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**Sergeant Alexander Wayne Blackman
("Marine A")**

Sentencing Remarks by HHJ Jeff Blackett, Judge Advocate General

Sergeant Blackman,

On 15 September 2011, while on patrol near CP Omar in Helmand Province, you shot an unknown Afghan insurgent in the chest and killed him. He had been seriously wounded having been engaged lawfully by an Apache Helicopter and when you found him he was no longer a threat. Having removed his AK47, magazines and a grenade, you caused him to be moved to a place where you wanted to be out of sight of your operational Headquarters at Shazad so that, to quote what you said: "PGSS can't see what we're doing to him". He was handled in a robust manner by those under your command, clearly causing him additional pain, and you did nothing to stop them from treating him in that way. When out of view of the PGSS (Persistent Ground Surveillance System) you failed to ensure he was given appropriate medical treatment quickly and then ordered those giving some first aid to stop. When you were sure the Apache Helicopter was out of sight you calmly discharged a 9mm round into his chest from close range. Your suggestion that you thought the insurgent was dead when you discharged the firearm lacks any credibility and was clearly made up after you had been charged with murder in an effort to concoct a defence. It was rejected by the Board.

Although the insurgent may have died from his wounds sustained in the engagement by the Apache, you gave him no chance of survival. You intended to kill him and that shot certainly hastened his death. You then told your patrol they were not to say anything about what had just happened and you acknowledged what you had done by saying that you had just broken the Geneva Convention. The tone and calmness of your voice as you commented after you had shot him were matter of fact and in that respect they were chilling.

That Afghan man, as an injured enemy combatant, was entitled to be treated with dignity, respect and humanity. Some commentators and members of the public have said that you should not have been prosecuted and that you have not committed a crime because it was killing within a conflict. Some also suggest it is legitimate to kill wounded enemy combatants because, as you said after you shot the insurgent, it is nothing they wouldn't do to British casualties. Those commentators are very wrong: if the British Armed Forces are not assiduous in complying with the laws of armed conflict and international humanitarian law they would become no better than the insurgents and terrorists they are fighting. Hearts and minds will not be won if British

service personnel act with brutality and savagery. If they do not comply with the law they will quickly lose the support and confidence of those they seek to protect, as well as the international community. You and all Service personnel learn this throughout your training - you demonstrated that you knew that then, because you tried to cover it up, and you know it now.

This was not an action taken in the heat of battle or immediately after you had been engaged in a fire fight. Nor were you under any immediate threat – the video footage shows that you were in complete control of yourself, standing around for several minutes and not apparently worried that you might be at risk of attack by other insurgents. You treated that Afghan man with contempt and murdered him in cold blood. By so doing you have betrayed your Corps and all British Service personnel who have served in Afghanistan, and you have tarnished their reputation. In one moment you undermined much of the good work done day in and day out by British forces and potentially increased the risk of revenge attacks against your fellow service personnel. You have failed to demonstrate the self discipline and restraint that is required of service personnel on operations, and which sets British troops apart from the enemy they fight.

Of course sitting in a court room in middle England is a far cry from the brutality of the conflict in Afghanistan, but you have been judged here by a Board made up of Service personnel who understand operational service because they too have experienced it. That is one of the strengths of the Court Martial system.

Many people have expressed views on your sentence in the media demanding a severe punishment on one hand and leniency on the other. However, you are not being tried by the media nor by those who express themselves vociferously. This Court Martial is an independent and impartial tribunal which will not be influenced by these sorts of statements and we have ignored them. We have reached an independent decision on the appropriate sentence based on all of the evidence we have heard, your plea of mitigation and the legal framework which we are obliged to apply, together with our collective experience of the law and the context and stresses of operations. Board members have served in all the theatres in which you have served.

Murder has always been regarded as the most serious criminal offence and the sentence prescribed is different from other sentences. By law, the sentence for murder is imprisonment for life and, by virtue of the Armed Forces Act 2006 s217, that is the sentence we must pass on you. There is no discretion to do otherwise. You will remain subject to that sentence for the rest of your life.

The decision whether to release you from custody during this sentence will be taken by the Parole Board which will consider whether it is safe to release you on licence. We are therefore required by law to set a minimum term that has to be served before the Parole Board may start to consider whether to authorise your release on licence. If you are released, the licence continues, as I said, for the rest of your life and recall to prison is possible at any time.

This offence is unique and unprecedented in recent history. You were in a tough operational environment where you were legally entitled to use lethal force against the enemy. Whilst carrying out your duty, you came across a very seriously wounded

enemy combatant. You were obliged to care for him but instead you executed him. That is a wholly different matter from the cases of murder in the UK normally considered by the civilian Courts, but we are still required by law to apply the same law which those courts are required to apply.

Parliament has set starting points (based on the circumstances of the killing) in the Criminal Justice Act 2003 Schedule 21, and we must apply that Schedule when fixing the minimum term. We reject the defence submission that Schedule 21 is not applicable. The drafters of the legislation provided a framework for all offences of murder and it is an unmeritorious argument to suggest that one particular type of murder was outside their contemplation. Schedule 21 provides a framework to assist the court in arriving at an appropriate sentence and there is sufficient flexibility to take into account the exceptional circumstances of this case.

We have, therefore, identified an appropriate starting point within Schedule 21. From there we have gone on to consider whether to increase or reduce the sentence from that starting point in the light of aggravating or mitigating factors.

This is not a case where a whole life order is appropriate. The normal starting point for a murder involving the use of a firearm is 30 years. (paragraph 5 of Schedule 21). In the case of R v Jones and Others [2005] EWCA Crim 3115 Lord Phillips LCJ (at paragraph 26) explained why this was the case. He said: “We have no doubt that the reason why the seriousness of such an offence is normally considered to be particularly high is that it results from the unlawful carriage of a loaded firearm and that the usual purpose of carrying such a firearm is to be able to kill or cause really serious injury. It is possible to envisage circumstances where this is not the case, but they will be very rare. Where a firearm is carried for the purpose of being used as an offensive weapon, we find it hard to envisage what reason there could be for not following the guidance in Schedule 21 and adopting 30 years starting point.”

Clearly this is not a “normal” firearms case. You were on duty in Helmand Province where you were undertaking duties on behalf of the British Government. Those duties were dangerous and life threatening and you were required to carry weapons and if necessary use lethal force in the furtherance of Government policy. Your case is one of the exceptionally rare circumstances envisaged by their Lordships in Jones where a firearm was used but where the starting point will be less than 30 years.

We are also satisfied that this offence does not fall within Schedule 21 paragraph 5A which specifies a minimum term of 25 years for offenders who take a knife or other weapon to the scene intending to commit any offence or have the weapon available and use it in committing a murder. As I have already said, you were armed legitimately and there is no suggestion that you set off on that patrol intent on murder.

In circumstances where the offence does not fall within the whole life, 30 year or 25 year starting points, the appropriate starting point is 15 years (Schedule 21 paragraph 6) and that is the starting point we have adopted. As I have said we must then apply aggravating and mitigating factors to that starting point.

We have considered the list of statutory aggravating factors in paragraph 10 of Schedule 21. We do not accept the prosecution submission that the use of a firearm is

an aggravating factor. You were armed legitimately and authorised to use lethal force. In fact in this circumstance your use of force was illegal, but it would be wrong to consider the use of a pistol which was carried lawfully in the context of military operations as an aggravating factor. We also accept that there was not a significant degree of planning or premeditation although it is clear from what you said that you decided shortly after you had disarmed the insurgent that you were going to do something to him which you did not want to be seen by your superiors in the headquarters. However, we have taken into account the following statutory and other aggravating factors:

- a. The victim was particularly vulnerable because he was seriously wounded and lying helpless and in obvious pain while you considered what to do with him.
- b. Your actions have put at risk the lives of other British service personnel. You have provided ammunition to the terrorists whose propaganda portrays the British presence in Afghanistan as part of a war on Islam in which civilians are arbitrarily killed. That ammunition will no doubt be used in their programme of radicalisation. That could seriously undermine the reputation of British forces and ultimately the mission in Afghanistan. As I have already said, committing this sort of act could well provoke the enemy to act more brutally towards British troops in retribution or reprisal.
- c. You were in charge of the patrol and it was incumbent upon you to set the standards. Long before you shot the insurgent you should as a Senior NCO have shown better leadership to young and less experienced men. In fact you abused your position of trust by involving the other junior and subordinate members of your patrol in covering up what you had done and lying on your behalf.

On the other hand, there are a number of statutory and other mitigating circumstances which apply, and which we have taken into account.

- a. First provocation: The cumulative effect of the increased kinetic activity, together with the deaths and life changing injuries to fellow marines had an obvious effect on you. You were also affected by the story that the Taleban had hung a British Serviceman's severed limb in a tree, although you did not personally see that. You were also in no doubt that the victim was an insurgent who had been firing at CP Taalanda moments before he was wounded.
- b. Second, the stress of operations: This was your sixth operational tour and your second to Afghanistan in under 14 years of service. We accept that you were affected by the constant pressure, ever present danger and fear of death or serious injury. This was enhanced by the reduction of available men in your CP so that you had to undertake more patrols yourself and place yourself and your men in danger more often. We also accept the psychiatric evidence presented today that when you killed the insurgent it was likely that you were suffering to some degree from combat stress disorder.
- c. Third your personal mitigation: The recent death of your father, your previous good character and excellent record of Service and the fact that you would never have committed this sort of offence at home in the UK.

The determination of the ultimate sentence is not a mathematical calculation but a question of balance and we have drawn together our collective experience of the law and of the Armed Forces to pass a sentence which reflects the seriousness of the offence, the context of the offending and your personal mitigation. While we acknowledge your personal circumstances and the immense pressure you were under, we note that thousands of other Service personnel have experienced the same or similar stresses. They exercised self discipline and acted properly and humanely; you did not.

It is also very important that this Court sends out a very strong message that while this sort of offence is extremely rare, if not unique, those Service personnel who commit crimes of murder, or other war crimes or crimes against humanity while on operations will be dealt with severely. This is a message of deterrence but it is also to reassure the international community that allegations of serious crime will be dealt with transparently and appropriately. In our view that message is delivered by sentencing you to imprisonment for life. Setting the minimum term reflects the seriousness of the offence while taking account of the unique and special circumstances of this case and your personal mitigation.

We took some of the operational contextual mitigating factors into account in reducing the starting point from 30 to 15 years, but the other mitigating factors outweigh the aggravating factors we have identified. **Having balanced all of these matters we have determined that the minimum term you must serve before you are eligible for the Parole board to start considering whether you should be released on licence will be 10 years. That will be reduced to 9 years 327 days to reflect the 38 days you have already spent in custody.**

As an inevitable consequence of a sentence of life imprisonment you will also be reduced to the ranks and dismissed with disgrace from Her Majesty's Service. We consider it necessary to dismiss you with disgrace because a sentence of dismissal *simpliciter* would be inadequate to reflect the gravity with which the court regards your conduct.

His Honour Judge Jeff Blackett
The Judge Advocate General of
Her Majesty's Armed Forces

6 December 2013