CITATION: R. v. Amara, 2010 ONCA 858
DATE: 20101217
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COURT OF APPEAL FOR ONTARIO

Doherty, Moldaver and Cronk JJ.A.

BETWEEN

Her Majesty The Queen

Respondent

And

Zakaria Amara

Appellant

James Lockyer and Brian Snell, for the appellant

Beverly Wilton, Nicholas E. Devlin and Ghazala Zaman, for the respondent

Heard: September 21, 2010

On appeal from the sentence imposed by Justice S. Bruce Durno of the Superior Court of Justice on January 18, 2010, with reasons reported at 2010 ONSC 441.

By the Court:

Background

[1] On October 8, 2009, the appellant, Zakaria Amara, entered pleas of guilty before Durno J. of the Superior Court of Justice on the following two counts in an indictment:

> [B]etween the lst day of March 2005 and the 2nd day of June 2006, in the City of Mississauga, in the City of Toronto, in the City of Fort Erie, in the Township of Ramara, in the Township of Guelph/Eramosa and elsewhere in the Province of Ontario, and in the country of Pakistan, [did] knowingly participate in or contribute to, directly or indirectly, any activity of a terrorist group, namely Fahim Ahmad and others, for the purpose of enhancing the ability of the terrorist group to facilitate or carry out terrorist activity, thereby committing an offence contrary to s. 83.18(1) of the *Criminal Code*.
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> [B]etween the lst day of March 2006 and the 2nd day of June 2006, in the City of Mississauga, in the City of Toronto, in the Township of Ramara and elsewhere in the Province of Ontario, did commit an indictable offence to wit, doing anything with intent to cause an explosion of an explosive substance that was likely to cause serious bodily harm or death to persons or was likely to cause serious damage to property, contrary to s. 81(1)(a) of the *Criminal Code*, for the benefit of, at the direction of, or in association with a terrorist group, namely Zakaria Amara and others, thereby committing an offence contrary to s. 83.2 of the *Criminal Code*.

[2] The sentencing judge referred to the first count as the "camp plot" and the second count as the "bomb plot".

[3] On January 18, 2010, the appellant was sentenced on the camp plot to 21 months' imprisonment. In arriving at that sentence, the sentencing judge credited the appellant with 7 years and 3 months for the 43 months and 18 days he had spent in pre-sentence custody. Hence, on that count, the appellant received the equivalent of a 9-year sentence. The appellant does not contest that sentence on appeal.

[4] In respect of the bomb plot, the appellant was sentenced to life imprisonment. Under s. 743.6(1.2) of the *Criminal Code*, R.S.C. 1985, c. C-46, the sentencing judge

fixed the period of the appellant's parole ineligibility at 10 years from the date of his arrest.

[5] The appellant seeks leave to appeal from the life sentence imposed in connection with the bomb plot and if leave is granted, requests that his sentence be reduced to a fixed term of 18 to 20 years, to be served consecutively to the 21-month sentence imposed on the camp plot.

[6] For reasons that follow, we would grant leave to appeal but dismiss the appeal from sentence.

The Offence and the Appellant's Role in it

[7] We find it unnecessary to describe at length the facts relating to the bomb plot. Suffice it to say that the appellant was the mastermind and chief organizer of a plot in which bombs were to be detonated at the Toronto Stock Exchange Tower, the CSIS Headquarters on Front Street in Toronto, and an unspecified military base east of Toronto. These three buildings were to be blown up during the morning rush hour. As the sentencing judge observed at para. 102, had the plot succeeded, "the results would have been catastrophic." It would have led to "multiple death[s] and injuries" and "changed the lives of many, if not all Canadians forever."

[8] Unlike his co-conspirators, Saad Khalid and Saad Gaya, whose sentences are also under review by this court,[1] the appellant did not feign ignorance at the sentencing

[1] Our reasons in *R. v. Khalid* and *R. v. Gaya* are being released concurrently with these reasons.

hearing as to the loss of life and human carnage that would have resulted had the plot succeeded. He knew full well that hundreds, if not thousands of innocent people would die or be gravely injured if everything went according to his plan. And yet, he went ahead despite this – or perhaps because of it –under the misguided belief that the greater the harm, the greater the likelihood that Canada would rethink its foreign policy in Afghanistan.

[9] Driven by his violent Jihadist convictions, the appellant plotted and schemed for months, schooled himself in the science of bomb-making, recruited underlings to assist him, used tactics designed to reduce the chances of detection, and played a central role in every important decision that was made to further the conspiracy. As the sentencing judge observed at paras. 107-108: "The meticulous details for the bomb plot were provided by Zakaria Amara." Further, his plan "was thoroughly researched and meticulously planned to the point that detailed instructions were given to those who did not know all the plans. The plans even included his fleeing the country right after the detonations."

The Offender

[10] The sentencing judge was alive to the appellant's positive attributes and to the various mitigating factors he advanced. He noted that the appellant was a young man (20 years old when arrested) and that he was a first offender. He acknowledged the appellant's guilty plea and took that into account, along with evidence from the appellant,

his family, and a psychiatrist retained by him, in concluding that the appellant was remorseful. He also observed at para. 112 that the guilty plea "save[d] court time and the public the expense of a trial."

[11] The sentencing judge further acknowledged the appellant's family responsibilities as a husband and the father of a young child, and the support that his family had provided to him and would continue to offer in the future.

[12] Finally, the sentencing judge considered the psychiatric evidence put forward on the appellant's behalf. He found it to be of some assistance, in that it provided "some evidence" that the appellant had "the capacity to change." However, in his view, it was too early to realistically assess the appellant's prospects for rehabilitation. He noted at para. 95:

> The depth of the offender's commitment and ideological beliefs *may* be changing, but a few months in the general population with inmates, four hours with the doctor, and his apparently sincere comments in court, require a circumspect assessment at this time. The depth and duration of his commitment will best be known in the future. [Emphasis in original.]

[13] In the end, the most the sentencing judge could say was that the appellant had "the capacity to be rehabilitated" (at para. 125). However, he added that "given the circumstances of this offence and this offender, those prospects are guarded at this stage."

The Sentence of Life Imprisonment

[14] Having reviewed in considerable detail the circumstances surrounding the bomb plot, the appellant's background and character, the aggravating and mitigating factors, the governing principles of sentencing and sentences imposed in other terrorism cases, the sentencing judge concluded at paras. 156 and 158 that the appellant should receive a life sentence for his participation in the bomb plot:

> As regards the bomb plot, again having considered all the circumstances of the case, I am persuaded that this is one of those rarest of cases where the maximum sentence of life is appropriate for this offender for committing this offence in this community. I acknowledge the exceptional nature of maximum sentences and particularly so where it is a life sentence for a young, first offender. However, the truly exceptional nature of this offence leads to the conclusion that that is the only appropriate sentence in these circumstances. In my view the circumstances warrant imposing the maximum sentence, as the Supreme Court of Canada has indicated. Having reached that conclusion, I must impose that sentence.
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> ...
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> I am well aware of the concern expressed in appellate authorities that sentences should not be such as to crush the hopes for rehabilitation and eventual release. I have given that principle as well as all the circumstances of this case most anxious consideration. However, the offender will be eligible for full parole in 6 years and 3 ½ months. He is a young man with some community support. That he has that support will no doubt be considered by the Parole Board. As will the fact that he pled guilty, accepting full responsibility for the offences. Should he bring the determination he had in pursuing the terrorist activities and objectives to his rehabilitation, he has the capacity to be rehabilitated. That too should be a positive factor. Zakaria Amara asked me not to

> close the door. While I have concluded that the only fit sentence is one of life imprisonment, I do not regard the door as permanently closed.

Analysis

[15] The appellant essentially raises one issue on appeal. He submits that in imposing a life sentence, the sentencing judge failed to give sufficient, or indeed any weight, to his many positive features and the mitigating factors in his case. According to the appellant, had the sentencing judge given those factors the weight they deserved, he would have received a sentence in the range of 18 to 20 years for his participation in the bomb plot.

[16] With respect, we see no merit in this argument, which in essence is that life sentences should be reserved for the worst cases involving the worst circumstances and the worst offenders. That notion was laid to rest by the Supreme Court of Canada in *R. v. L.M.*, [2008] 2 S.C.R. 163, at paras. 18-22, a decision with which the sentencing judge was fully familiar.

[17] In sum, having regard to all the facts and circumstances, the sentencing judge concluded that the appellant's case was one of those rare instances where a life sentence was warranted. That disposition was open to him and we see no basis for interfering with it.

[18] Needless to say, had the sentencing judge followed the approach to the sentencing of terrorists that we have outlined in *R. v. Khawaja* and *R. v. Khalid*, released concurrently, the result would have been the same. As we observed in those decisions,

life sentences should not be viewed as exceptional for terrorists who actively participate in plots that, to their knowledge, are designed to or are likely to result in the indiscriminate killing of innocent human beings. Under that approach, a life sentence for the appellant would have been a certainty.

[19] The appellant was the mastermind of a plot that, at the very least, he knew was likely to result in the indiscriminate killing of innocent people on a potentially massive scale. Indeed, in the appellant's case, a strong argument can be made that widespread carnage was precisely the outcome that he intended. As the sentencing judge observed at para. 102: "[T]here is no dispute that what would have occurred was multiple death[s] and injuries.... [T]he potential for loss of life existed on a scale never before seen in Canada." Add to this observation, the sentencing judge's finding that the appellant's reformation is far from certain and that his prospects for rehabilitation "are guarded at this stage", and a life sentence becomes the only feasible sentence.

Disposition

[20] In the result, the appeal from sentence is dismissed.

Signed: "Doherty J.A."
"M. J. Moldaver J.A."
"E. A. Cronk J.A."

RELEASED: “DD” DECEMBER 17, 2010