IN THE WINCHESTER CROWN COURT

THE QUEEN

-v-

ZAHID HUSSAIN

SENTENCING REMARKS OF MR JUSTICE SWEENEY

Zahid Hussain, you are 29 years old and have no previous convictions.

In May of this year, at the conclusion of your trial in the Birmingham Crown Court, you were convicted, on overwhelming evidence, of the principal charge that you faced, namely engaging in conduct in preparation for giving effect to your intention to commit acts of terrorism, contrary to s.5 of the Terrorism Act 2006.

I must now sentence you for that offence, which carries a maximum sentence of life imprisonment.

Having presided over your trial, and applying principles set out in *King* [2017] 2 Cr.App.R. (S.) 6, I am sure of the following facts:

1. At all material times, you were living at your parents' house in Alum Rock in Birmingham – where your bedroom was on the ground floor.

2. By the autumn of 2014 you had become bedroom radicalised and a supporter of ISIS, had decided to commit acts of terrorism in this country by using explosives to cause death and/or serious injury, and you remained an extremist throughout the period of your offence.

3. In the period between November 2014 and your eventual arrest on 9 August 2015 you variously engaged in:

    (a) Using your bedroom as your base of operations and improvised laboratory.

    (b) Acquiring viable recipes for a number of high explosives – in particular, the primary high explosive HMTD (in sufficient quantity to make at least eight detonators); a plastic explosive; and the secondary high explosive ANFO (the ingredients of which are ammonium nitrate, which is often found in domestic cool packs, mixed with petrol or diesel fuel).

    (c) Researching and purchasing a number of the ingredients and materials required to produce both HMTD and ANFO.

    (d) Concentrating hydrogen peroxide by boiling it on a hotplate, in order to use the concentrated form in the manufacture of HMTD.

    (e) Making a substantial 'pressure cooker' bomb containing what you understandably believed to be 3.8kgs of the secondary high explosive ANFO and what you intended to be shrapnel – namely 1.6kgs of nails, screws, components from a socket set, bolts, and other metal objects.

(f) Making, after earlier testing, four viable improvised explosive igniters (each consisting of a modified fairy light, chlorate-based match-head composition, sugar and wax) each of which was capable of detonating a primary high explosive).

(g) Making sufficient chlorate-based match-head composition for over 60 more such igniters.

(h) Cutting down five pen casings – so that they could be used, with a primary high explosive, and an improvised explosive igniter, as a detonator for a secondary high explosive.

(i) Modifying a mobile phone so that it could be used to initiate an improvised explosive igniter.

(j) Modifying a wireless doorbell apparatus so that it could be used, with a detonator which included an improvised explosive igniter, to cause an explosion up to 100 yards away.

(k) Carrying out reconnoitres in the Woodlands Road area – close to the main railway line between Birmingham and London.

(4) When you were arrested outside your family's house in the early hours of 9 August 2015 you had jettisoned the knife and crowbar that you were carrying, but were found to be in possession of four pieces of paper – on each of which you had made handwritten notes – respectively consisting of lists of chemicals and the viable explosive recipes; a sketch map of the Woodlands Road area; a list of user names relating to the social media site KIK; and references connected with the TOR internet browser (which effectively enables the user to use the internet without trace).

(5) Subsequent searches of your bedroom revealed, amongst other things:

(a) That you had used the bedroom to carry out both your experiments and construction work in relation to explosives and related devices.

(b) The presence of the various items that you had made or modified, including the pressure cooker bomb, together with the fact that you had purchased cool packs in January and June 2015.

(c) That you had 4 books – the contents of which were concerned with sabotage and guerrilla warfare tactics including, in one instance, attacks on railway lines.

(d) That you had installed, and re-installed on a number of occasions, the TOR internet browser and had used it on many occasions – amounting to an average of three times per day.

(e) That you had visited the Isdarat TV website (an ISIS version of YouTube) on some 1851 occasions.

(f) That amongst a large number of images on your computer there were nearly 2000 relating to terrorism – including ISIS, conflict injuries, and a picture of the Boston bomber (who had used a pressure cooker device).

(6) When your 'pressure cooker' bomb was examined by an expert it was discovered that the "explosive" element in it was inert as it had been made using a mixture of urea and diesel,

rather than ammonium nitrate and diesel – because, unbeknown to you, the cool packs that you had purchased contained urea (which is hard to distinguish from the ammonium nitrate that you believed that they contained, and which you intended to use). Had the device been made with ammonium nitrate it would have been capable of causing a significant explosion. In particular, if detonated in a crowded area it would have been potentially fatal to those within metres of it, and would have potentially caused serious injury amongst those up to tens of metres away.

(7) By the time of your arrest, you had not formed a specific plan as to when and how you were going to cause one or more explosions but, had the pressure cooker bomb not been inert, you would have had the capability to cause at least one explosion within a relatively short time, and more thereafter.

(8) You deliberately lied to the police in interview – falsely claiming that you intended to sell the pressure cooker bomb to The Sun newspaper; that the improvised explosive igniters and the chlorate-based match-head composition had been made for the purpose of experimentation with a view to creating a fake detonator for the 'pressure cooker' bomb; and that the modified doorbell device had also been made purely for the purpose of experimentation.

Psychiatric issues aside, comprehensive guidance on sentence for offences contrary to s.5 of the 2006 Act is given in *Kahar* [2016] 2 Cr.App.R. (S.) 32.

As the Court of Appeal made clear in that case, conduct threatening democratic government and the security of the State has a seriousness all of its own. The purpose of sentence in relation to such offences is to punish, deter and incapacitate, whilst at the same time ensuring that the sentence is not disproportionate. In your case culpability is extremely high as more than one explosion was clearly intended, and the harm intended to be caused was ultimately loss of life or serious injury to the person. The starting point, psychiatric issues aside, is therefore one of life imprisonment.

You were clearly deeply radicalised and, over a period of at least nine months, were strongly committed to what you were doing, aspects of which involved planning and research and were quite sophisticated – albeit that, in the end, the 'pressure cooker' bomb that you made was actually inert. That, however, was not what you intended.

It is common ground between the parties that your offending is not a precise fit in any of the Levels of offending identified in *Kahar.*

However, applying the principles identified in that case, and in view of the findings of fact that I have made, I have reached the provisional conclusion, I repeat psychiatric issues aside, that, in the terms of the Criminal Justice Act 2003 you are a dangerous offender and that your offence is on the borderline between the bottom of Level 3 and the top of Level 4.

The psychiatric issues arise, in short, against the following background.

In January 2015, i.e. during the course of your commission of the offence, you wrote a letter to your GP in which you variously stated that you had very bad mental health problems, namely social anxiety disorder, depression and very bad paranoia; that you did not feel comfortable with people and did not go out of the house except at night when you always carried a knife with you; that you always felt that someone was following you and heard a voice in your head with which you argued; that you felt hopeless and your anger was uncontrollable; that pictures in your mind of stabbing people brought some relief; that you had had the problem for a long time; and that you could not take it anymore and needed help.

Two appointments were arranged with a psychiatrist but you did not attend either of them.

After your arrest, you were psychiatrically assessed – during the course of which you variously asserted, amongst other things, that you had been unwell for about five years; that you were hearing voices and experienced subliminal messages from the television and the internet (including ISIS twitter feeds which told you to do things and to look for things in specific places); that ISIS were copying your ideas and that the government were monitoring your activities; that you had made a map and believed that there was a drainpipe that hid something; that there was no bomb making equipment in your bedroom, it was all scrap; then that you had obtained an explosive recipe from the internet and had written it down; that you had peroxide to make a bomb to protect yourself, but had no intention to make a live bomb; and that you had concentrated hydrogen peroxide because you just wanted to be prepared in case you needed it.

In the result, it was concluded that you were psychotic, and you were admitted to the Raeside Clinic, under the care of Dr Maganty. You were later moved to the Tamarind Centre, where you have remained since – under the care of Dr Maganty and then Dr Memon. During the initial months at the Tamarind Centre you were noted to be psychotic – albeit claiming at one point that the hydrogen peroxide was for mouth ulcers. A diagnosis of treatment-resistant paranoid schizophrenia was made.

Prior to trial there was an issue as to your fitness to stand trial. Dr Joseph was instructed for the prosecution but you declined to be interviewed by him. He concluded that you were fit. Following a contested hearing, Holroyde J concluded that you were fit to stand trial.

No psychiatric issue was raised at your trial – which you initially attended, but then chose not to attend. Arrangements were however made for you to observe the trial by CCTV from the Tamarind Centre – which you chose to do on some days but not on others. You chose not to give evidence at your trial.

At the conclusion of the trial I ordered the provision of reports as to disposal from Drs Maganty, Memon and Joseph – which were provided, along with all their previous reports. Again, however, you refused to be seen by Dr Joseph.

On 31 July 2017, I heard evidence from Dr Memon and Dr Joseph, and argument from the parties. In the result, I ordered the provision of a Court psychiatric report from Dr Cumming – warning you that in the event that you refused to be interviewed by Dr Cumming I would be likely to draw adverse inferences against you.

In the result, you did permit Dr Cumming to interview you for a time and he duly provided a report. At a further hearing last week, Dr Cumming gave evidence and was cross-examined by the prosecution. Dr Joseph provided a further report and there were further submissions by the parties.

I have taken into account the content of all the various reports, and of the evidence given by the three psychiatrists.

In short, Dr Maganty and Dr Memon agree that your actions were directly driven (or most significantly driven) by psychotic mental illness, without which you would not have committed the offence; that the resolution of your psychosis is likely to diminish your risk of violence to others; and that you continue to suffer from chronic treatment-resistant paranoid schizophrenia, for which you receive daily medication. They therefore invite consideration of disposal by the making of a hospital order under s.37 of the Mental Health Act 1983 and a restriction order under s.41 of that Act rather than a Hospital and Limitation Direction under s.45A – as they see the risk that you pose to others as

dependent on your mental illness which will require many years of treatment in hospital for a recovery to be achieved, if at all, and assert that for your risks to be safely managed you require lifelong effective and assertive care with indefinite oversight by the Ministry of Justice. They point out that any conditional discharge would be subject to strict conditions and that were you to show any sign of relapse or increased risk you could be recalled to a secure hospital within hours. Whereas they argue that under a s.45A order, which they suggest would be inferior, you would be rehabilitated back to the community via the prison estate and then ultimately released by the Parole Board – but with no mental health or social services required to report on you on a statutory basis, and no power to recall you to hospital should you relapse. Rather, you would be supervised in the community by a probation officer who would not be qualified or experienced in treating mental illness.

Dr Joseph indicated that he had not tried again to interview you as he had little doubt that you would refuse. He proceeded upon the basis that in convicting you the jury had rejected any psychotic explanation for your actions. He concluded that your offending and risk to others was not related to mental illness or that, if it was, it was not confined solely to any mental illness which was likely to be exaggerated. He therefore concluded that, when considering the safety of the public, it would be safer for you to be made subject to a Direction under s.45A – with any eventual release being under the Parole Board who will be able to take all factors into account.

In his evidence, Dr Cumming recognised the difficulty of the Court's decision as to disposal. Whilst alert to the risk of faking, he supported the diagnosis of paranoid schizophrenia and concluded that your illness has increasingly the hallmarks of a chronic profile, and that there is some evidence that it is resistant to treatment. In the end, he favoured the making of orders under sections 37 & 41 of the 1983 Act, but accepted the existence of good arguments in support of the making of a s.45A Direction

In a further report, and albeit that he had originally accepted that you were suffering from mental illness, Dr Joseph invited consideration of the fact that you were considering who to talk to on the basis that you would only engage with psychiatrists who you considered would support a hospital disposal, and that you were likely to be manipulating Dr Cumming. He expressed concern that three psychiatrists were recommending a s.37/41 disposal in the face of what may well be a malingered mental illness, but concluded that if the court is satisfied that you are currently suffering from a mental disorder the appropriate disposal is by a Direction under s.45A as the risk is too great that if you are made the subject of a s.37/41 disposal you will make a swift "recovery" so that a First Tier Tribunal has no option but to conditionally discharge you.

All the psychiatrists and the parties have rightly proceeded upon the basis that the leading case on these issues is *Vowles* [2015] 2 Cr.App.R (S.) 6. I have also considered the other cases that have been drawn to my attention.

In *Vowles* the court set out the matters that fall for consideration, as follows:

1. A judge must carefully consider all the evidence in each case and not feel circumscribed by psychiatric opinions.

2. The judge must therefore consider, where the conditions under s.37(2)(a) are met (namely whether the court is satisfied on the evidence of two registered medical practitioners that the offender is suffering from mental disorder, and that the nature or degree of it makes it appropriate for him to be detained in a hospital for medical treatment, and appropriate medical treatment is available) what is the appropriate disposal in view of the matters to

which the judge will invariably have to have regard, including – the extent to which the offender needs treatment for the mental disorder from which he suffers; the extent to which the offending is attributable to the mental disorder; the extent to which punishment is required; and the protection of the public including the regime for deciding release and the regime after release. There must always be sound reasons for departing from the usual course of imposing a penal sentence, and the judge must set these out.

3. The judge must pay very careful attention to the different effect in each case of the conditions applicable to and after release.

4. The fact that two (or more) psychiatrists agree that a hospital order with restrictions under ss. 37/41 is the right disposal is therefore never a reason, on its own, to make such an order.

5. In a case where the evidence of medical practitioners suggests that the offender is suffering from a mental disorder; that the offending is wholly or in significant part attributable to that disorder; and that treatment is available; and the judge considers in the light of all the relevant circumstances that a hospital order (with or without a restriction) may be an appropriate way of dealing with the case, the judge must consider matters in the following order:

   (a) Whether the mental disorder can appropriately be dealt with by a Direction under s.45A.

   (b) If it can, the judge should make such a direction.

   (c) If such a direction is not appropriate, it is essential that the judge gives detailed consideration to all the factors encompassed in s.37(2)(b) (ie. that having regard to all the circumstances, the most suitable way of dealing with the offender is by means of a hospital order) and, in particular, where the mental disorder is treatable, once treated the offender would not, in any way, be dangerous, and the offending is entirely due to the mental disorder, a hospital order under ss. 37/41 is likely to be the correct disposal.

I have given all these matters the most careful consideration – including the submissions made about them, orally and in writing, on your behalf – in particular as to the extent of the agreement amongst Doctors Memon, Maganty and Cumming about them.

By reference to <u>all</u> the evidence I have some doubts as to the genuineness of your mental illness but, not being sure about that, proceed upon the basis that you were suffering from paranoid schizophrenia at the time of the offence and continue to do so. I am, however, sure that your offending was not wholly attributable to that disorder – indeed that your offending was only partly attributable to that disorder, the principal driver for which was your voluntary bedroom radicalisation. Even if your offence was in significant part attributable to the disorder, I am sure, against the overall background, that your mental disorder can be appropriately dealt with by a Direction under s.45A, and that there are no sound reasons for departing from the usual course of imposing a penal sentence.

My concluded view therefore is that you are a dangerous offender and in view of the level of the danger that you pose, and the impossibility of predicting when it will come to an end, this is an appropriate case in which to impose a sentence of life imprisonment.

Accordingly, I sentence you to life imprisonment with a minimum term of 15 years.

The notification requirements under Part 4 of the Counter-Terrorism Act 2008 will apply to you for the next 30 years.

I make a Forfeiture Order under s.23A of the Terrorism Act 2000 in relation to all the property listed on the prosecution schedule.

The appropriate Victim Surcharge Order will be drawn up.

Given your absence, I direct that your counsel explains to you the effect of the sentence that I have imposed.

Mr Justice Sweeney

9 October 2017