CITATION: R. v. Khalid, 2010 ONCA 861
DATE: 20101217
DOCKET: C51062

COURT OF APPEAL FOR ONTARIO

Doherty, Moldaver and Cronk JJ.A.

BETWEEN

Her Majesty the Queen

Appellant

and

Saad Khalid

Respondent

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

Russell Silverstein and Ingrid Grant, for the respondent

Heard: May 20, 2010

On appeal from the sentence imposed by Justice S. Bruce Durno of the Superior Court of Justice on September 3, 2009.

By the Court:

I. Background

[1] On May 4, 2009, the respondent, Saad Khalid, entered a plea of guilty before Durno J. of the Superior Court of Justice to one count in an indictment as follows:

> [B]etween the 1st 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 section 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 section 83.2 of the *Criminal Code*.[1]

Section 83.2 provides for a maximum punishment of life imprisonment.

[2] In pleading guilty to this offence, the respondent was prepared to admit that he participated in a bomb plot with a terrorist group led by Zakaria Amara ("Amara"), but he would not admit to knowing that detonation of the bomb or bombs would likely result in death or serious bodily harm. He was only willing to admit that, to his knowledge, the explosions would likely result in serious property damage. The sentencing judge therefore heard evidence as to the respondent's state of mind and his degree of moral blameworthiness, pursuant to *R. v. Gardiner*, [1982] 2 S.C.R. 368 (the "*Gardiner* hearing").

---

[1] Section 83.2 of the *Criminal Code*, R.S.C. 1985, c. C-46 reads:

> 83.2 Every one who commits an indictable offence under this or any other Act of Parliament for the benefit of, at the direction of or in association with a terrorist group is guilty of an indictable offence and liable to imprisonment for life.

The underlying indictable offence as charged in the indictment is s. 81(1)(a), which states:

> 81. (1) Every one commits an offence who
> (a) does anything with intent to cause an explosion of an explosive substance that is likely to cause serious bodily harm or death to persons or is likely to cause serious damage to property;

[3] The sentencing judge rejected the respondent's attempt to reduce his level of moral culpability. In a lengthy ruling dated August 20, 2009, reported at 2009 CanLII 44274, the sentencing judge stated at para. 128 that he was "satisfied beyond a reasonable doubt that [the respondent] was wilfully blind as to whether persons were likely to be killed or seriously injured as a result of the explosion(s) he was assisting with." Wilful blindness is the same as knowledge in the eyes of the criminal law. In other words, the respondent knew that the terrorist activities in which he was an active and willing participant were likely to cause death or serious bodily injury.

[4] Having determined the respondent's level of culpability, the next issue was the appropriate sentence. Over the course of the sentencing hearing, the sentencing judge heard from several witnesses who attested to the respondent's good character. In addition, numerous letters of reference were filed on his behalf. The sentencing judge also received a report and heard evidence about the respondent from Dr. Ramshaw, a forensic psychiatrist retained by the defence.

[5] The Crown sought a sentence of 18 to 20 years and an order requiring the respondent to serve half of the sentence before being eligible for release on full parole. With respect to the amount of credit to be given for the 39 months spent by the respondent in pre-sentence custody, Crown counsel submitted that he should be credited with 5 to 5 1/2 years. Defence counsel sought a sentence of 8 to 10 years, with no

increased period of parole ineligibility, less a credit of 8 years and 3 months for pre-sentence custody.

[6] On September 3, 2009, the sentencing judge delivered very full and comprehensive reasons for sentence. In the end, having regard to all the circumstances and the relevant sentencing principles, he concluded that a sentence of 14 years was appropriate. To accomplish this, he sentenced the respondent to "a further seven years, in addition to 39 months of pre-sentence custody" for which he credited the respondent with 7 years. The sentencing judge declined to make an order under s. 743.6(1.2) of the *Criminal Code* requiring that the respondent serve one half of his sentence before being eligible for parole.

[7] The Crown applies for leave to appeal and if leave is granted, seeks to have the respondent's sentence increased to an effective sentence of 18 to 20 years. The Crown does not challenge the credit of 7 years allotted for the 39 months the respondent spent in pre-sentence custody. Hence, in real numbers, the Crown submits that we should add 4 to 6 years onto the respondent's 7-year sentence. The Crown also seeks an order under s. 743.6(1.2) of the *Criminal Code*, requiring that the respondent serve half of his sentence before being eligible for full parole.

[8] For reasons that follow, we would grant leave to appeal, allow the appeal and increase the respondent's effective sentence from 14 to 20 years. Taking into account the 7-year credit for pre-sentence custody, that translates into a sentence of 13 years. We

would also make an order under s. 743.6(1.2), requiring that the respondent serve one half of his sentence (6 1/2 years) before he may be released on full parole.

II. Reasons of the Sentencing Judge

(1) The Offence and the Respondent's Role in it

[9] Over a period of three months, from March 1, 2006 until the day of his arrest on June 2, 2006, the respondent participated in a plot with his high school friend Amara and others, to detonate bombs 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.

[10] Based on the findings of the sentencing judge, the respondent did not know the precise locations that Amara was targeting, nor did he know that he was to drive a rented van containing a bomb to one of the targeted locations. What he did know, pursuant to the sentencing judge's finding on the *Gardiner* hearing, was that he was engaged in a plot which, if successful, would likely have caused the death or serious injury of innocent people.

[11] The bombs that Amara planned to detonate were each to consist of one ton of ammonium nitrate and diesel fuel – the blast effect of which would have been the equivalent of 768 kilograms of TNT. The consequences resulting from such an explosion were not lost on the sentencing judge. As he noted in his ruling on the *Gardiner* hearing at para. 55, it "would have caused catastrophic damage to a multi-storey glass and steel

frame building 35 metres from the bomb site, as well as killing or causing serious injuries to people in the path of the blast waves and force." The sentencing judge, who also presided over Amara's sentencing hearing, described in his reasons for sentence in *R. v. Amara*, 2010 ONSC 441, at paras. 102 and 104, the horrific consequences that would have followed had the plot succeeded:

> [T]here is no dispute that what would have occurred was multiple death and injuries. On the timetable indicated in the facts with detonation occurring at 9 a.m., the impact would have been magnified as workers arrived for work. With one ton bombs at each location, the results would have been catastrophic. What this case revealed was spine-chilling. I agree with Mr. Lacy that the potential for loss of life existed on a scale never before seen in Canada. It was almost unthinkable without the suggestion that metal chips would be put in the bombs. Had the plan been implemented it would have changed the lives of many, if not all Canadians forever.
>
> ...
>
> This was not an offence that would just impact on those who were injured or killed and their families and friends. This type of offence, even when it is stopped before the plans are implemented, impacts throughout Canada.

[12] On the evidence led by the Crown at the respondent's sentencing hearing, which largely took the form of a "Statement of Uncontested Facts", the respondent's primary task, up to and including the date of his arrest, was to rent an industrial storage unit for storing the three tons of ammonium nitrate that Amara had arranged to purchase – unwittingly from a police agent – and to off-load and store it there once it was delivered.

[13] And that is what the respondent did, with the assistance of Saad Gaya, another co-conspirator. The sentencing judge made the following findings in this regard:

> The offender [the respondent] also gave and relayed instructions to Gaya, including telling him on June 1 that he would pick him up the next morning but that it would not be from Gaya's house, and that he was to take his beard off and bring $4,000 and food. When arrested, Gaya had over $9,000 in his backpack.
>
> On June 2, on instructions from Amara, Saad Khalid and Gaya bought a large quantity of corrugated boxes and plastic bags and drove to the industrial unit in Newmarket. They assembled the boxes and lined them with garbage bags as they were to empty the ammonium nitrate into the boxes and stack them. They were then to destroy the ammonium nitrate bags. They were to put a dot on the bags so they would know if it was replaced as occurred in the London bombings when the authorities switched the bags. In order to put wax on the door and the doorframe so that it would be obvious if the door was opened, they brought two candles as directed.
>
> After the arrest, police found step-by-step instructions to the offender and Gaya outlining what they were to do at the industrial unit.

[14] The respondent's involvement did not end there. In concluding that the respondent was not just a "gofer", as he maintained, and that "his degree of responsibility remain[ed] relatively high", the sentencing judge referred to the respondent's overall involvement in the plot as follows:

> He is an intelligent young man, not one with learning deficits who might not have been able to put together what he got himself into. There is no reduction because of the wilful blindness finding reference *R. v. Sidhu* (2009), 242 C.C.C. (3d) 273 (Ont. C.A.) at para. 17. He was not just a gofer. No doubt, he bought the electrical components, tried to rent one

> house and did rent two industrial units, was prepared to do reconnaissance in downtown Toronto, bought the boxes and bags and assembled them, and unloaded the purported ammonium nitrate.
>
> He also recruited a third member making sure he would not cause any trouble and was a good candidate. He said the candidate should be picked on how useful they will be. Getting others involved in the scheme is an aggravating factor in itself. He told his accomplices that they had to be alert to security measures because Amara was being followed. There was no room for error. It was not a joke. They were not cooking biryani. It was not the cool club. He wanted them to meet every week to keep everyone updated. While that was his wish, it was not going to happen. He also had input into the date of the bombings, moving it forward. He gave and relayed instructions to Gaya. He was not someone who just sat by waiting for his next assignment without providing input.

[15] The electrical components mentioned by the sentencing judge were located at the respondent's home following his arrest. They consisted of six light/dark relay switches and a PMK 160 circuit board designed to function with a cellular phone and capable of receiving a visual signal through a photo-sensor unit. The PMK 160 circuit board could be used at close or long range.

(2) The Offender

[16] The respondent was 22 years old at the time of sentencing and 19 years old at the time of his arrest. As found by the sentencing judge, he enjoyed a good childhood and a close relationship with his family.

[17] In 1995, his family moved to Canada from Saudi Arabia so that the respondent and his siblings could pursue post-secondary education, something they were not

permitted to do in Saudi Arabia. The respondent's mother died suddenly when he was 15 years old. His father remarried in 2005 and the respondent had a positive relationship with his stepmother.

[18] The respondent performed fairly well in school and after completing Grade 12, he enrolled at the University of Toronto, Mississauga Campus. At the time of his arrest in June 2006, he had completed the first year of a business management program and was hoping to transfer to Commerce.

[19] In his ruling on the *Gardiner* hearing at para. 120, the sentencing judge described the respondent as "an intelligent young man who was able to gain admission to university." This was one of the factors he took into account in finding that the respondent "was wilfully blind as to whether persons were likely to be killed or seriously injured as a result of the explosion(s) he was assisting with." As the sentencing judge observed: "He is a young man who I infer could draw reasonable conclusions from facts known to him. He could 'connect the dots'." The sentencing judge described at paras. 122-25 the facts known to the respondent and the obvious conclusions he would have drawn therefrom:

> (1) The respondent knew that Amara held extremist views and that Amara was in charge of the operation.
>
> (2) The respondent was expecting to receive 2 tons of materials to make bombs (it turned out to be 3 tons). He knew he had purchased 6 relay switches and he had a circuit board. From this, he would not have held the belief that "this was to be many small explosions."

> (3) The respondent's intention, and that of his co-conspirators, was to intimidate the public or compel the Canadian government to change its policy in Afghanistan. This would "require a significant event or events, not blowing up a car in northern Ontario or a tree stump"; and
>
> (4) The respondent was told to conduct surveillance and take pictures "in one area only – downtown Toronto." From this, it is apparent that he knew that "one or more targets were to be in downtown Toronto", which "was [to be] the location of a large explosion".

[20] Based on the psychiatric evidence from Dr. Ramshaw, the sentencing judge accepted that the respondent was not a psychopath and that he did not suffer from a major mental illness. His motivation for committing the crime was, as Dr. Ramshaw noted in her report, religiously and ideologically-based:

> His [the respondent's] motivation does not flow from anti-sociality, impulsivity or psychopathy, but rather from his religious beliefs, his sympathy toward the extreme Muslim cause and his perceived need to take steps to stand up against the Western world, and to influence change.
>
> …
>
> Mr. Khalid's sense of religiously condoned behavior superseded his perceived need to abide by secular laws. While he does have the capacity to reflect and to change his behaviour, there has been no attention [*sic*, attenuation] in the strength of his beliefs.

[21] In line with Dr. Ramshaw's report, as well as the respondent's statements to the court and other pertinent information, the sentencing judge was satisfied that the respondent had seen the error of his ways, at least to the extent that he had renounced violence as a legitimate means of attaining his goals. By the time of sentencing, the

sentencing judge was satisfied that the respondent was "truly remorseful", that he had been "specifically deterred and learned a significant lesson", and that he did not represent "a continuing danger to the public."

[22] The sentencing judge concluded that the respondent's prospects for rehabilitation were very good. In so concluding, he placed considerable emphasis on the fact that the respondent was a young, first offender and that he enjoyed the full support of his family and many members of the community. He also accepted that the respondent had come to appreciate that "he needed help [presumably in the form of cognitive behaviour therapy suggested by Dr. Ramshaw] and was prepared to get it", even though he initially told Dr. Ramshaw that he did not feel the need to change.

(3) The Sentencing Judge's Review of Aggravating and Mitigating Factors and Relevant Sentencing Principles

[23] In his reasons, the sentencing judge canvassed the various aggravating and mitigating features of the case.

[24] By way of aggravation, the sentencing judge noted the following factors: the respondent's offence involved planning and deliberation over a 3-month period and was not "a spur of the moment offence"; the explosion or explosions, to the respondent's knowledge, were likely to cause death or serious bodily harm and were intended to cause "serious property damage and a serious risk to the health and safety of the public"; and all terrorism offences are serious and the respondent's offence was "most serious" given that it was punishable by a maximum sentence of life imprisonment.

[25] By way of mitigation, the sentencing judge took into account the respondent's guilty plea, his age, his lack of prior criminal record, his remorse, the psychiatric evidence that he does not present an acute risk to himself or others, his prospects for rehabilitation, and the length of time he had spent in pre-sentence custody.

[26] The sentencing judge next reviewed the purposes and principles of sentencing. He recognized that denunciation is "a key component in sentencing for terrorism offences" and that general deterrence is also central to "send a clear message to others who would be tempted to engage in similar conduct", particularly those who might "be tempted to 'sign-on' to the terrorist plans of the more fanatic."

[27] Based on his findings, the sentencing judge concluded that the principle of specific deterrence had already been achieved in the respondent's case and there was no need to separate the respondent from society because he was not dangerous and would not compromise the public's safety. As for rehabilitation, the sentencing judge was of the view "that with counselling [the respondent] can be rehabilitated and become a law abiding member of society." He also believed that the respondent had "accepted responsibility for his wrongdoing", despite his attempt to minimize "the results that would likely have flowed from his conduct". The sentencing judge went on to observe that there is a "need to bring home to the [respondent] the enormous dangers involved in this activity" and that, while he had "taken some valuable steps in that direction… there remains a distance to go."

[28] After reviewing the serious nature of the respondent's crime and his degree of involvement, the sentencing judge considered other sentencing case law to ensure, so far as possible, that the sentence he had in mind was similar to other sentences imposed on similar offenders in similar circumstances.

[29] In the end, having determined that "denunciation and general deterrence are the predominant considerations", but noting that "due consideration must be given to all factors relevant to the offence and the offender", the sentencing judge concluded that the respondent should be sentenced to 14 years in the penitentiary. He observed that, but for the mitigating factors, the range of 18 to 20 years suggested by the Crown "might have been appropriate." However, in this case, the purposes and principles of sentencing could "be achieved with a shorter sentence. The message that a youthful first offender receives a very significant penitentiary term achieves the objectives previously canvassed."

[30] Regarding the respondent's parole ineligibility, the sentencing judge recognized that under s. 743.6(1.2) of the *Criminal Code*,[2] the respondent bore the onus of showing that he should not have to serve one half of his sentence before being eligible for full parole. This provision required the respondent to demonstrate, on balance, and having

---

[2] Section 743.6(1.2) states:

> 743.6 (1.2) Notwithstanding section 120 of the *Corrections and Conditional Release Act*, where an offender receives a sentence of imprisonment of two years or more, including a sentence of imprisonment for life, on conviction for a terrorism offence or an offence under ss. 467.11, 467.12 or 467.13, the court shall order that the portion of the sentence that must be served before the offender may be released on full parole is one half of the sentence or ten years, whichever is less, unless the court is satisfied, having regard to the circumstances of the commission of the offence and the character and circumstances of the offender, that the expression of society's denunciation of the offence and the objectives of specific and general deterrence would be adequately served by a period of parole ineligibility determined in accordance with the *Corrections and Conditional Release Act*.

regard to the circumstances of the offence and his character and circumstances, that "the expression of society's denunciation of the offence and the objectives of specific and general deterrence would be adequately served" by applying the normal rules applicable to parole ineligibility.

[31] The sentencing judge noted that "the most prominent considerations" in this case were denunciation and general deterrence and that the respondent's offence was "most serious." However, taking into account the respondent's prospects for rehabilitation and the fact that he had been specifically deterred and did not present a continuing danger to the public, the sentencing judge determined that "the expression of society's denunciation of the offence and the objective of specific and general deterrence can be adequately served by a period of parole determined in the normal course by the Parole Board. They will be in the best position to monitor and gauge his progress."

III. Analysis

[32] The sentencing judge delivered comprehensive reasons for sentence. As always, his reasons are clear and compelling. However, and with respect, the sentencing judge did not have adequate regard to the sentencing considerations that are demanded by the unique nature of terrorism-related crimes. As we observe in *R. v. Khawaja*, released concurrently with these reasons, terrorism is a crime unto itself. Manifestly, terrorism poses extraordinary challenges and exceptional risks to society and it calls for an approach to sentencing that reflects its uniqueness. In the result, in our view, the sentence

imposed in this case did not adequately reflect the enormity of the respondent's crime and the significant part he played in it.

[33] The respondent played a pivotal role in a scheme which if implemented, could have killed countless innocent people and left the entire country changed very much for the worse. Accepting the force of the mitigating factors identified by the sentencing judge, we nonetheless conclude that the sentence imposed was demonstrably unfit.

[34] In *Khawaja*, we explain why terrorism is a unique crime and why we believe it must be treated differently from conventional crimes. We need not repeat what we said, other than to reinforce the principle that, where the terrorist activity, to the knowledge of the offender, is designed to or is likely to result in the indiscriminate killing of innocent human beings, sentencing judges should give serious consideration to life sentences, and where a life sentence is not called for, to sentences exceeding 20 years.

[35] The respondent's crime was certainly one that on its face called for a life sentence. Fuelled by his religious and ideological convictions, he was prepared to engage in the mass murder of innocent men, women and children on Canadian soil. Had the respondent and his co-conspirators succeeded in their mission, the respondent would have been charged with numerous counts of first degree murder. And if found guilty of first degree murder, he would have been sentenced to life imprisonment with no possibility of parole for 25 years, regardless of his age, his lack of criminal antecedents or his prospects for rehabilitation.

[36] The fact that the authorities foiled the respondent's and his co-conspirators' plot does not lessen the gravity of the respondent's crime, nor does it diminish his level of moral blameworthiness. The sentencing judge took the position that "[a]bsent the mitigating factors", the range of 18 to 20 years sought by the Crown "might have been appropriate." With respect, we disagree. In the circumstances, were it not for the mitigating features that serve to reduce the length of sentence, the respondent would most certainly have been a candidate for a life sentence.

[37] We now propose to turn to the mitigating factors and explain why, on the approach that should be taken in sentencing terrorists like the respondent, the sentencing judge over-emphasized their significance and reduced the sentence below the appropriate range.

[38] As a starting point, we refer to *R. v. Martin*, [1999] 1 Cr. App. R. (S.) 477, a case in which an IRA terrorist plotted with others to set off explosions at six electricity sub-stations with a view to destabilizing the southeast of England. As found by the trial judge, the purpose of the conspiracy was not to cause death or personal injury, however, the conspirators were reckless as to the number of people who might be killed or injured as a result of the explosions. The plot was sophisticated and would likely have succeeded had the security services not intervened.

[39] At trial, Martin received a 35-year sentence. The Court of Appeal reduced his sentence by 7 years, having regard to the fact "that death and injury, although a likely by-

product of the implementation of the conspirators' plan, was not its primary object." In the course of his reasons on behalf of the court, Lord Bingham C.J. made the following observation at p. 480:

> In passing sentence for the most serious terrorist offences, the object of the court will be to punish, deter and incapacitate; rehabilitation is likely to play a minor (if any) part.

[40] Lord Bingham's reference to "the most serious terrorist offences" was directed at those cases where the primary purpose of the enterprise is to endanger life. We see very little distinction between that type of case and the case at hand, where the respondent was found to have known that the explosions planned for downtown Toronto were likely to kill or injure any number of innocent people.

[41] In arriving at the sentence he imposed, the sentencing judge placed considerable emphasis on the respondent's youth, his lack of criminal record, his remorse and his prospects for rehabilitation. He also considered the respondent's psychiatric make-up and took it to be important that he did not suffer from psychopathy or some other major mental illness "in determining if he remains a danger to the public and should for that reason alone, or in conjunction with other factors, be separated from society."

[42] While we do not question the integrity of these findings, we believe that the sentencing judge placed too much emphasis on rehabilitation in arriving at what he considered to be a fit sentence.

[43] Beginning with the respondent's age and lack of criminal antecedents, it is settled law that the leniency normally accorded to youthful first offenders will be greatly reduced where the crime in question is very serious. In this case, short of actually committing mass murder, the respondent's crime ranks extremely high on the scale of serious crimes.

[44] The sentencing judge recognized this. He described terrorist offences as "a most vile form of criminal conduct", noting that they "attack the very fabric of Canada's democratic ideals" and "strike fear and terror into the citizens in a way not seen in other criminal offences." He also recognized the enormity of the particular crime that the respondent and his confederates were actively pursuing. As noted earlier, the sentencing judge observed in *Amara* at para. 102 that if the bombs had been detonated, "the results would have been catastrophic." He referred to the case as "spine-chilling" and found that "the potential for loss of life existed on a scale never before seen in Canada…. Had the plan been implemented it would have changed the lives of many, if not all Canadians forever."

[45] Having identified the gravity of terrorist offences in general and the enormity of the respondent's crime in particular, we believe that the sentencing judge should have given the respondent's youth and lack of criminal record much less significance than he did. When balanced against the nature and seriousness of the crime, these factors are entitled to considerably less weight.

[46] Another reason for taking a more punitive approach to youthful first offenders who might be tempted to commit terrorist crimes is to let them know, in clear terms, that their youth and lack of criminal antecedents will count for little in ameliorating the severity of their sentences. As Lord Phillips C.J. observed in *R. v. Barot*, [2007] EWCA Crim. 1119, at para. 45, while the length of sentence may not deter "the more fanatic" who in some cases, "are prepared to kill themselves in order the more readily to kill others", it is "important that those who might be tempted to accept the role of camp followers… are aware that, if they yield to that temptation, they place themselves at risk of very severe punishment."

[47] We accept that the respondent's youth and his lack of criminal antecedents were relevant considerations on sentencing. But, in terrorism cases, these factors must be viewed through a different lens. Youthful first offenders present as attractive recruits to sophisticated terrorists. They are vulnerable and impressionable because of their youth and their prior good character makes them difficult to detect by law enforcement authorities. The sad truth is that young home-grown terrorists with no criminal antecedents have become a reality. And that is something the courts must recognize and take into account when deciding how much leniency to give to youthful first offenders who commit terrorist crimes.

[48] The approach that we believe should be followed when dealing with young first-offender terrorists takes on added significance in situations such as the respondent's. It is

easy to get caught up in the fact, without more, that the respondent was only 19 years old when he chose to join Amara and his terrorist associates. But a more probing inquiry puts the respondent's youth in a somewhat different light.

[49] The respondent is not a deprived youth. By all accounts, his family is loving and supportive and he was given the opportunity of gaining a university education at one of Canada's finest universities. At the time of his arrest, he had completed his first year of a business management program and was planning to transfer to Commerce. The respondent is clearly an intelligent young man.

[50] These features help place the respondent's youth in its proper perspective. Much as he would like to characterize his conduct as "a mistake" – that is how he described it to Dr. Ramshaw and the court – his planned and deliberate activities over the space of three months can hardly be dismissed as a mere "mistake". Nor can he attribute his actions to the immature over-exuberance of a youthful radical. In truth, the respondent was engaged in a diabolical plot that most 19-year-olds would never even think of, let alone pursue. Fuelled by fanatical beliefs, he was prepared to engage in the indiscriminate killing and injury of innocent people.

[51] While the psychiatric evidence indicates that the respondent does not suffer from psychopathy or some other major mental illness, we consider this to be largely irrelevant. The absence of a major mental illness in no way diminishes the level of his moral culpability and tells us little about his risk of re-offending.

[52] Similar concerns arise in respect of the emphasis placed by the sentencing judge on the extent of the respondent's remorse and the fact that specific deterrence was not needed in his case. While the sentencing judge found that the respondent was truly remorseful and that he had learned his lesson and accepted responsibility for his wrongdoing, he nonetheless observed:

> There remains some minimization in terms of the results that would likely have flowed from his conduct and a need to bring home to the offender the enormous dangers involved in this activity and the devastating property and physical damage that was likely. He has taken some valuable steps in that direction but there remains a distance to go.

[53] In concluding that the respondent had taken "some valuable steps" towards reformation but that "there remain[ed] a distance to go", the sentencing judge no doubt had in mind the respondent's unsuccessful attempt on the *Gardiner* hearing to reduce to a very significant degree his level of moral blameworthiness. He was not prepared to admit that he knew that people would likely die or suffer serious injuries from the explosions. Along the same lines, at the sentencing hearing, the respondent took the position that he was merely "a gofer". The sentencing judge disagreed with that characterization. The respondent further tried to suggest, by way of mitigation, that there was no real risk that anyone would have been harmed or any buildings destroyed because Amara was totally incompetent – and that in any event, without the assistance of a police agent, Amara would not have been able to obtain the large quantities of ammonium nitrate needed to build the bombs. Once again, the sentencing judge disagreed.

[54] The sentencing judge was clearly alive to the danger of uncritically accepting the respondent's assertions that he had seen the light and was now a reformed person. He was right to have approached these protestations with a healthy degree of scepticism. The respondent's position at the *Gardiner* hearing attempting to minimize his degree of culpability did not reflect the attitude of someone who had accepted responsibility for his wrongdoing and was truly remorseful. His effort to reduce the level of his moral blameworthiness could just as easily have been seen as an attempt on his part to get away with as much as he could. Moreover, the respondent made no attempt to cooperate with the authorities following his arrest. He did not provide information about his co-conspirators, nor did he offer to testify against them. Had he done so, this would have been much more telling about the extent of his reformation.

[55] Nonetheless, we accept the sentencing judge's findings that the respondent's reformation was sincere and that his positive efforts merited consideration. These factors served to ameliorate the severity of the sentence that the respondent might otherwise have received. That said, we believe that his reformative efforts were entitled to less weight than the sentencing judge gave them.

IV. Conclusion on Sentence and Period of Parole Ineligibility

[56] Taking into account the mitigating factors that the sentencing judge considered and giving them the weight they deserve, we think that the respondent should have received a sentence in the range of 20 to 25 years. Stern sentences in that range are

meant to send a clear message – those who chose to pursue deadly terrorist activities from or in Canada will pay a very heavy price.

[57] Having identified the appropriate range of sentence at 20 to 25 years, we note that Crown counsel, both at the sentencing hearing and on appeal, submitted that the respondent should receive a sentence in the range of 18 to 20 years. Obviously, in making that submission, Crown counsel could not have known of the approach that this court would take to the sentencing of terrorists like the respondent. That said, when the court determines that a Crown sentence appeal should be allowed, the court will inevitably give considerable weight to the Crown's position as to the appropriate sentence.

[58] Thus, in light of all the circumstances, including the range proposed by the Crown, we would impose an effective sentence of 20 years, which is at the bottom end of the 20 to 25 year range we have identified. In order to impose an effective sentence of 20 years, we would grant leave to appeal, allow the appeal from sentence and increase the respondent's term of imprisonment from 7 to 13 years.

[59] It will be apparent from our reasons that we respectfully disagree with the sentencing judge's decision to reject the presumptive period of parole ineligibility (in this case, one half of the sentence) set out in s. 743.6(1.2) of the *Criminal Code*.

[60] We have already set out our reasons for concluding that, in imposing the sentence he did, the sentencing judge under-emphasized the enormity of the respondent's crime

and over-emphasized his rehabilitative prospects. These reasons apply with equal force to the issue of parole ineligibility. We need not repeat them. Suffice it to say that, had the sentencing judge followed the approach that we believe he should have, he would have come to a different conclusion on the issue of parole ineligibility.

[61] Accordingly, an order will go requiring that the respondent serve one half of his sentence (6 1/2 years) before he may be released on parole. The ancillary orders made by the sentencing judge shall remain the same.

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

RELEASED: "DD" DECEMBER 17, 2010