

## Trying to Kill An FBI Agent: Sentence Too Low

January 15, 2020

The United States Court of Appeals for the Second Circuit (Second Circuit) on December 27, 2019, rejected as “shockingly low” a seventeen-year prison term imposed on a terrorist who attempted to kill an FBI agent. The defendant in *United States v. Mumuni* faced an eighty-five-year term under the Federal Sentencing Guidelines. One member of the three-judge panel dissented in part because he did not believe that the sentence was so “shockingly low” as to require resentencing.

### *Background*

Fareed Mumuni **met** Munther Omar Saleh, his co-defendant, through a college Islamic society. Saleh **described** himself as a “full-fledged member of ISIS with a radicalizing gift.” The two **accompanied** Nader Saadeh, their co-conspirator, when Saadeh purchased hiking boots and a compass in anticipation of Saadeh’s trip to Syria to join ISIS. After his arrest, Mumuni **said** he had checked out flights to Turkey from New York and had begun to raise money for the trip to join ISIS. He **also** indicated at the time after his arrest that he planned to kill any officers who tried to stop him.

Beyond overseas enlistment, Mumuni and Saleh discussed targeting police officers in this country as well. Saleh **offered** Mumuni a pressure-cooker bomb. Mumuni **asked** if it was religiously permissible to die in a suicide attack on the police. Saleh passed on an **ISIS** recruiter’s assurance that it was. Mumuni pressed Saleh on the best way to proceed. Saleh **told** him to bomb the police, run over his victims with a car or truck, and use the victims’ guns against other officers.

Later, Saleh **informed** Mumuni that he planned to go on the attack and kill non-Muslims in this country. Mumuni wished him luck. That night, authorities **arrested** Saleh and a companion after a botched assault on an FBI agent who had been tailing them. The FBI **then** secured a warrant to search Mumuni’s house for his cell phone. Mumuni’s mother admitted the heavily armed search team. Hearing the commotion, Mumuni came downstairs from his bedroom with an eight-inch

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kitchen knife behind his back. Officers directed him to the living room where Mumuni **stabbed** at an unarmed FBI agent with the kitchen knife. The agent was wearing an armored vest and a metal magazine carrier that deflected the blows. Mumuni's lawyer subsequently characterized the attack as a "suicide by cop" **effort**.

Mumuni eventually **pleaded** guilty to five charges: (1) **conspiracy** to provide material support to a terrorist organization; (2) **attempting** to provide material support to a terrorist organization; (3) **conspiracy** to assault a federal officer; (4) **assault** on a federal officer with a deadly weapon; and (5) **attempted** murder of a federal officer.

The sentencing process for federal crimes **begins** with the Federal Sentencing Guidelines. A probation officer **uses** the Guidelines' scoring system to determine the sentence recommended under the Guidelines and prepare a presentencing report. Following a ruling on any disputes over the probation officer's report, the district court **considers** the recommendation along with various statutory sentencing factors and imposes a sentence. The district court's sentence can be **overturned** on appeal only if it is either procedurally or substantively unreasonable. A sentence is **procedurally** unreasonable if it involves a miscalculation of the Sentencing Guidelines, does not account for any departure from the Guidelines' sentencing range, fails to consider the statutory sentencing factors, or is based on clearly erroneous facts. Under Second Circuit precedents, a sentence is **substantively** unreasonable if it is "shockingly high, shockingly low, or otherwise unsupportable as a matter of law."

#### *District Court*

The probation officer calculated Mumuni's Guidelines-recommended sentence at the bottom of the chart – offense level 43, criminal history category IV. That rating **merits** a recommended sentence of life imprisonment. However, a Guidelines-recommended sentence may **not exceed** the maximum penalty for the crimes of conviction, and life imprisonment is thought to exceed any sentence for a term of years. Thus, Mumuni's Guidelines-recommended sentence had to be "reduced" from life imprisonment to imprisonment for eighty-five years (the total of the maximum terms for his five offenses).

The district court **ultimately** sentenced Mumuni to prison for seventeen years and Saleh for eighteen years. The court appears to have considered their cases **comparable** and Saleh the more culpable of the two. Mumuni's lawyer **urged** several potentially mitigating factors. Mumuni was only twenty-one years old at the time of his arrest. He had no prior criminal record. His crimes resulted in neither physical injury nor property damage. Moreover, the district court **credited** Mumuni's clean disciplinary record during the three years he spent in pre-trial and pre-sentence detention. The district court also seemed to **question** whether Mumuni intended to kill the agent rather than to draw the fire of the other agents and whether, under the circumstances, the kitchen knife could be considered a deadly weapon. There is no indication that the district court had any qualms about accepting the fact that Mumuni's attack on the FBI agent constituted an attempt to provide material support for ISIS. The government appealed.

#### *Second Circuit*

The Second Circuit **found** Mumuni's sentence of seventeen years substantively unreasonable and sent it to back to the district court for resentencing with the instruction that "any subsequent appeal in this case shall be directed to this panel." The Second Circuit considered the district court's analysis **wanting** on three grounds. **First**, the panel found the district court's rationale

inconsistent with its acceptance of Mumuni's guilty plea. If the district court doubted whether Mumuni intended to kill the agent or that the kitchen knife was not a deadly weapon, it should not have accepted his plea to those charges, the Second Circuit explained. [Second](#), the panel majority questioned the district court's assessment of Mumuni's and Saleh's relative culpability. Mumuni pleaded guilty to trying to kill an FBI agent. Saleh did not. [Third](#), the Second Circuit found that the district court had departed from the Guidelines-recommended sentence to a greater extent than the mitigating circumstances warranted. The panel majority concluded that Mumuni's age, first-time-offender status, prison record, and testimonials were not enough to justify reducing a sentence of eighty-five years in prison to one of seventeen years.

One member of the Second Circuit panel dissented in part. [He](#) did "not believe that the seventeen-year sentence [was] shockingly low." He would [afford](#) the district court greater latitude to judge the comparative culpability of co-defendants and the weight of mitigating factors.

### *Congressional Options*

The 116th Congress has a number of pending proposals that would reinforce the Second Circuit's view of the seriousness of Mumuni's offenses. Some would establish a mandatory minimum for attempting to kill a federal judge or law enforcement officer, *e.g.*, [S. 1480](#). Others would establish a separate domestic terrorism offense, *e.g.*, [H.R. 4187](#). Still others would curtail the good-time credits available to federal prisoners convicted of terrorism offenses, *e.g.*, [S. 1684/H.R. 3067](#).

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