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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 16th April 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE PICKEN

and

MRS JUSTICE FARBEY DBE

R E G I N A

- v -

HUSNAIN RASHID

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M N Mian QC appeared on behalf of the Applicant

Mr A Richardson appeared on behalf of the Crown

J U D G M E N T
(Approved)

Tuesday 16th April 2019

LORD JUSTICE HOLROYDE:

1. This is a renewed application, following refusal by the single judge, for leave to appeal against life sentences imposed for terrorist offences.

2. On 31st May 2018, in the Crown Court at Woolwich, the applicant, who is now 32 years old and without previous convictions, pleaded guilty to three offences contrary to section 5 of the Terrorism Act 2006 (counts 1, 2 and 3) and one offence contrary to section 1 of that Act (count

4). The particulars of the offences which he admitted were as follows. Count 1:

"HUSNAIN RASHID between the 28th January 2017 and 23rd November 2017 with the intention of committing acts of terrorism engaged in conduct in preparation for giving effect to that intention namely:

- i. Messaging individuals he believed to be in Islamic State territory;
- ii. Seeking advice as to routes to travel to Syria and Turkey;
- iii. Saving money in order to travel;
- iv. Purchasing equipment;
- v. Seeking to obtain tazkiyah to join Islamic State."

We pause to note that "seeking to obtain tazkiyah" means seeking an individual to vouch for the applicant as a prospective member of Islamic State.

3. The particulars of count 2 read:

" HUSNAIN RASHID between the 27th October 2016 and 23rd November 2017 with the intention of assisting another to commit

acts of terrorism engaged in conduct in preparation for giving effect to that intention, namely sending a Telegram user with the username Rapunzel messages containing:

- i. links to videos setting out how to use a laser to assist in shooting down aircraft;
- ii. links to documents and materials providing details of how to manufacture an explosive in a confined space; and
- iii. a link to documents and materials providing details of how to jam anti-tank ground missiles."

4. The particulars of count 3 read:

" HUSNAIN RASHID on or before 22nd November 2017 with the intention of assisting another to commit acts of terrorism, engaged in conduct in preparation for giving effect to that intention, namely:

- i. Created a secure and impenetrable cache of digital devices,
- ii. Created the 'Lone Mujahid' brand,
- iii. Created the Lone Mujahid publication,
- iv. Created and administered a network of Telegram channels aimed at Lone Mujahid and aspiring Lone Mujahid,
- v. Uploaded a number of resources, including terrorism publications, to his channels to assist others' attack planning,
- vi. Analysed and dissected the attack at Besiktas Stadium and researched ways in which the attack could have been carried out more successfully and how it could be carried out at similar venues within the UK."

5. Finally, count 4 (the charge under section 1 of the 2006 Act) was particularised as follows:

" HUSNAIN RASHID between the 26th November 2016 and 23rd November 2017 published statements and at the time of doing so intended members of the public be directly or indirectly encouraged to commit, prepare or instigate acts of terrorism, namely:

- i. a post of a photograph of the Burmese Ambassador to the United Kingdom, with the address of the Burmese Embassy saying 'you know what to do';
- ii. a post urging people to 'fight and spill the blood to the apes in your land' with a message stating 'start planning, start scouting targets, start monitoring entry/exit routes, start preparing tools and weapons/explosive. You have available to you Book of Terror, Art of War, OSJT Trainer V1, OSJT Terror V2, Material by other Ikwah, videos, PDFs';
- iii. a photograph of Prince George, along with the address of his school, and a black silhouette of a jihad fighter and message 'even the royal family will not be left alone';
- iv. a map of Sixth Avenue in New York and message stating 'New York Halloween Parade. Have you made your preparations? The Countdown begins'."

6. The applicant initially pleaded not guilty to those charges. He only changed his plea at trial after a detailed opening speech by prosecuting counsel.

7. We have quoted the particulars of the counts in the indictment because they convey a clear impression of the sort of activity in which the applicant had engaged. Between 2016 and his arrest in November 2017, he used a number of online Telegram channels and chat groups to post an enormous quantity of terrorist-related materials with the aims of providing online material for those preparing to commit acts of terrorism and of offering as much assistance, encouragement and support as he could. His many online postings included glorification of terrorist atrocities committed by others, and he encouraged and incited his readers to plan and commit terrorist attacks of their own. He created the "Lone Mujahid" channel to provide resources with a view to assisting lone wolf attackers. He offered assistance with a wide variety of methods of attack which could be committed by a single individual, including attacks with bombs, chemicals, poison, vehicles, weapons and knives. Significantly, in our view, some of his readers consulted him online, seeking his advice on poisons and explosives. He was engaged in the creation of an online

magazine which he intended to call "The Lone Mujahid".

8. The applicant also communicated over the internet with a terrorist known as "Rapunzel" (a UK national previously known as Omar Ali Hussain), who was fighting jihad in Syria. The applicant posted to Omar Ali Hussain materials which could assist terrorist activity in the ways particularised in count 2 and asked him to pass them on to the appropriate department. In return, the applicant sought assistance from Omar Ali Hussain as to how the applicant himself could travel abroad to fight jihad.

9. The applicant also sought to incite, encourage and inspire others to commit lone wolf terror attacks. He viewed the carrying out of attacks in western countries as the only acceptable alternative to fighting jihad abroad. His online proposals ranged across international borders and drew no distinction between adults and children, soldiers and civilians as potential targets. His suggestions included, for example, injecting poison into supermarket ice creams and targeting Prince George at his first school. The common theme of these postings was to encourage what might practicably be accomplished by an individual acting alone.

10. The applicant also disseminated terrorist publications with a view to encouraging others to commit acts of terrorism, including editions of a magazine which provides information on bomb making, amongst other topics.

11. The applicant sought to travel overseas. He made preparations as particularised in count 1. At the time of his arrest, he had not obtained the necessary backing of another to join a fighting group of Islamic State.

12. In his sentencing remarks the judge referred to the applicant's activities as "prolific" and said

that he had, amongst other things, provided "an unstoppable flow" of incitement and encouragement to others to commit acts of terrorism.

13. Police officers went to the applicant's home on 22nd November 2017. He attempted to throw his mobile phone into a neighbouring property, but the phone was recovered and examined. It contained a large quantity of terrorist-related material. Over the period covered by the indictment of a little over a year, the mobile phone contained 290,000 messages. Other computer equipment was also seized and examined. This included a laptop with an encrypted partition (amounting to about 25 per cent of the total available space on the hard drive), which could only be accessed by the use of a password.

14. Following his arrest, the applicant declined to comment throughout a series of interviews. He refused to provide the password for any of his devices. He entered, as we have said, not guilty pleas which he maintained until after the trial had begun.

15. At the sentencing hearing, which took place on 13th July 2018, the judge had the assistance of two reports. A pre-sentence report, dated 11th July 2018, assessed the applicant as posing a high likelihood of further offending of a similar nature and a high risk of serious harm to others. The author of the report assessed the applicant as having identifiable thinking and behavioural issues which were linked to his offending behaviour and the risk of harm to others. The author took the view that "what started off as a citizen's concerns with the Syrian war and the harm inflicted upon innocent Syrian civilians quickly turned into his identification of Islamic extremist ideologies". The author of the report felt that the applicant may have enjoyed receiving a level of esteem and notoriety from others as a result of his online publications. Indeed, the applicant told the author of the report that he had been contacted by "admin members of ISIS" and became aware of the videos and media publications which he then helped to disseminate, thus contributing

towards his own radicalisation. The author felt that the applicant would benefit from a particular programme, which could be delivered in custody, aimed at de-radicalisation.

16. The judge also had a detailed assessment provided by Imam Dr Alyas Karmani, in which the applicant was described as "a highly socially excluded and isolated individual" with very limited social experience and a puritanical approach to his Muslim faith which added to his isolation. The Imam suggested that the applicant lacked both real world experience and a concept of the consequences of his actions. The lack of direction in the applicant's life was central to the reason why he had become absorbed in his online world of violent extremism. The Imam went on to say that the applicant had first been exposed to concepts such as armed jihad in 2008 and had become engrossed in it. However, his sole reference point for understanding what was happening in Syria and Iraq was online material posted by Islamic State which "provided him a very narrow self-affirming narrative".

17. The Imam gave the following assessment of the applicant:

"[He] is a self-radicalised individual and not an embedded ideologue and extremist supporter of ISIS, and as such I feel he can be easily re-educated through a re-education programme and enabled to become a fully integrated member of society. I believe he does not fully embrace the ISIS ideology but rather found it an opportunistic way to promote his own mission which was to raise awareness of the suffering of the Syrian people."

18. Later in his assessment report, the Imam expressed his assessment of risk in the following terms:

"I do not believe the [applicant] is an imminent danger and risk to society and that he has recognised the grave error of his ways and the misguidance of his behaviour and has distanced himself from his past actions.

I believe that [the applicant] has begun a path of de-radicalisation to violent extremism and recognises that ISIS and their ilk represent a perverted understanding of Islam akin to the 'Khawarij' (deviated groups) and that through further re-education will be resilient to the ideology and will not re-offend.

[The applicant] is committed to redressing the error of his ways by promoting the correct understanding of Islam and averting others from the path of extremism; as such I feel with the correct guidance and handling, [the applicant] will be a very good asset in refuting the ISIS and related ideology.

Whereas I believe that [the applicant] should be given a proportionate punishment for his offences, I strongly believe that through a programme of re-education and de-radicalisation he can play a more productive role as a member of society as someone who promotes the correct values of Islam and refutes and challenges extremist notions.

Based on my assessment, I believe that [the applicant] is an ideal candidate for successful risk reduction and re-education."

19. Having heard submissions, the judge found the applicant to be a dangerous offender, as that term is defined for the purposes of the Criminal Justice Act 2003. In his clear and thorough sentencing remarks, the judge explained that the effect of section 225 of the 2003 Act is that where a dangerous offender is convicted of an offence which carries life imprisonment (as the offences charged in counts 1, 2 and 3 do), and the court considers that the seriousness of the offence or the offences justifies the imposition of imprisonment for life, then the court must impose a sentence of imprisonment for life. The judge reminded himself, rightly, that life imprisonment remains a sentence of last resort. He took into account the two reports to which we have referred and accepted their account of the factors which had led to the applicant's radicalisation and long-standing obsession with violent extremism. The judge continued (at page 6E of his sentencing remarks):

"I am sure that someone who is prepared to encourage others to commit the most serious terrorist acts, as you did over an extended period of time, with your characteristics and thought processes

presents a significant risk of serious harm by the commission of further specified offences to members of the public, both in the United Kingdom and abroad."

The offences which the applicant had committed were extremely serious and in the judge's view it was not possible to say when the applicant would cease to be a danger.

20. The judge then considered the Sentencing Council's definitive guideline for sentencing in cases of this type. He regarded counts 1, 2 and 3 as falling within category B1 of the guideline relating to offences under section 5. The guideline indicated, therefore, a starting point of life imprisonment, with a minimum term of 25 years' custody, and a range of minimum term from 20 to 30 years. He identified a number of aggravating features. Count 4, in the judge's assessment, fell within category A1 of the guideline applicable to an offence contrary to section 1. The starting point was, therefore, five years' custody, with a range from four to six years. Again, the judge identified a number of aggravating features. The only mitigation available to the applicant was his lack of previous convictions.

21. The judge concluded that he must impose life imprisonment on counts 1, 2 and 3. The appropriate minimum term after trial would have been 28 years. The appropriate sentence after trial on count 4 would have been five years. The judge reduced those sentences by ten per cent to reflect the late guilty pleas. Accordingly, on each of counts 1, 2 and 3 he imposed sentences of life imprisonment, with a minimum term of 25 years (less days spent remanded in custody). On count 4, he imposed a determinate sentence of four and half years' imprisonment.

22. The grounds of appeal against sentence advanced by Mr Mian QC on behalf of the applicant, whom he represents here as he did in the court below, are that the judge was wrong to make a finding of dangerousness; that the judge was wrong to categorise the offences charged in counts

1, 2 and 3 as category B1 offences; that the imposition of life sentences on counts 1, 2 and 3 was manifestly excessive; and that the minimum term was manifestly excessive. Following refusal of leave by the single judge, each of the grounds is now renewed. We are grateful for the submissions which we have received from Mr Mian and from Mr Richardson on behalf of the respondent.

23. In oral submissions in support of his first ground, Mr Mian relies heavily on the contents of the two reports to which we have referred, both of which recognised the possibility of de-radicalisation of the applicant and both of which recorded his commitment to receiving assistance in that regard. In the light of that evidence, submits Mr Mian, the author of the pre-sentence report was wrong in the assessment of future risk and the judge was wrong to find the applicant to have been dangerous. Even if the finding of dangerousness could be justified, Mr Mian points out, correctly, that a life sentence does not follow as a matter of course: an extended determinate sentence was also available to the judge and, in Mr Mian's submission, should have been imposed.

24. As to the application of the guidelines, Mr Mian submits in relation to count 1 that the applicant had shown no sign of actually travelling abroad over the period of nearly a year during which he had been in communication with Omar Ali Hussain; and that the harm which the judge found to be established was far too remote. In Mr Mian's submission, the appropriate guideline category for count 1 should have been C3. In relation to counts 2 and 3, Mr Mian points out that section 5 is a broad offence and submits that it is essential for the sentencing judge to pay proper regard to the actual criminality. The actual criminality in counts 2 and 3, he suggests, could equally well have been covered by charges of encouragement and dissemination of terrorist materials. He accepts that count 3 is more serious than count 2, but in each case he submits that the judge's categorisation of the offences was wrong. He argues that the appropriate category for the offence in count 2 was C3 and for that in count 3 was C2. He emphasises again that a sentence of life imprisonment is a sentence of last resort.

25. Offences contrary to section 5 of the Terrorism Act 2006 are serious specified offences. Accordingly, the judge was required to assess, in accordance with section 229 of the Criminal Justice Act 2003, whether there is a significant risk to members of the public of serious harm occasioned by the commission by the applicant of further specified offences.

26. The stark facts were that a man with no previous convictions, initially motivated by distress and anger at the fate of innocent persons caught up in the Syrian civil war, had within a comparatively short period of time become so thoroughly radicalised that he persistently engaged over a period of more than a year in doing what he could to encourage others to commit terrorist atrocities and to prepare to travel abroad himself in order to engage in combat.

27. With respect to Mr Mian's submissions, the level of criminality (to adopt his term) shown in the evidence relating to these three counts was, in our judgment, much more serious than Mr Mian's submissions would suggest. The nature of the offending and the extent of it provided a clear foundation for the judge's finding of dangerousness. So, too, did the assessment in the pre-sentence report of a high risk of further offending and the causing of serious harm to others. So, too, did the Imam's assessment of the applicant as an introverted loner with an extremely narrow world view and a rigid black and white view of world affairs.

28. The judge of course had to consider, and clearly did consider, the indications in both reports that the applicant could benefit from appropriate training and had shown or had expressed willingness to do so; and in particular to take into account the Imam's assessment that the applicant could successfully be de-radicalised. It is to be noted, however, that the Imam's assessment gave no indication as to how long that process might take. We think that it is relevant to note that the applicant's refusal to reveal his computer passwords (in particular the password protecting that

part of his laptop hard drive to which we have referred), coupled with the delay in entering the eventual guilty pleas, suggest that any de-radicalisation will be a slow process. In those circumstances, we have no doubt that the judge was entitled to make the finding of dangerousness.

29. We turn to consider the application of the sentencing guideline. In relation to count 1, the judge assessed the applicant's culpability as category B on the basis that the applicant's plans to travel to Syria and there to support ISIS were "well advanced and likely to be carried out but for your arrest". Mr Mian, as we have said, challenges that assessment. He points out that over a period of about eleven months the applicant had neither secured tazkiyah, nor even booked tickets to any destination.

30. The judge assessed count 2 as category B culpability, on the basis that the applicant was "co-ordinating others to take part in terrorist activity abroad". This, too, is challenged by Mr Mian who suggests that it is unrealistic to regard the readily available internet links which the applicant posted to Omar Ali Hussain as being of any practical value to ISIS.

31. As to count 3, the judge assessed culpability as category B. He said:

"It is hard to overstate the conduct captured by count 3. You sought to co-ordinate others, undertaking lone wolf-style attacks both in the UK and elsewhere".

Mr Mian submits that count 3 involved at most category C culpability "acts of significant assistance or encouragement of others".

32. The judge assessed harm in relation to each of the three counts as category 1, because multiple deaths were risked and were very likely to be caused. In this regard the judge said:

"The sheer scale of your conduct was such that your conduct was very likely to be responsible for multiple deaths arising out of lone wolf style attacks from those you sought to encourage to undertake attacks in the West on forces fighting in Syria, or as a result of your own combat on behalf of ISIS in Syria."

33. Mr Mian argues that in counts 1 and 2 the level of harm was category 3, because at least one death was risked but was not very likely to be caused; and in count 3 was category 2, because multiple deaths were risked but not very likely to be caused. Mr Mian's overall submission, accordingly, is that the appropriate sentences would have been determinate custodial sentences or extended determinate sentences.

34. Mr Richardson, for the respondent, submits that the judge correctly analysed the offences and applied the sentencing guideline appropriately.

35. Reflecting upon these submissions, we accept that the judge did fall into error in some aspects of his application of the sentencing guideline. In relation to count 1, we see force in the point that over a period of about eleven months the applicant had not reached the stage of making firm plans for travel abroad and had not found anyone to recommend him to ISIS. Nonetheless, the judge was entitled to regard this as a culpability B offence on the basis that the applicant was acting alone in terrorist activities, where the preparations were advanced in the respects particularised in count 1 and likely to have been carried out if the applicant had not been arrested. In our view, however, it could not be said that the applicant's planning had reached the stage where multiple deaths were very likely to be caused. If his intentions had come to fruition, multiple deaths were certainly risked, but in our view the appropriate harm category was 2.

36. In relation to count 2, we do not think that the degree of assistance which the applicant's

activities provided to Rapunzel and others fighting for ISIS can be dismissed in the way that Mr Mian suggests. The links which the applicant supplied would be of real value to those engaged in fighting jihad, and risked multiple deaths. The judge was not, however, correct to find that the applicant had co-ordinated others to take part in terrorist activity. This involves a question of degree. In our view, by sending links to Rapunzel for him to pass on to others, the applicant had engaged in acts of significant assistance or encouragement of others but could not be said to be co-ordinating their activities. Accordingly, this offence was more correctly categorised as 1C.

37. We agree with the judge that count 3 was a harm category 1 offence. The scale and frequency of the applicant's internet postings were such that the judge was entitled to find that it was very likely that at least one of those incited and encouraged by the applicant would cause multiple deaths. That, after all, was the purpose for which the applicant unremittingly posted message after message over a period of about a year. Again, however, we do not think that the applicant's online activity can properly be described as co-ordinating the activities of whoever might read his posts. We again take the view that the appropriate categorisation was 1C.

38. It follows that for each of counts 1, 2 and 3 the guideline identifies a starting point of life imprisonment, with a minimum term of fifteen years' custody and a category range for the minimum term of between ten and twenty years. We agree with the judge that each of the three offences was aggravated by the applicant's repeated accessing of extremist material, his communication with other extremists, his deliberate use of encrypted communications to facilitate the commission of the offence and/or to avoid detection, his indoctrination and encouragement of others, and his attempt to disguise his identity to prevent detection. We recognise that some of those aggravating features are already captured to a degree by the categorisation of the individual offences. Nonetheless, we have no doubt that the aggravating features outweighed the sole mitigating factor of the applicant's lack of previous convictions.

39. Although we have disagreed with some aspects of the judge's categorisation of the offences, we are satisfied that he was entitled to come to the conclusion that the seriousness of these three offences, taken together, was such as to justify the imposition of a sentence of life imprisonment. Such a sentence is the starting point recommended by the guideline. Although sentences of life imprisonment are sentences of last resort, the judge was entitled to conclude that they were necessary in this case.

40. For those reasons, we conclude that the sentences of life imprisonment must be upheld but that the minimum term to be served must be reduced. In our judgment, each of the three offences would have merited after trial a sentence of life imprisonment, with a minimum term of twenty years. For guilty pleas, which were not entered until after the opening speech for the prosecution had been concluded, we take the view that the applicant could receive, at most, a reduction of five per cent. The minimum term of twenty years is thus reduced to one of nineteen years.

41. We should add for completeness that the original application for leave to appeal against sentenced was lodged out of time. However, the delay was short and an explanation has been given, which we accept.

42. We therefore grant leave to appeal. We allow the appeal to the following extent. On each of counts 1, 2 and 3 we quash the sentences of life imprisonment, with a minimum term of 25 years (less the days spent remanded in custody) and on each of those counts we substitute a sentence of life imprisonment, with a minimum term of nineteen years (less the time spent remanded in custody). The number of days spent in custody was 219. Accordingly, the minimum term will be one of eighteen years 146 days.

43. The sentence on count 4 remains a determinate sentence of four and a half years' imprisonment.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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