time would be spent in custody (no more than 50%) and how much on licence – Article 8.
- At the end of the custodial element, release from prison on licence was automatic.

[15] In addition, any sentence of a term of imprisonment could be suspended – see section 18 of the Treatment of Offenders Act (NI) 1968.

[16] In 2021, in response to two particular terrorist attacks, Parliament decided that sentencing in terrorist cases should be tougher than before. The 2021 Act introduced Article 15A into the 2008 Order with the following main effects:

- A term of imprisonment can no longer be suspended.
- The custodial element of any term of imprisonment will now be two-thirds, not a maximum of 50%.
- Release even after two-thirds of the sentence has been served will no longer be automatic but will be a matter for the Parole Commissioners.
- At the end of the term of imprisonment there will be an additional year on licence.
- In some cases an extended custodial sentence can be imposed.

[17] For the defendant, Mr Hutton, focused his submission on the issues of a suspended sentence and of the make-up of the custodial term ie 50/50 with automatic release or two-thirds, one third with the Parole Commissioners involved. For reasons already stated I have ruled out the possibility of a suspended sentence. That leaves me to deal with Mr Hutton's submission that I should follow the "old law" under the 2008 Order and break down my sentence in the old way, the custodial part not exceeding 50% with the remainder on licence. His submission is that by reference to his analysis of the legislation, read with articles 5 and 7 ECHR, article 15A (the new law) is to be disregarded.

[18] In the case of Morgan and others the defendants were sentenced by Colton J in November 2020, well before the new law which came into effect on 30 April 2021. He specified, in accordance with article 8, that the defendants would each serve 50% of their sentence in custody with the remainder on licence. During their time in custody the new provisions came into force, and they were told that they would no longer be released at the expected time, when 50% of their sentence had been served. Instead, they would have to serve two-thirds of their sentence and then have their release considered by the Parole Commissioners.

[19] That decision was challenged, and the case made its way to the Supreme Court. In that court's unanimous judgment, the challenge failed. The court affirmed that it was not material that the criminal offences had been committed in 2014, before the law in sentencing was changed in 2021. Nor did it matter that Colton J had specified in November 2020, again, prior to the 2021 Act coming into force, that they would serve half of their sentence in prison and then be released. The Supreme Court held that neither of those facts inhibited the application of the new tougher sentencing provisions.

[20] Specifically, it rejected the argument that there had been a breach of article 7 ECHR which in part provides:

> "Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

[21] It also rejected an argument that the extra time which was to be spent in prison (the difference between 50% of the sentence and a minimum of two-thirds of the sentence) breached the right under article 5(1) ECHR to the right to liberty or the right only to be lawfully detained after conviction by a competent court.

[22] The rationale for the Supreme Court's approach was that the Crown Court sets the term of imprisonment when it passes sentence under Article 7 of the 2008 Order. In the present case that sentence is four years. By contrast when it fixes under Article 8 the custodial period and the licence period (usually 50/50) it is <u>not</u>

amending the term of imprisonment fixed under Article 7. Rather, it is setting out the manner of execution of the sentence which it has imposed.

[23] Mr Hutton, for the defendant, has sought to distinguish the *Morgan* decision in his submissions. In part, he has done so by contending that in that case the challenge was to the 2021 Act which is primary legislation rather than the 2008 Order which is secondary legislation and is, therefore, more susceptible to challenge. However, the fact is that the Supreme Court reached its decision on the basis that there is simply no breach of articles 5 or 7 ECHR. That being so, there is no traction in seeking to draw a distinction between primary and secondary legislation.

[24] I am bound to follow the decision of the Supreme Court and I do so since, in my judgment, it applies directly to the circumstances of this case.

[25] To complete this sentencing exercise, I sentence the defendant to four years in jail. It will be a matter for the Parole Commissioners whether she should be released after she has served two-thirds of that sentence.

[26] This sentence means that notification requirements specified in the Counter-Terrorism Act 2008 are triggered. I will make any necessary orders suggested or agreed by the parties. It appears to me that because the sentence is for four years' imprisonment, the defendant will be subject to the notification requirements for 10 years – see section 53(1)(c) of the 2008 Act. The requirements have to be complied with within three days of the defendant's release from custody, whenever that might be.