



# Judiciary of England and Wales

INNER LONDON CROWN COURT

REX

V

BRWA SHORSH

## SENTENCING REMARKS

On 31<sup>st</sup> July 2024 you were found guilty by a jury of attempted murder and I must now sentence for that offence.

It occurred at about 3pm on Saturday 3<sup>rd</sup> February 2024 on a Victoria line platform at Oxford Circus Underground station.

The victim, Mr Potoczek, was on his way home having completed his work for the day as a postman.

You were complete strangers to each other and, as I will set out, he had done nothing at all to you to even begin to justify what you did to him.

What happened was captured on clear CCTV footage.

You had been lying down on a bench on the platform for some time but were sitting upright when Mr Potoczek approached.

As he walked past, you stood up suddenly and pushed him hard to the side, causing him to fall onto the track. At the moment you did that, a train was seconds away from emerging from the tunnel into the station.

It was purely through luck that Mr Potoczek fell close to the edge of the track and did not touch the electric rail. He remained on his feet and, thanks to the very quick reaction of another passenger, he was pulled to safety. The train driver saw what was happening and commendably, was able to stop the train manually before it reached the point where Mr Potoczek had fallen.

Had Mr Potoczek touched the electric rail or had the train not stopped in time, he would almost certainly have lost his life or at least been caused very severe injury.

You remained on the platform for a while and then walked away. You were found on another bench at Warren Street station at about 10pm that night and arrested.

You gave evidence in your trial. You said that you had seen some women passing on the previous train who you believed were laughing at you and that had made you angry. You said that you then felt disrespected by Mr Potoczek because of the way he looked at you. Although you denied trying to kill him you said that you did not care if he died. You had said the same thing when you were first interviewed following your arrest. In his evidence, Mr Potoczek said that he did notice you sitting on the bench but that his mind was on other things and he did not look at you in any particular way. Having heard his evidence and seen the CCTV I am sure that he did not look at you in any sort of hostile way or do anything that he could have foreseen would cause you to attempt to harm him, let alone kill him.

I therefore sentence you on the basis that for no other reason than that you were feeling generally angry and then wrongly perceived Mr Potoczek to have been looking at you, you made the spontaneous decision to try to take away his life.

He gave a statement two weeks after the incident describing the effect it had had upon him. He was suffering with repeated nightmares and was fearful of using the Underground again, although he had to use it to get to work. He was also concerned that he was developing what he described as a phobia of people. He has not given an updated personal statement but having heard him give evidence in the trial, I have no doubt that is because he is of robust character and does not wish to dwell on the matter.

Turning to your background, you were first identified in the UK in 2018, having entered illegally. Three different dates of birth are recorded for you on the police national computer, which would mean you are between 23 and 25 now. You were to tell the psychiatrist who interviewed you that you left school in Kurdistan at the age of 16 and then worked in a shop for six years before leaving your country because of a falling out with your father. If that is accurate, you must in fact be in your later 20s. However, you told the probation officer that you left home at 17. You said that you lost your identity documents on your journey through Europe. I cannot therefore be certain of your true age but approach the case on the basis you are at least very close to 25, the age at which it is now generally assumed a person has reached full maturity.

You say you were refused asylum in Germany and then France, before travelling on to the UK. You were initially housed in Yorkshire but then moved to London in late 2018. You appear to have been homeless on and off since then. You have since made an asylum application in the UK but not until at least 2020.

Within months of your arrival in the UK you committed a racially aggravated offence of common assault and received a short prison sentence of 12 weeks. Once in London, between the beginning of 2019 and the end of 2023 you committed a further five

offences of assault or battery, an offence of threatening a person in public with a weapon, a bike chain, and three offences of outraging public decency.

Most of the assault offences were committed towards officers attempting to move you along from railway stations. The last offence, committed in Nov 2023, was an unprovoked attack on a female rail passenger, in which you struck her to the back of the head. In total during that period you served six separate short prison sentences.

You were assessed by a mental health practitioner after your arrest in this case. Then, in March 2024 you were assessed by a clinical psychologist, Dr Preston, and a consultant psychiatrist, Dr Deo. Dr Preston's report is summarised in Dr Deo's report. Dr Preston concluded that you may have an IQ close to the borderline of a learning disability. Dr Deo, found that you had a detached manner but showed no obvious signs of mental illness. He also confirmed that you have had no prior contact with mental health services in this country. He produced a further report on 10<sup>th</sup> September 2024, having interviewed you again after the trial. He concluded that there was little change in your mental state. He found that you did not experience psychotic symptoms and there was no evidence of paranoid or delusional beliefs. You have not been prescribed any psychiatric medication since being remanded in custody. He also noted that you said you regularly drank alcohol, sometimes heavily, when you were homeless, although there is in fact no evidence that you were drunk when you committed this offence.

I have also had the benefit of a very thorough pre-sentence report. The probation officer notes that you appear to have reflected on your actions since the trial and you are aware that you could have killed Mr Potoczek. However, you also continue to maintain that Mr Potoczek had somehow disrespected you and deserved to be pushed, albeit that you said he did not deserve to fall onto the track. The probation officer concludes that at unless you begin to acknowledge your behaviour and work with professionals to understand and manage your responses and triggers, it is likely that you will continue to behave in an irrational manner and in so doing present a high risk of serious harm to the public. Your lack of genuine remorse is a further factor supporting that conclusion.

Dr Deo reached a similar conclusion, putting it slightly more positively: he said it is likely that you will benefit from strategies aimed at reducing your impulsive behaviour and managing your frustration/stress tolerance. However, he does not identify any particular factor or reason why you will engage with such strategies.

I accept that travelling as a migrant through Europe and subsequently being homeless for a prolonged period may have had a significant adverse effect upon you. A Police Officer who made a statement in this case had seen you regularly on the Underground network since 2018. He last saw you in January 2024. He noted that your behaviour and appearance had dramatically changed over that time.

Applying the sentencing council guideline for attempted murder your culpability falls in to category C as this was a spontaneous offence.

As to harm, Mr Potoczek undoubtedly suffered psychologically. I agree with the joint submission of both parties that it is a category 3 case but category 3 covers a range of scenarios including those where no harm at all is caused. This case must therefore fall at the higher end of the category.

The starting point is therefore 10 years imprisonment and the range from 7 to 15 years, Your criminal record is an aggravating feature. The potential psychological harm you could have caused to others, particularly the train driver , is also an aggravating feature.

Your background and recent experience is to a certain extent, a mitigating feature.

In my judgement, the shortest determinate sentence that I could pass upon you is 13 years imprisonment.

I must then decide whether you are dangerous offender. Given the frequency and escalation in your offending since 2019 and the wholly unprovoked and spontaneous nature of this offence, coupled with the lack of any psychiatric condition that might explain it, I have no hesitation at all in concluding that you are a dangerous offender. You clearly pose a high risk of serious physical harm to members of the public.

Next I must decide whether the seriousness of the offence justifies a life sentence. It has been submitted on your behalf that I should not reach that conclusion, because it was not a targeted or premeditated offence, it was not committed with a firearm or dangerous weapon, and you had not previously committed any very serious offence.

I have considered that submission very carefully but I reject it. It is no exaggeration to say that this was an extremely dangerous criminal act that would strike fear into every traveller on the Underground. It follows a pattern of previous violent acts towards anyone who challenged you which had already escalated in November 2023 to a completely unprovoked attack on another stranger. There is no sensible explanation for why you attempted to kill Mr Potoczek and that, in my judgement, makes the offence all the more serious. There is also in reality nothing to indicate to me with any degree of confidence that you are likely to develop ways of controlling your anger so that you no longer pose a substantial risk of serious harm to the public.

For those reasons I am satisfied that a life sentence must be imposed.

[Defendant to stand up]

The sentence I therefore impose upon you is life imprisonment.

In passing that sentence, I must set the minimum term that you will serve before the Parole Board will consider your possible release. That must be equivalent to the period

would have served if this were not a life sentence. That would be two thirds of the 13 years less the time you have spent on remand, which is 194 days.

The minimum term you will serve is therefore 8 years and 49 days.

The minimum term is not a fixed term after which you will automatically be released. It is the term that must be served before the Parole Board can undertake their first review of your case. At that point they will review the risk that you then present and consider whether you can properly be released subject to licence and if so on what terms.

If and when you are released, you will be subject to licence and this will remain the case for the rest of your life. If for any reason your licence is revoked, you will be recalled to prison to continue to serve your life sentence in custody.

It follows that unless and until the Parole Board consider that your release is appropriate you will remain in custody.

**His Honour Judge Kelleher**

**10<sup>th</sup> October 2024**