

Khawaja Receives Prison Sentence

Mohammed Momin Khawaja, a Canadian software developer, was recently found guilty in a trial related to foiled bomb plot in the United Kingdom. Khawaja will serve 10 years and 6 months in prison - much less than five of his co-conspirators in England who each received life sentences.^[1] Evidence in the British trial showed that Khawaja travelled to Pakistan in 2003, where he met fellow Jihadi sympathizers who found Khawaja to be very enthusiastic and useful. They also welcomed his £1,800 donation.^[2] Khawaja's role in the bomb plot was to build a remote-control detonator. Omar Khyam, the ringleader of the operation, was under British police and MI5 surveillance when Khawaja travelled to the UK to meet him. Khawaja's details were immediately passed on to Canadian authorities, who began monitoring his activities upon return to Canada.^[3]

Khawaja's trial is significant as he is the first individual to be charged under the 2001 *Anti-Terrorism Act*,^[4] which was introduced after the September 11 attacks.^[5] Crown Prosecutor David McKeercher pressed for a sentence of two life terms, plus an additional 44 years, arguing that Khawaja was "a grave and palpable threat to society":

He's chosen a murderous way of life. There is no indication of any remorse whatsoever. A life sentence is more benign than the killings and maiming he intended.^[6]

While Khawaja never testified himself, his defence was that he wanted to join Muslim insurgents fighting NATO troops in Afghanistan, but was tricked into building electronic triggers to detonate bombs in London.^[7] Because the prosecution team provided no evidence of Khawaja's knowledge of the British bomb plot, Ontario Superior Court Justice Douglas Rutherford acquitted him of two of the seven charges against him.^[8] The first two counts related to the British bomb plot, while the next four counts "established that Khawaja participated in or contributed to the activity of the terrorist group with a view to facilitating its terrorist activity."^[9] Under the principle in *Kienapple*,^[10] where "the same transaction gives rise to two or more offences with substantially the same elements and an accused is found guilty of more than one of those offences, that accused should be convicted of only the most serious of the offences," no sentence was imposed on count two against Khawaja.^[11] Much emphasis was placed on Khawaja's good behaviour in detention.^[12] The trial judge counted Khawaja's five years in custody before trial in determining his sentence; he will not be eligible for parole until he has served half of his sentence.^[13]

Here is a breakdown of Khawaja’s sentence:[\[14\]](#)

	Section of Criminal Code	Maximum Sentence Possible	Sentence for Khawaja
Count 1	81(1)(a) [15]	Life Imprisonment	4 Years
Count 3	83.18(1) [16]	10 Years	3 Years
Count 4	83.21(1) [17]	Life Imprisonment	2 Years
Count 5	83.03(a) [18]	10 Years	2 Years
Count 6	83.18(1)	10 Years	3 Months
Count 7	83.19 [19]	14 Years	3 Months

Khawaja may appeal the sentence, which his lawyer, Lawrence Greenspon, called “excessive.”[\[20\]](#) On the other hand, University of Toronto terrorism expert Wesley Wark called it a “surprisingly light sentence in the circumstances,” and “perhaps people will say this is another example that our justice system is too lenient in the face of serious crimes.”[\[21\]](#)

[\[1\]](#) *Omar Khyam, Salahuddin Amin, Jawed Akbar, Anthony Garcia and Waheed Mahmood*, [2008] EWCA Crim 1612 (C.A.).

[\[2\]](#) *Supra* note 1.

[\[3\]](#) *Ibid.*

[\[4\]](#) *S.C. 2001, c. 41.*

[\[5\]](#) *Supra* note 1.

[\[6\]](#) Ian MacLeod, “Crown Demands Two Life Terms for Khawaja” *The Ottawa Citizen* (13 February 2009).

[\[7\]](#) *Ibid.*

[\[8\]](#) *R. v. Khawaja*, [2008] O.J. No. 42444 at para. 3.

[\[9\]](#) *Ibid.* at para. 5.

[\[10\]](#) *Kienapple v. R.*, [1975] 1 S.C.R. 729.

[\[11\]](#) *Supra* note 9, at paras. 18 and 21. The possession and development charges stem from the same activity, which led to the court’s ruling (at para. 20).

[\[12\]](#) *Ibid.* at para. 26.

[\[13\]](#) *Ibid.* at paras 45 and 55.

[\[14\]](#) *Ibid.* at paras 34 and 54.

[\[15\]](#) “Everyone commits an offence who 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” ([R.S.C. 1985, c. C-46](#)).

[16] “Every one who knowingly participates in or contributes to, directly or indirectly, any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years” (*ibid.*).

[17] “Every person who knowingly instructs, directly or indirectly, any person to carry out any activity for the benefit of, at the direction of or in association with a terrorist group, for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity, is guilty of an indictable offence and liable to imprisonment for life” (*ibid.*).

[18] “Every one who, directly or indirectly, collects property, provides or invites a person to provide, or makes available property or financial or other related services intending that they be used, or knowing that they will be used, in whole or in part, for the purpose of facilitating or carrying out any terrorist activity, or for the purpose of benefiting any person who is facilitating or carrying out such an activity” (*ibid.*).

[19] “Every one who knowingly facilitates a terrorist activity is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years” (*ibid.*).

[20] CTV News, “Khawaja Sentenced to 10.5 Years Under Terror Law” (12 March 2009).

[21] *Ibid.*