

IN THE CROWN COURT SITTING IN BELFAST

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THE QUEEN

-v-

AMIR ALI ESMAILY

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STEPHEN J

[1] Amir Ali Esmaily you have pleaded guilty to possession of a firearm and ammunition in suspicious circumstances contrary to Article 64(1) of the Firearms (Northern Ireland) Order 2004. The particulars of the offence are that between 12 July 2008 and 19 July 2008 you had in your possession an AKM 7.62 x 3.9 millimetre calibre assault rifle and an AKM type magazine containing six rounds of 7.62 x 39 calibre ammunition under circumstances such as to give rise to a reasonable suspicion that you did not have them in your possession for a lawful purpose.

**Factual background**

[2] The factual background has been outlined to the court by Mr Ramsey QC who appeared with Ms Kitson on behalf of the prosecution. You are a university student living in Belfast. Your mother is disabled, and though she resided in the Republic of Ireland, she also had and continues to have a home in Londonderry. You kept in contact with your mother visiting her in Londonderry. The house in Londonderry was known to be unoccupied for long periods of time. On 13 July 2008 during a visit you checked the boiler in the external unlocked boiler house and you found a taped up package. There was nothing of any substance inhibiting members of the public from gaining access to the boiler house. The package was taped up in such a way that the outline of the contents was discernible. You lifted the package and then replaced it where you had found it. You recognised that this package contained a weapon with the outline of an assault rifle. The package also contained 6 rounds of ammunition though you were unaware of this at the time. You handled the package containing the weapon once. There is no suggestion that you were responsible for or played any part in placing the weapon and ammunition there. You are absolved of any responsibility for the presence of the weapon and ammunition and indeed you had and have no

knowledge as to who stored the weapon and ammunition in the boiler house or how or when they came to be there. This was the first and only occasion on which you physically saw and handled the package containing the weapon. You were uncertain as to what to do and were fearful of repercussions if you reported your find to the police. In a general way you believed that you and your family would suffer reprisals and possibly violence if you did report what you had found to the police. Your concerns were heightened because it seemed to be known in the area that you were associated with the army in that you were a part time Royal Marine reservist.

[3] You returned to Belfast on 14 July 2008 and discussed the matter with a number of friends asking for their advice. Subsequently you identified all of those friends to the police and all of them confirm that they were approached as you have described. You received a range of responses from them including one friend not knowing what to do and another advising you to report the matter to the police. All these individuals have confirmed that you appeared worried, agitated and seriously concerned as to what you should do. In the event you did nothing. This was a consequence of indecision rather than a positive decision to do nothing. That indecision left open the possibility that the weapon could have found its way back into the hands of those who had placed it there.

[4] On the other hand if you had not discussed the matter with anyone then it is feasible that information would not have reached the police and the weapon and ammunition would not have been found.

[5] On Friday 18 July 2008 the police, acting on information, carried out a search of your home in Belfast and your mother's home in Londonderry. The assault rifle and ammunition were found and you were arrested.

[6] You were interviewed between 18 July 2008 and 23 July 2008. You initially denied any knowledge of the weapon and ammunition but on 20 July 2008 you informed the police as to the circumstances in which you had found the weapon fully co-operating with the police investigation.

[7] Both your home in Belfast and your mother's home in Londonderry were searched as well as your motor car. The search was for "... adhesive tape, plastic bags, documents, electronic storage devices, military type clothing and fibre/other samples required for comparison ... or other terrorist paraphernalia ..." None was found. Accordingly the searches did not raise any suspicions that you had any connection with or that you supported in any way any terrorist organisation or indeed that you were involved in any unlawful activity at any time.

[8] You are not suspected of ever having belonged to or having any connection with or being sympathetic in any way towards any unlawful

organisation in Northern Ireland or elsewhere. Indeed it is accepted that the opposite is correct and that because of your own diverse religious and cultural background you have not identified with any particular political or religious viewpoint.

[9] It was the prosecution case and by your plea you have accepted that on the basis of these facts that you were in possession of the weapon and ammunition for five days between 13 July 2008 and 18 July 2008.

### **Sentencing guidelines.**

[10] The maximum penalty is 10 years imprisonment or a fine or both.

[11] The purpose of firearms legislation is to impose tight and effective control on the use of highly dangerous weapons. The unlawful possession of a firearm is a grave source of danger to society. Any firearms offence is serious and offences will almost invariably merit terms of custody even on a plea of guilty and in the case of an offender with no previous record. I was referred by counsel to *R v McKenzie* [2005] NICA 7 and *R v Avis & Ors* [1998] 1 Cr App R 420. In the latter case Lord Bingham stated:

“The appropriate level of sentence for a firearms offence, as for any other offence, will depend on all the facts and circumstances relevant to the offence and the offender, and it would be wrong for this court to seek to prescribe unduly restrictive sentencing guidelines. It will, however, usually be appropriate for the sentencing court to ask itself a series of questions:

(1) What sort of weapon is involved? Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use (such as a sawn-off shotgun) will be viewed even more seriously than possession of a firearm which is capable of lawful use.

(2) What (if any) use has been made of the firearm? It is necessary for the court, as with any other offence, to take account of all circumstances surrounding any use made of

the firearm: the more prolonged and premeditated and violent the use, the more serious the offence is likely to be.

(3) With what intention (if any) did the defendant possess or use the firearm? Generally speaking, the most serious offences under the Act are those which require proof of a specific criminal intent (to endanger life, to cause fear of violence, to resist arrest, to commit an indictable offence). The more serious the act intended, the more serious the offence.

(4) What is the defendant's record? The seriousness of any firearm offence is inevitably increased if the offender has an established record of committing firearms offences or crimes of violence."

[12] As appears from that passage it is usually appropriate for the sentencing court to ask itself a series of questions. The answers in this case are:

(1) A genuine AK47 assault rifle was involved for which ammunition was available. It is self-evident that a powerful weapon such as this can wreak havoc, taking life, causing serious injury, being used in the commission of serious crimes and empowering terrorists to terrorise individuals and communities. However I note that the weapon, whilst functional, was old and in poor condition.

(2) No known use has been made of the weapon. Its condition would suggest that it was not in active use but rather was being stored.

(3) You did not possess the weapon with any intent to use it.

(4) You have no criminal record.

**Risk of harm to the public and likelihood of re-offending.**

[13] Michael Winnington, Probation Officer, in his report completed on 7 May 2010 advises that there is a low likelihood of re-offending and that you are assessed as not representing a risk of serious harm to the public. He assessed you as being appropriate for a Probation Order and also as being suitable for community service work for instance in the form of a Community Service Order.

[14] The offence which you have committed is a serious offence within Article 12(2) of the Criminal Justice (Northern Ireland) Order 2008. The court is not of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by you of further offences specified in that Order.

**Personal circumstances.**

[15] You are 27 years of age (date of birth 12 September 1982) and an Iranian national. You are a high achiever whose career has been blighted for the last two years since your arrest in 2008. You had obtained a degree in Chemistry from Queen's University Belfast and had commenced a PhD in Chemical Research. As a result of your arrest your university studies have been put on hold though you continue to undertake some academic work and maintain your support both emotional and practical for your disabled mother whom you visit daily. You hope to resume your academic career completing your PhD and thereafter pursue a career either as an academic or finding appropriate employment in the private sector. It is clear from your academic success to date and from the voluminous and impressive references that have been made available to me that you have the potential to make a substantial contribution in the future in any career that you choose.

**Mitigating features.**

[16] Your plea of guilty. This was not entered at the earliest stage but I am giving you full discount for that plea in that you did not dispute any of the facts. You were open and honest in relation to those facts. Any delay in entering a plea of guilty was based on a genuine concern as to whether on those facts you were legally guilty. You justifiably required time to give anxious consideration to this matter with your legal advisors.

[17] I also take into consideration that there was a potential defence open to you but despite that defence you chose to plead guilty. You could have contended that whilst you had the relevant knowledge and the opportunity and ability to assume possession or control of the weapon and ammunition that the necessary mental element was lacking in that you did not wish or intend to take possession or assume control.

[18] You have been on bail for a substantial period of time with severe restrictions.

[19] The past effect on your career over the last 2 years. You still face a decision by the University as to what if any action to take against you. That is a matter for the University but it was not contended on your behalf that you would face any ongoing adverse consequence once this sentencing exercise has been concluded. Independently of that I do not approach this case on any

other basis but that the University will promptly allow you to resume your education participating fully in the life of the University with no further or ongoing repercussions for you.

[20] The potential future effect on your career in that your criminal conviction at the very least will require explanation to any potential employer and it might quite unjustifiably have an unwarranted adverse impact.

[21] The effect on your health due to the very considerable strain which I accept you have been under and in that respect I have a report from Dr Cunningham dated 27 April 2010.

[22] The potential future effect on your participation in the Royal Marine reserves if you were to apply to continue with them.

[23] Your genuine remorse based on your insight.

[24] Your good character. In that respect you have some 80 - 90 testimonials all of which speak highly of you demonstrating that you are held in esteem and have touched the lives of many people for the good.

[25] The substantial contribution that you make to the support of your seriously disabled mother.

[26] Your concerns as to the repercussions if you reported the matter to the police and the difficult position in which you found yourself.

[27] Your attempts to obtain guidance and advice from friends, demonstrating amongst other matters your genuine concerns.

[28] The effect on your personal standing amongst friends, acquaintances and academic colleagues.

## **Conclusion**

[29] Possession of an AK 47 is a serious offence and it should be met with a custodial sentence by virtue of the enormous damage that weapons, in particular of this calibre, can cause to individuals, families and the community. There should be an immediate report of any weapons found and in particular of an assault rifle to the police at the very least in sufficient time to prevent the weapon disappearing back into the hands of those who would wish to use it or to store it for future potential use. However I consider that the circumstances of the offence in combination with the mitigating factors which I have listed are wholly exceptional. Accordingly I will suspend any sentence of imprisonment. The sentence that I impose is one of imprisonment for 2 years suspended for 3 years.