CASE NO. 202302042/A4

Neutral Citation Number [2024] EWCA (Crim) 804
IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CENTRAL CRIMINAL COURT
THE RECORDER OF LONDON (HIS HONOUR JUDGE LUCRAFT KC)
T20217328

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 28 June 2024

Before:

LADY JUSTICE ANDREWS

MR JUSTICE GRIFFITHS

RECORDER OF MANCHESTER
HIS HONOUR JUDGE DEAN KC
(Sitting as a Judge of the CACD)

REX

V

SHABAZ SULEMAN

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MR C BLAXLAND KC appeared on behalf of the Appellant.
MR D ATKINSON KC appeared on behalf of the Crown.

**JUDGMENT**

LADY JUSTICE ANDREWS:

1. The appellant is now aged 28. On 14 April 2023 in the Central Criminal Court, he pleaded guilty on a written basis to one offence of preparation of terrorist acts, contrary to section 5 of the Terrorism Act 2006, in connection with his travel from the UK to join so-called Islamic State ("IS") in Syria. Two other terrorism-related counts were allowed to lie on the file on the usual terms, but were very properly taken into account by the judge when determining the appropriate level of sentence.

2. On 26 May 2023, he was sentenced by the Recorder of London, HH Judge Lucraft KC, to a sentence of life imprisonment with a minimum term of 9 years and 6 months, less 596 days spent in custody. He appeals against this sentence on two grounds, namely (i) that the judge put the offence into the wrong category under the applicable Sentencing Guideline; and (ii) that the judge erred in concluding that the appellant met the criteria for *dangerousness* so as to warrant a sentence of life imprisonment.

3. The offence was committed in August 2014, when the appellant was 18 years old. Whilst on a family holiday to Turkey, he attempted to cross over into Syria to join IS with the ambition of becoming a sniper. Although the Turkish authorities apprehended and detained him, he pursued that ambition by deliberately choosing to be part of a prisoner swap that they held with IS in October 2014, instead of being deported to the United Kingdom.

4. Analysis of the appellant's computers, which were seized after he had gone to Syria, showed that prior to his departure on holiday, he had immersed himself in IS propaganda and was fully aware of the extreme violence in which that organisation was engaged. His online activity included viewing and downloading a substantial amount of imagery of IS fighters and IS propaganda. He shared some imagery and propaganda with his friends on social media, including a propaganda video that featured Abu Bakr al-Baghdadi (the leader of IS at the time it declared a caliphate). He encouraged members of a WhatsApp group to which he belonged to watch it, saying, among other things: "The sniper's picking off cops, is mad and the silent pistol assassinations going to officers' homes at night and killing them in their sleep." As the date for his family holiday approached, the material he downloaded included material calling for the killing of non-believers and justifying violent Jihad, and images of executions and their aftermath.

5. At the time of his departure, he was in WhatsApp contact with his family. He initially told his mother that he was with a friend and that she was not to worry, but he subsequently messaged his family and told them he was going to Syria. He said: "I'm already far away from you. I'm doing this for Allah, no one else. I'm not brainwashed or anything. I've been planning this for months". He subsequently sent a message to them in which he spoke of his aspiration to become a sniper and therefore to engage in the killing of those opposed to IS.

6. On finally reaching Syria, the appellant did join IS. He performed a number of roles with them, including becoming part of their Military Police and undertaking armed guard duty. The expert evidence relied on by the prosecution showed that this was a very responsible position in the maintenance of the regime, and that it was given to individuals who were regarded as "outstanding". The appellant was provided with a firearm and he was tasked with maintaining the regime through the use of violence where necessary. It was obvious that, having been given a firearm, he had to be able to demonstrate to his IS confederates that he would be willing and able to use it.

7. The appellant was also very active on social media at the time and he made it clear in his postings that he had joined IS, that he wished to fight with them and he was being trained by them. He established Twitter accounts which he used to disseminate IS propaganda and to encourage others to follow his example in joining them. He also communicated with the Press about these activities. In a message to a journalist with The Times newspaper, he said that he had chosen to join IS and that he had a good cover story because he pretended to be an aid worker (he had done aid work in Syria the previous year). He also said that he and others had watched IS propaganda whilst they were in detention in Turkey. However, after some 5 to 6 months in Syria, he became disenchanted with IS and sought to leave, but he was not permitted to do so. Eventually he was taken captive by a faction of the Free Syrian Army and transferred to Turkey. He then went to Pakistan. He was eventually arrested on his arrival at Heathrow Airport on 29 September 2021.

8. In his basis of plea (which the judge made clear in his sentencing remarks was the basis upon which he sentenced him) the appellant accepted that he understood at the time he went to Syria in order to join IS that it was a proscribed organisation and that it was engaged in violent conflict in Syria. He also accepted that he received weapons training by IS when he arrived in Syria, and that he carried out checkpoint guard duty and police duties for IS, but he was not engaged in active fighting. He was also involved in media duties by way of online discussions and the like. He said that he came to realise that IS's view of Islam did not adhere solely to Islamic principles as he understood them, and that he was imprisoned by IS because of his expressed refusal to engage in fighting, and their suspicion that he might not share their ideology.

9. The appellant was 18 years old at the time of his departure to Syria and turned 19 whilst he was there. He was 27 years old at the time of sentence. He had no previous convictions or cautions recorded against him.

10. The offence to which the appellant pleaded guilty, contrary to section 5 of the Terrorism Act 2006, focused on *preparation* for giving effect to his intention to engage in terrorism. That intention was to become a sniper at the behest of IS, which he knew to be a terrorist organisation, and he prepared to and took all steps within his control to give effect to that intention. He was undeterred by his detention in Turkey, and deliberately chose to be part of the prison swap in order to achieve his objective of joining IS. In continued pursuit of his intentions, he undertook weapons training with IS. He was selected to form part of their Military Police and in that capacity, he undertook armed guard duties. He also engaged in a role via social media in the advancing of IS propaganda and the

encouragement of others to follow his example and to join IS before becoming disillusioned with them and seeking to leave.

11. The Crown identified the following aggravating factors. First, to the extent that they were not reflected by the starting point chosen, the actions of the appellant once he did arrive in Syria. Secondly, on his account to his family, he had been in contact with other extremists before and in order to facilitate his departure. Thirdly, on his account to other members of his WhatsApp group, he had started to use Telegram encrypted communications in this context. Fourthly, he had been in possession of and repeatedly accessed extremist material before his departure. Fifthly, he sought to share that material with others to encourage them to adopt his extremist views, and he continued in such activities after his arrival in Syria. Finally, he had failed to respond to a warning that had been provided to him by a police visit that he had reported to others in February 2014.

12. It was accepted that a number of mitigating features were present, including his young age at the time of committing the offence, his previous good character, and the fact that he voluntarily sought to distance himself from IS after a period. The judge also had the benefit of a number of character references to which he made reference in the course of his sentencing remarks.

13. Pursuant to section 5(3) of the Terrorism Act 2006, the maximum sentence which may be imposed on a person guilty of an offence under section 5 is a sentence of imprisonment for life.

14. The judge was referred to, and applied, the applicable Sentencing Guideline which was effective from 1 October 2022. He placed the sentence in category B2, that is culpability B and harm level 2. Originally this appeal was advanced on the basis that he should have placed the sentence within category C3, but Mr Blaxland KC, on behalf of the appellant, having reconsidered the matter, accepted that the judge was correct to say that the culpability factor was B. He nevertheless maintained that the harm should have been level 3 and not level 2. Mr Blaxland pointed out to the Court that, if the categorisation were properly level 3, then offenders would be less likely to be found to be *dangerous offenders* for the purposes of sentencing and therefore the life sentence may not have been appropriate.

15. Mr Blaxland submitted that this was a young man with a particular ambition which was possibly not very realistic. It was not viable to expect that he was actually going to become a sniper or use his gun to shoot anyone once he had arrived, and the judge had failed to look at the facts in the round. He submitted that when those like the appellant who join an organisation like this go to Syria, anything could happen. The sentence did not comfortably sit within the guidelines, which Mr Blaxland said were really aimed at acts of preparation for terrorism which take place within the jurisdiction, such as where somebody is apprehended by the police before they can carry out a bomb attack on a domestic target.

16. Harm level 2 covers the situation where multiple deaths are risked but are not very likely to be caused. Level 3 is where any death is risked but not very likely to be caused.

Therefore, the likelihood of the deaths actually being caused is not the focus of the guideline, the question is whether multiple deaths are *risked.*

17. Mr Atkinson KC, who prosecuted this case and appeared before us today, submitted that because the appellant had joined IS with the clear intention of becoming a sniper, but this had not ultimately happened due to his change of heart, the Court should adopt by analogy the approach to be adopted under the guideline to those cases where an offender's preparation for an act of terrorism is thwarted by law enforcement. He submitted that this analogy was apt because it focused on the intention of the appellant *at the time of his preparations* rather than on the question of whether the preparations led to their ultimate objective or did not occur for reasons that were either beyond the offender's control or which arose after the preparations in question, at a time when the relevant intention was already complete. Mr Atkinson submitted that the Court was required to assess the culpability of an offender on the basis of what they *intended* to achieve and the harm that they intended to cause, taking account of the viability of their plan.

18. Mr Atkinson referred the Court to the way in which the Court approached the matter in R v Boular and Boular [2019] EWCA Crim 798, in which, like the present case, one of the defendants had sought to engage in offending abroad. On the question of culpability, Holroyde LJ observed in that case [50]:

> "As to culpability, the sentencing judge must, in our view, consider the culpability factors on the basis of what the offender was planning to do... The fact that Security Services were monitoring the activities of the offender and aimed to prevent the commission of the offence does not reduce the culpability of the offender."

He then observed at [52]:

> "... the reference to 'risk' focuses on what was intended: that is, the consequences if the plan had succeeded."

19. By reference to the guideline, in the assessment of harm, the fact that an offender desisted is indeed an important factor to be taken into account (by reference to whether that change was voluntary at the stage at which it occurred). But that accords with the fact that harm is assessed based on the type of harm *risked* and the likelihood of that harm being caused, and that is judged by what the appellant intended.

20. In this case, the appellant intended to become a sniper. That role would have involved multiple deaths if carried out. That had to be set against the likelihood that the appellant would in fact have become a sniper. The learned judge looked at that question having regard to all the evidence that was put before him. That included the roles that were carried out by the appellant in pursuit of that intention once he went to Syria. The judge

correctly recognised the two elements to which we have referred. He said:

> "On harm, looking at what you intended, you had intended to become a sniper. As such, that role, if carried out, would have involved multiple deaths. I need to set that against the likelihood that you would in fact have become a sniper. Category 2 for harm includes multiple deaths risked but not very likely to be caused."

He then went on to explain why he put the case into the category that he did. He referred to the fact that the appellant intended to undertake weapons training and that he did so. He said that the fact that the appellant then adopted a role that included the carrying of a gun further supported the categorisation. He found that death was very likely to have been caused but for his change of heart.

21. In our judgment, the way in which the judge approached the matter in his careful sentencing remarks was impeccable. He had regard to all of the submissions made on the appellant's behalf by defence counsel, including the submission that his behaviour involved a degree of immaturity and bravado, and that this, coupled with the fact that no combat duties were carried out and the fact that no harm was in fact caused, indicated that the Court should go to level 3 rather than level 2. But having taken all of those factors into account, with care, as he said, the judge came to the view that this case properly fell within level 2 as to harm.

22. In our judgment, that was an unimpeachable approach, and the judge was fully justified for the reasons that he gave to categorise the offending as falling within B2. That meant that under the relevant guideline the starting point was one of life imprisonment with a minimum term of 15 years and the category range from life imprisonment with minimum term of 10 years to life imprisonment with a minimum term of 20 years' custody.

23. However, as Mr Blaxland very properly pointed out, the reasons given for that range are that anybody who falls within that category is very likely to satisfy the criteria for *dangerousness*, namely that there is a significant risk to members of the public of serious harm being occasioned by the commission by the offender of specified offences.

24. Mr Blaxland submitted that this was a case in which the judge should not have found the appellant to be *dangerous*. He pointed in particular to the fact that there was a great deal of evidence of his immaturity at the time when the offence was committed. It is a well-known fact that the brain continues to develop until the age of 25 and therefore the appellant would have acquired a degree of greater maturity (although perhaps not as much as might have been hoped) by the time that he voluntarily returned to this country. A great deal of weight was placed by Mr Blaxland on the fact of that voluntary return and on the fact that the appellant told the authorities he was coming back. He referred us to the case of R v Lang, the leading authority in relation to matters of this kind, in which it was said that either as regards adults with no relevant previous convictions, or younger people, when the court is exercising a discretion to impose a life sentence, it is important to bear in mind future conduct - among other matters, the likely impact on the young

offender of the process of maturation.

25. Mr Blaxland complains that, when the judge made the finding that the *dangerousness* test was met, there was no proper explanation of why the factors Mr Blaxland had identified did not all point in the opposite direction, as Mr Blaxland submitted they did. Therefore Mr Blaxland submitted that the judge should have departed from the categorisation and sentenced below the range by imposing a determinate sentence rather than a life sentence.

26. Mr Atkinson submitted that it was not necessary to demonstrate that the offender met the requirement of *dangerousness* in order to put the case into Category B2. However he recognised that the reason for the starting point being a life sentence was because the offender was likely to meet the criteria for *dangerousness* if the risk of harm and the culpability factors were met.

27. Mr Atkinson referred us to the case of R v Choudhury [2016] EWCA Crim 1341, in which this Court said [23]:

> "This court will not normally interfere with a finding of dangerousness unless it can be shown that the sentencer has failed to apply the correct relevant principles, *or reached a conclusion to which he was not entitled to come on the material before him.*" [Emphasis added].

Mr Atkinson submitted that here it could not be said that the judge applied the wrong principles or reached a conclusion which he was not entitled to reach.

28. It is clear from his sentencing remarks that the judge applied the correct legal test. The way in which he approached the matter was first to consider the detailed pre-sentence report, and the views expressed by its author, who had interviewed the appellant. But he correctly observed that the ultimate decision was one for the court, based on all the information available about the offender and the facts of the case. The question for us is therefore whether he was entitled to reach the conclusion that he did.

29. Pausing there, it is entirely correct, as Mr Blaxland submitted, that this was a case in which the appellant had pleaded guilty and therefore the learned judge did not have the benefit of having observed him giving evidence or hearing all of the evidence at a trial. Nevertheless, there was a copious amount of evidence before the court, much of which was referred to in some detail by the judge earlier in his sentencing remarks. He carried out a fairly detailed analysis of the messages on social media, the events that took place after the appellant had travelled to Syria, and in particular an interview that was carried out between the appellant and a journalist from Sky News during that period.

30. The judge said that in the course of that interview the appellant had made some significant statements, including that he did not really want to fight but he wanted to help the Syrian people, but that he was sympathetic to IS. He also said that he was interviewed by IS intelligence to check that he was not a spy; and that he was transferred to Hama and was trained there in weapons training. He was on guard duty within an IS controlled area for around 5 months. He then went off to Raqqah and he was transferred

in February 2015 into a foreign fighting battalion with German, French and Finnish individuals and that that was where he saw the reality of IS and that the foreign fighters were "cannon fodder" sent there to die. He then described how he was imprisoned in Raqqah because it was believed by IS that he was a spy and that he gave in and said he did not want to leave and that he did not want to fight. He was then transferred to the Military Police where he worked for a year. He said that he was looking for a way out intending not to kill anybody and that in fact he did not kill anybody. Whilst he was there, he had a Kalashnikov and a military uniform.

31. The judge then also referred to the fact that, when he came back, the appellant sought to distance himself from various things that he had said to the Press, including in that interview, and, in particular, to what he said when he was arrested and interviewed on his return to this country. Much of this was untruthful. Among other things, he denied becoming a member of IS. He said he did not join them or swear allegiance to them, but he was a civilian within the territory they controlled. He claimed he did not handle any firearms and that he did not receive training. He claimed that he was forced to do the Sky News interview by Syrian factions. He said he had been tortured by them to say that he had fought for IS in battles. The judge said he gave a variety of reasons for why what he had said previously in his accounts of his time in Syria was not the truth.

32. All that formed part of the background to which the judge had regard when he was forming his assessment of whether or not there was a significant risk to members of the public of serious harm likely to be occasioned by the commission of this appellant of further specified offences.

33. In considering the pre-sentence report, the judge acknowledged that the author made a number of significant observations that might point both ways, and he gave examples of that. The author had said it was difficult to fully analyse the appellant's version of why he did what he did, because he had not seen any hard evidence of his version of events, save for what he had told the author of the report in an interview, and what he had said to the prison staff, the court and the media. The author described him as "very young" at the time he went to Syria and extremely immature, believing what he was told by IS until he claimed he had changed his mind when he saw the reality of what was happening. The impression given by the author of the report was that he is still immature for someone of his age and still does not seem to fully realise the seriousness of the offence. All those matters pointed in the direction that Mr Blaxland urges upon the Court.

34. However, the author of the pre-sentence report went on to say:

> "Most importantly, I still have no real explanation as to why he returned to the UK when he could have stayed free in other parts of the world. Currently, his risk is so unknown, we have no real idea of what his intentions are now, back in the UK, what skills he has learned and whether he intends to make use of them here. I have concerns about his thinking and mindset and his attitude to violence. In interview, he was very matter of fact in discussing these issues, but he was not particularly forthcoming about anything he witnessed or participated in in any great detail. Until he

> has been sentenced and fully assessed, the risk to others, in my view, remains high."

The judge then went on to refer to a later part of the same section of the pre-sentence report in which the author said that the appellant had told him (the author) that he no longer believes in violence and the politics and ideas of IS, and that he claimed now to hold more mainstream Muslim views despite his past views. He said that he did not support IS or any other terrorists acts and that he regretted his youthful ideas and, "he told me that he understood what he can be seen to have done was dangerous to society". He presented as articulate, forthcoming and deep thinking in interview and was prepared to discuss many things which the author found positive.

35. Ultimately, despite that, the author of the pre-sentence report came down on the side of assessing the appellant as *dangerous*. He expressed the view that the appellant posed a high risk of serious harm to members of the public and that he posed a potential risk to the public should he revert to the views which he previously held.

36. It is clear that the judge carried out a totally holistic assessment of the contents of the report, both positive and negative, before reaching a view about the risks this young man continues to pose to members of the public. Bearing in mind what was said in Choudhury and in the light of the way in which the judge approached matters, having regard to all of that material and to the character references which were put forward on behalf of the appellant, it is impossible to say that he did not take into account everything that he should have taken into account in determining *dangerousness*. He was in the best position to reach a view about something like that.

37. Although Mr Blaxland has said everything that possibly could have been said to seek to persuade us that the judge got the assessment wrong, it cannot be said by this Court that his finding of *dangerousness* was unjustified. He balanced the effects of age and immaturity against the appellant's thinking and mindset as displayed to the author of the pre-sentence report. It is also very clear from the way in which he expressed himself that the learned judge made up his own mind on the question, not just on the basis of the views of the author of that pre-sentence report but on the basis of all the material that had been put before him, including the material referred to earlier in his sentencing remarks, encompassing the different accounts that were given by the appellant to various people at various times in relation to what happened in Syria and his reasons and motivations for coming back.

38. In the light of all of that, although Mr Blaxland said everything that could be said in order to persuade us to interfere with the learned judge's assessment, we do not consider that this is one of those cases in which it would be appropriate for the Court to do so; indeed, although it is not for us to make our own assessment of *dangerousness*, we would endorse the learned judge's view in that regard.

39. For those reasons, the judge was entitled to pass the sentence that he did. It was neither wrong in principle nor manifestly excessive. This appeal is therefore dismissed.

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