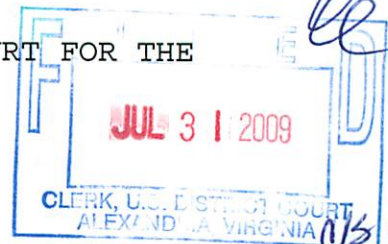


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



United States,)
)
 v.)
)
 Ahmed Omar Abu Ali,)
)
 Defendant.)

Case NO. 1:05cr53 (GBL)

SENTENCING ORDER

THIS MATTER is before the Court for re-sentencing. On November 22, 2005, a jury found Defendant Ahmed Omar Abu Ali guilty on all nine Counts charged. On March 29, 2006, this Court sentenced Mr. Abu Ali to three hundred sixty (360) months in the custody of the Bureau of Prisons, followed by thirty (30) years of supervised release. *United States v. Abu Ali*, No. 1:05-cr-53, 2006 WL 1102835 (E.D. Va. Apr. 17, 2006). On April 2, 2009, the Fourth Circuit reversed this Court and remanded the case for re-sentencing, instructing this Court to re-evaluate the 18 U.S.C. § 3553(a) factors. *United States v. Abu Ali*, 528 F.3d 210, 269 (4th Cir. 2008). I have done so. The issue before the Court is what sentence is "reasonable" to impose on Mr. Abu Ali, in light of the Federal Sentencing Guidelines and the statutory factors outlined in 18 U.S.C. § 3553(a).

I. STANDARD OF REVIEW

By its decision in *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court rendered the Federal Sentencing Guidelines "advisory" rather than "mandatory." However, that decision did not leave district courts with "unguided and unbounded sentencing discretion." *United States v. Green*, 436 F.3d 449, 455 (4th Cir. 2006). Rather, *Booker* requires district courts to "consult the [Federal Sentencing] Guidelines and take them into account when sentencing." *Booker*, 543 U.S. at 224 (citing § 3553(a)(4)).

Also, district courts must follow the commands of § 3553(a), which requires the court to "impose a sentence sufficient, but not greater than necessary, to comply with [the statutory purposes for sentencing]." § 3553(a). As the Fourth Circuit explained, in order to sentence a defendant post-*Booker*, district courts must engage in a four-step process. *Green*, 436 F.3d at 455-56. First, courts must properly calculate the sentence range recommended by the Sentencing Guidelines. *Id.* Second, courts must determine whether a sentence within that range and within statutory limits serves the factors set forth in § 3553(a) and, if not, select a sentence that does serve those factors. *Green*, 436 F.3d at 456. Third, courts must implement mandatory statutory limitations. *Id.* Fourth, courts must articulate the reasons for selecting the particular sentence, especially explaining why a sentence outside of the Sentencing Guideline

range better serves the relevant sentencing purposes set forth in § 3553(a). *Id.* If a district court does not apply the properly calculated Guidelines range, its reasons for doing so must be based on the factors listed in 3553(a). *Id.*

II. ANALYSIS

A. *Calculation of Sentence Range Recommended by the Sentencing Guidelines*

First, the Court finds that the sentence range recommended by the Sentencing Guidelines has not been properly calculated. The presentence report awarded Defendant a three-level reduction pursuant to U.S.S.G. § 2X1.1 (b) (2) on Count 9 of the Superseding Indictment (conspiracy to destroy aircraft, in violation of 18 U.S.C. § 32(b) (4)). However, this reduction is not applicable to violations of 18 U.S.C. § 32. U.S.S.G. § 2X1.1 (d) (1) (B). Therefore, the Court sustains the Government's objection to the Guidelines calculation. Based on the offenses for which Defendant was convicted and the relevant adjustments for his role in those offenses, Defendant's Adjusted Offense Level is fifty-one (51), his Criminal History Category is six (VI), and the resulting applicable Guideline range is a term of life in prison.

B. Selecting a Sentence Based on the Seven Factors in § 3553(a)

Second, the Court holds that a sentence within the applicable Guideline range serves the factors set forth in § 3553(a). The Court will discuss the factors in greater detail below.

C. Implementation of Mandatory Statutory Limitations

In sentencing Mr. Abu Ali, the Court is implementing the mandatory statutory limitations which require a mandatory minimum sentence of two hundred forty (240) months imprisonment on Count 8.

D. Analysis of the § 3553(a) Factors

The Court of Appeals for the Fourth Circuit outlined several reasons why it found this Court's original sentence imposed unreasonable and an abuse of discretion. That opinion focused in on this Court's judgment about the case in every respect and, in this Court's view, offered its own view of what evidence this Court ought to find, the weight this Court ought to give it, and rejected this Court's judgment about several of the § 3553(a) factors. This Court is bound by the judgment of the Court of Appeals to re-sentence and has been directed to re-weigh the statutory sentencing factors. This Court has done so in accordance with what a trial judge interprets as direction from the Court of Appeals.

1. The nature and circumstances of the offense and the history and characteristics of Mr. Abu Ali, § 3553(a)(1).

a. the nature and circumstances of the offense

As the judge who presided over nine days of gathering evidence from Saudi Arabia, a five-day suppression hearing, and a lengthy trial, I had an opportunity to view the witnesses, to see the evidence, and to consider the jury's judgment about the case. This was a very serious case where a United States citizen, a student scholar, left this country, went to the University of Medina, Saudi Arabia, and joined al-Qaeda, a dangerous terrorist organization. The Court and the jury recognized that the threat of terrorist activity, whether on our shores or directed at United States citizens, soldiers, or citizens of other states in their communities, is a grave danger to the public. Al-Qaeda has organized groups of individuals to carry out acts of mass murder and threatens massive wounding of groups in public places.

This trial revealed that Mr. Abu Ali made a deliberate judgment to associate with and join al-Qaeda and that he shared his organization's goal to harm people. The trial revealed that he trained, did research on putative targets, and discussed plans with other terrorist organization members to come to America and carry out terrorist crimes.

From the outset of this criminal case Mr. Abu Ali asserted that his videotaped confession was involuntary, the product of torture. The Court conducted a five-day suppression hearing,

heard from Mr. Abu Ali and his witnesses, heard from the Government's witnesses, and concluded that the confession was voluntary and not the product of torture. The jury heard this issue and concluded that Mr. Abu Ali's confession was voluntary, and now three judges of the Court of Appeals have reviewed this issue as well; the issue has been thoroughly vetted and resolved. Mr. Abu Ali is guilty of the crimes charged. No plausible reason has ever emerged as to why both the Saudi and United States governments would collude to incarcerate this young man without some proof beyond a reasonable doubt.

The Court is well aware of the scope of Mr. Abu Ali's confession that included a discussion of ways to attack stadiums and nightclubs, and to assassinate the President of the United States. There was a troubling discussion of a plot to assassinate the President, a martyrdom attack which Mr. Abu Ali said he was willing to join in order to accomplish a goal, to create terror, and achieve martyrdom.

Although the crimes for which Mr. Abu Ali was tried and convicted are extremely serious, several factors underlying the commission of those crimes are relevant to this sentencing. Let me be clear that the Court recognizes and appreciates that, although Mr. Abu Ali was not successful in the aims of this conspiracy, even an attempt to carry out these kinds of acts is serious. However, the facts remain that:

1. Mr. Abu Ali never planted any bombs, or injured any people;

2. No witness testified that they personally saw or conspired with Mr. Abu Ali to commit any acts of violence in Saudi Arabia or the United States and there was no evidence that there were other co-conspirators in the United States;

3. No weapons, bombs, or chemical weapons were ever found in Mr. Abu Ali's possession; and

4. No victim was injured in the United States by Mr. Abu Ali's individual actions.

The Court acknowledges that, during the trial, there was evidence that Saudi police did discover weapons and devices in so-called "safe houses" where al-Qaeda members met, lived, and trained. Mr. Abu Ali in his confession acknowledged training on weapons and explosive devices in one of the safe houses.

b. the history and characteristics of Mr. Abu Ali

Mr. Ali was born in Houston, Texas and moved to Arlington, Virginia at the age of four. He was raised by a mother who worked in the home and a father who worked outside of the home. Mr. Abu Ali was valedictorian of his high school class in Falls Church, Virginia, and later attended the University of Maryland to study engineering. He was a youth leader and camp counselor at his mosque. He has no prior criminal history and an apparently good educational history.

Letters from his friends, family, and numerous members of his community paint a positive portrait of Mr. Abu Ali's personality, intelligence, humility, and generally decent reputation as a young man.

During the three years that Mr. Abu Ali has been incarcerated, there have been no complaints brought to the attention of the Court that Mr. Abu Ali has broken institutional rules or posed a threat to anyone on the staff of the institution where he is housed. Furthermore, during pre-trial detention, Mr. Abu Ali's behavior was exemplary during his incarceration in the Alexandria Detention Center, a fact that was attested to at trial by correction officers who supervised and interacted with him. He has been called a model prisoner despite some very onerous conditions of confinement which limit his contact with family and the outside world. He has been continuously held in solitary confinement. Although the Government argues that Mr. Abu Ali's behavior was quite the opposite while in Saudi custody, the Court credits the testimony and observations of the officers and officials at the Alexandria Detention Center who testified before the Court.

Mr. Abu Ali has been detained for at least twenty-four (24) months at the federal prison called Supermax under very strenuous restrictions - essentially solitary confinement. Mental health professionals cited by the defense opine that "severe restriction of environmental and social stimulation has a profoundly

deleterious effect on mental functioning." (Def.'s Position on Sentencing 15-21.) All of these factors weigh in favor of the Court's decision to impose its sentence.

2. A sentence that will adequately and reasonably reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, § 3553(a)(2)(A).

As previously mentioned, the crimes for which Mr. Abu Ali was tried and convicted are very serious. The Court of Appeals has re-weighed this factor and determined that my judgment about the gravity of the offense does not sufficiently encompass the two judges' view of the enormity of the crime. I beg to differ, but reasonable jurists can reach different conclusions about the weight to give the various factors and reach different results. My difference with the Court of Appeals does not allow me to put aside their judgment; I must consider their judgment carefully. I have.

I think that the sentence I will impose here sufficiently captures the Court of Appeal's concerns. In addition to reflecting the seriousness of the offense, this sentence will provide just punishment for the offense because Mr. Abu Ali will be forced to spend his most productive years in prison and will lose the opportunity to build a family or a career over that time as a result of his actions. Additionally, this sentence will promote respect for the law because it seeks a fair and just result in light of the specific facts in this case.

3. A sentence that will afford adequate deterrence to criminal conduct, § 3553(a)(2)(B).

The Court's sentence will specifically deter Mr. Abu Ali from engaging in future criminal conduct. According to the Life Expectancy Table contained in the Virginia Code, Mr. Ali, as a 28-year old man, is expected to live another 45.7 years. VA. CODE ANN. § 8.01-419. In light of that expectation, the sentence that the Court will announce today carries a very lengthy term of imprisonment.

The Court of Appeals rejected my judgment about the weight youth, age, character, and maturity should or can have in determining a sentence. Section 3553(a) provides that the Court take these factors into consideration, and I have. I remain of the view that the decisions of a 21-year-old man are not necessarily the same decisions that would be made by a man of substantially advanced age who has had great time to reflect and mature. The Sentencing Commission's own data demonstrates this principle as it correlates a reduced risk of recidivism to age.

4. The need to avoid unwarranted sentence disparities among defendants with similar records found guilty of similar conduct, § 3553(a)(6).

Three years have passed since the original sentencing in this case. This is a singular case. I now regret that the Court of Appeals interpreted my original judgment to be an attempt to compare Mr. Abu Ali to anyone, so I will not do that in this re-sentencing. My original Sentencing Order addressed each of the

§ 3553(a) factors and the number of words in the opinion did not drive the sentence. The defense has pointed to a number of terrorism cases where sentences less than life have been imposed. I acknowledge that there are a number of post-trial terrorism cases where sentences less than life were imposed by trial judges. I am constrained by the Court of Appeals' opinion to search for a benchmark case that is substantially similar in every respect. Such a case does not exist. Even if there were a case, I do not think that a trial judge is bound to impose a judgment in a case based upon what another judge in another court has done, because, as Justice Stevens acknowledged, this work of sentencing involves individualized consideration of each case by the trial judge who heard the case, and there is no legal error in different judges reaching different sentences for an individual case.

5. Protecting the public from further crimes of the defendant, § 3553(a)(2)(C), and kinds of sentences available, § 3553(a)(3).

Here, there are arguments that would justify the imposition of either a sentence for a term of years or a life sentence. In the time since the Fourth Circuit's remand for re-sentencing, this Court has had the opportunity to reconsider its original sentence of thirty years. In reflecting on all of the factors, the Court has re-weighed two of the factors distinct from its prior opinion. These factors are § 3553(a)(2)(C), to protect the public from future crimes of the defendant, and § 3553(a)(3), the

kinds of sentences available, specifically what risk, if any, Mr. Abu Ali would pose to the public following thirty years in Supermax.

The § 3553(a)(2)(C) factor considered is the need for the sentence imposed to protect the public from future crimes of Defendant. The Court must contemplate whether a thirty year sentence or a term for any number of years in federal prison is sufficient to protect the public from further crimes by Mr. Abu Ali.

In his confession, Mr. Abu Ali admitted to participating in the planning of heinous and potentially catastrophic crimes to be committed against the United States citizenry. He discussed his willingness to join a group of three snipers to assassinate the President. He confessed that he had an idea to kill the President as he walked along a rope line greeting the public. He confessed that he was willing to martyr himself for his cause. It is noteworthy that, throughout trial, sentencing, and two years served in Supermax, Mr. Abu Ali has yet to make any statement expressing any remorse, or even if he denies the offense, renouncing his previously demonstrated association with al-Qaeda, his beliefs, or accepting responsibility for the crimes.

As I reconsider the types of sentences available, a term of years or a life sentence, Mr. Abu Ali has made no personal effort or indication to persuade the Court that a term of years is warranted. Defense counsel has gone to great lengths to detail

the harsh conditions of Mr. Abu Ali's incarceration and the almost certain deleterious impact on Mr. Abu Ali's mental health that extended detention in solitary confinement in the Supermax facility is likely to have. Most certainly, thirty years of incarceration under such restricted conditions will impact his mental and physical health, functioning, and capacity. Without a doubt, Mr. Abu Ali will struggle to transition back into functioning society that will essentially have moved on without him. He would be released into a world that will bear only a limited resemblance to the world he left behind, a world with little, if any, friends or family left to support him at the end of thirty years. He will be a middle-aged man with no skills, experiences, or social network. Therefore, the Court is concerned about the combination of Mr. Abu Ali's demonstrated unwillingness to renounce the beliefs that led him to participate in terrorist activities; the extreme nature of his current confinement; and the future unknowns regarding his mental state, ability to assimilate, and whether he would have matured beyond his previously-confessed desire to commit terrorist acts and desire to achieve martyrdom. There is simply no way for the Court to know what Mr. Abu Ali's mental state would be after thirty years of solitary confinement. The risk of the unknown from a term of years sentence is too great in this case. I cannot put the safety of the American citizenry at risk. In three years nothing has come to light to alleviate this concern. I am further unpersuaded that a lengthy term of supervised

release following a term of years could or would be a sufficient measure to prevent recidivism.

Thus, the Court finds that a sentence of life in the custody of the Bureau of Prisons will provide adequate deterrence to future criminal conduct and is "sufficient but not greater than necessary to achieve the statutory purposes of sentencing" and to reasonably protect the public from further crimes of Mr. Abu Ali.

The Court and the law do not require that Mr. Abu Ali have been successful in carrying out any of the crimes contemplated by the various conspiracies for which he was convicted in order to severely punish him for his crimes. The law and the Court need not wait until there are victims of terrorist attacks to fully enforce the nation's criminal laws against terrorism. Acts of terrorism must be punished whether one has completed those acts or conspired to carry them out.

At the same time, this Court also believes that it must be able to make judgments about the nature, quality, and scope of the actions of individual defendants and to fashion sentences that are based on the actual facts presented to the Court. This is an essential role of the Court and a critical component to allowing for "reasonable" sentences that avoid unwarranted disparities and are "sufficient but not greater than necessary to achieve the statutory purposes of sentencing." § 3553(a).

III. CONCLUSION

For the reasons detailed in this Order, the Court finds that a life sentence is reasonable and is "sufficient but not greater than necessary to achieve the statutory purposes of sentencing" as required by the Federal Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553(a). The Court therefore sentences Mr. Ahmed Omar Abu Ali to life imprisonment and a statutorily mandated supervised release term. For the foregoing reasons, it is hereby

ORDERED that Mr. Ahmed Omar Abu Ali is COMMITTED to the custody of the United States Bureau of Prisons to be imprisoned for a term of life. The sentence is allocated per Count as follows: Mr. Abu Ali shall serve one hundred twenty (120) months as to each of Counts 1, 2, 3, 4, 5, 6, and 9, consecutive to one another; and life as to each of Counts 7 and 8, for a total term of imprisonment for life. It is further

ORDERED that Mr. Ahmed Omar Abu Ali shall serve terms of SUPERVISED RELEASE as set forth herein following the conclusion of his term of imprisonment. The term of supervised release is allocated per Count as follows: Mr. Abu Ali shall serve three years each as to each of Counts 1, 2, 3, 4, 5, and 6, consecutive to one another; five years each as to Counts 7 and 8, consecutive to all other Counts; and three years as to Count 9, consecutive to all other Counts, for a total term of supervised release of

THREE HUNDRED SEVENTY-TWO (372) MONTHS. It is further

ORDERED that the Court will not require Mr. Abu Ali to pay any restitution because his actions did not cause physical harm or financial damage to others. However, the Court will require Mr. Abu Ali to pay a \$900.00 special assessment right away. The Court will not impose any other fines or costs of incarceration because it finds that Mr. Abu Ali does not have the ability to pay them. It is further

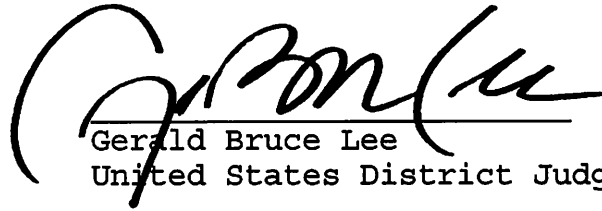
ORDERED that Mr. Abu Ali has the right to appeal this sentence within ten (10) days of the entry of this Order pursuant to Federal Rule of Appellate Procedure 4(b)(1)(A). It is further

ORDERED that the Court REQUESTS that the United States Bureau of Prisons review whether Special Administrative Measures ("S.A.M.") that have been instituted for Mr. Abu Ali regarding

his solitary confinement and lack of contact with his family remain necessary and appropriate.

The Clerk is directed to forward a copy of this Order to counsel of record.

Entered this 31st day of July, 2009.


Gerald Bruce Lee
United States District Judge

Alexandria, Virginia
07/31/09