

Kristofer Kearney

Sentencing Remarks

KK, I have to sentence you for 2 offences of disseminating a terrorist publication, contrary to s. 2(1) of the Terrorism Act 2006.

You pleaded not guilty to these offences when this matter was listed for a PTPH on 31st January 2023. The case was again listed on 1st March at the instigation of your representatives when you pleaded guilty on the basis that you had been reckless as to your encouragement of terrorism. The prosecution case, however, was that you had done so intentionally and accordingly the matter was adjourned for a trial of issue with which I dealt recently and at which you gave evidence. I shall return to this aspect of your case shortly.

Turning to the factual background to this case, on 6th February 2019 you were subject to a ‘ports stop’ under Schedule 7 of the Terrorism Act 2000. You were asked by officers to provide the password to your devices, which included 3 mobile phones, but you refused to do so.

At some time in the next few months you moved with your family to live in Spain. You were summonsed to attend at Westminster Magistrates Court on 2nd July, to answer a charge of failing to provide information to an examining officer, but you failed to attend and a warrant was issued for your arrest.

This is of particular relevance and is clearly an aggravating feature, in that the 2 offences to which you have pleaded guilty were committed by you in January and March 2021, at a time when you were unlawfully at large.

In November 2020 you set up a Telegram channel under the name ‘Charlie Big Potatoes’; Telegram being an encrypted social media platform containing links to documents mainly of

an extreme right wing nature. The channel was live and accessible to the public until September 2021 and as at May 2021, you had 1,642 subscribers.

Count 1 arises out of your posting a page on the channel on 23rd January 2021 which contained links to 89 files, which in the main contained extreme right wing material.

Count 2 concerned your posting of an updated version of that page containing links to 119 documents.

The documents to which links were provided included:

1. Texts by fascists and extreme right wing ideologues;
2. Accelerationist texts which in some cases encouraged political violence and argued that accelerationist revolutionary ideals should not be compromised;
3. Manifestos of extreme right wing terrorists and killers, including Anders Breivik and Brenton Tarrant;
4. Holocaust denial and related texts;
5. Texts by fascist related ideologues;
6. Fiction related to extreme right wing themes;
7. Texts related to conspiracy theorists.

The main themes of your channel concerned:

1. White genocide which white males needed to fight to resist;
2. Nazi and fascist heroes of the past;
3. Antisemitism, including holocaust denial and conspiracy theories such as that Jews were responsible for all the world's ills.

These themes frequently involved violent images, videos and rhetoric, including material that depicted violence as an inevitability and/or threatened and encouraged violence in the context of the battle against white genocide.

An important part of the evidence in this case is in the material set out in the prosecution Timeline which sets out a selection of postings by you in the main between November 2020 and March 2021 which is of relevance in relation to the question of your mindset.

In this country we have lived for many years in a multi cultural society which most people regard as being enriching. Right thinking members of any society regard tolerance, kindness, understanding and inclusivity to everyone, regardless of their background, as being of absolutely fundamental importance.

Much of the material that you have posted entirely negates those values and is extreme, vile, inflammatory, divisive and deeply offensive.

In evidence before me you described yourself as a nationalist and a British fascist but asserted that you did not believe in the use of violence to bring about the changes in the make up of society and the British population.

The issue as to whether you intended to encourage acts of terrorism or were merely reckless in this regard clearly affects the degree of seriousness of your offending as reflected in the Sentencing Guidelines.

In short, your counsel and counsel for the prosecution agree that if intention is proved to the requisite standard, this is a category A2 offence, with a starting point of 7 years and a range of 4-9 years, whereas if it is a case of recklessness, it is a category B2 offence, with a starting point of 4 years and a range of 3-5 years.

In so far as the trial of issue is concerned, I have handed down a lengthy judgment. For the purposes of these sentencing remarks I don't propose to repeat what I said in that judgment but if my sentence upon you were to be the subject of a review, that document would need to be considered. My conclusions were as follows.

My overall impression was that you were, articulate, intelligent and thoughtful. You were also fervent and fanatical about your beliefs which you had clearly honed over many years and played a very central part in your life, as demonstrated by the frequent and lengthy podcasts in which you were involved.

Whilst I accept that you may not have familiarised yourself with the entirety of the postings in the library and all the videos, in my judgment you minimised your knowledge of all of this material. I did not accept your claims that you were completely ignorant of just about everything within the material that advocated violence, indeed were horrified by it and wouldn't have posted any of it, had you known of its content.

That said, the volume of material contained within the library that was posted was so substantial that you clearly could not have read it all or indeed probably the majority of it.

To that extent and given what you must have known as to the extreme mindset of your followers, there was on any view a very high degree of recklessness on your part.

In addition though, whilst I am willing to give you the benefit of the doubt that your entire agenda and intention was not throughout to encourage acts of terrorism, I conclude from the nature, extent and volume of the material posted that such was your fanaticism in achieving your stated objectives that you were prepared and intended, at least in part for that to happen, if that is what it took.

It follows that I regard the position as being somewhat nuanced as involving elements of both recklessness and intention and therefore as falling between the figures in the

Sentencing guidelines for category A2 and B2. I therefore propose to take as a starting point the median figure of 5 ½ years.

Turning to your personal circumstances, you are now 37 years of age. You are married and had 4 children but as a result of a tragic accident your youngest child died a few weeks ago, aged only 15 months and I offer my sincere condolences to you in so far as that is concerned.

You have a number of minor and old convictions which are of no relevance and I shall accordingly ignore them and treat you as being of good character.

There are no statutory aggravating features but the fact that you were unlawfully at large at the time of these offences in the circumstances to which I have already alluded is clearly an aggravating feature. I regard that as balancing out as against your lack of previous convictions.

It is suggested by the prosecution that the fact that this material was addressed to a specifically targeted audience is a further aggravating feature, but I agree with your counsel's submission that on the facts of this case, if I accepted that that was the case, it would involve an element of double counting.

I turn next to the issue of the discount to which you are entitled for your guilty plea. Had you pleaded guilty at the PTPH you would have been entitled to 25%. You changed your plea a few weeks later which reduces that entitlement in my judgement to 20%. With regard to the trial of issue, I regard the outcome as being in part favourable to the prosecution and in part favourable to you. That being the case in my judgement the appropriate discount is 15%.

I am required to consider the issue of dangerousness, i.e. whether there is in your case a significant risk to members of the public of serious harm occasioned by the commission by you of further offences.

In considering that aspect of your case, I have had regard to the evidence in the case and the fact that I was able to hear from you at some length during the trial of issue and form a judgment about you, and I have also been able to consider the lengthy PSR.

It is clear to me that you have a deeply entrenched mindset and no real concern for or appreciation as to the seriousness of your offending and I have come to the conclusion that the criteria for dangerousness are met in your case.

The sentence that I impose, concurrently on each count is one of 6 years 8 months imprisonment, of which the custodial element will be 4 years 8 months and the extended licence period one of 2 years.

For the avoidance of any doubt, I have arrived at the figure of 4 years 8 months by deducting 10 months by way of 15% discount from the 5 ½ year figure to which I have already referred.

You will be required to serve 2/3 of the 4 years 8 months, less time spent on remand and time spent awaiting extradition, i.e. 1 year 7 days.

You will then be on licence and subject to recall.

Surcharge.

Notification requirement for 10 years

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