NCN: [2020] EWHC 283 (Admin)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

No.QB-2019-003302

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 23 January 2020

Before:

LORD JUSTICE DAVIS
MRS JUSTICE MAY

B E T W E E N :

SOLICITOR GENERAL — Applicant

- and -

TINA McGUIRE — Respondent

MS K. HARDCASTLE appeared on behalf of the Applicant.

MR J. HIPKIN appeared on behalf of the Respondent.

J U D G M E N T

LORD JUSTICE DAVIS (giving the judgment of the Court) :

1 Her Majesty's Solicitor General applies for the committal of the respondent, Tina McGuire, on the basis of a deliberate breach of court injunctions. The actual breach is of a kind which has occurred on previous occasions so far as other individuals have been concerned. We say at the outset that in this case the breach has been, and is, admitted, as the respondent has herself confirmed to us this morning. The only real issue is as to the appropriate penalty to be imposed.

2 The context is the notorious murder of Jamie Bulger on 12 February 1993. He was a toddler, just two years old at the time. His killers were two boys, Jon Venables and Robert Thompson, who, distressingly, were themselves but young children, only 10½ years old or thereabouts, at the time. In many jurisdictions that would not be an age at which criminal responsibility could attach at all. Indeed, so far as this jurisdiction is concerned, i.e. the jurisdiction of England and Wales, the two of them exceeded by only a margin of a few months the age, 10 years, at which criminal responsibility can attach.

3 The ensuing trial at Preston Crown Court attracted enormous publicity. There was widespread distress and revulsion that so little a child could have been so wantonly and gratuitously abducted and killed by two 10-year-old children. Upon conviction, the two were sentenced, as required by law, by the trial judge, Morland J, to indefinite detention at Her Majesty's pleasure. Reporting restrictions as to their names were lifted after conviction. But the judge maintained significant restrictions with a view to aiding their subsequent reformation and rehabilitation.

4 Sustained levels of extreme hostility towards the two have persisted over the years. In such circumstances, the then President of the Family Division in 2000 imposed wide-ranging injunctions designed to deal with real concerns that, on release on licence, each of Venables and Thompson would be exposed, even where they adopted new names and new identities, to a real risk of serious harm or even death if their identities and appearances were revealed. Such injunctions have, with some variations made over the years, remained in place. There is an identified continuing need for them. Indeed, an application to discharge the injunctions was rejected by the current President of the Family Division only last year: see *Venables v News Group Papers* [2019] EWHC 494 (Fam).

5 It is also to be noted, and indeed to be stressed, that the ongoing concerns relate not only to Venables and Thompson themselves; the concerns also relate to those individuals who may be wrongly identified as them. Indeed, there has been at least one serious incident where that has happened. Put very broadly, the injunctions in place prohibit, amongst other things, the publication or solicitation of (1) any images or descriptions of the physical appearances of Venables and Thompson; (2) any information purporting to identify any persons formerly known as them, and (3) any information purporting to describe their past, present or future whereabouts. It is not necessary for present purposes to set out the precise details of the injunctions in question.

6 Such injunctions are directed to the world at large and must be obeyed. As stated by Lord Burnett LCJ in the recent case of *Venables and Thompson v News Group Newspapers and others* [2019] EWHC 241 (QB) at para.12:

> "Compliance is not optional. Anybody who has been served with or knows of the injunctions and, with that knowledge, acts contrary to their prohibitions is

guilty of contempt of court and liable to be punished for the breaches. It is essential in the public interest that these principles should be upheld. It is fundamental to the rule of law that orders of the court are obeyed. An injunction of this sort is granted by a court only after careful consideration of all the evidence, the applicable law and arguments advanced by the parties. If it is suggested that the judge has made an error in granting the injunction, there is the possibility of appeal. It is also possible to apply to vary an injunction if circumstances change. There may well be a temptation for individuals, almost always on incomplete or superficial understanding of the position, to believe that they know better and, in a misguided way, to conceive that they are right to undermine the rule of law by breaching an injunction of this sort. There are others who do so appearing to welcome the consequences they might face; and others, particularly in a case of this sort, who are motivated by pure malice to those protected by the injunction, and without any thought for the wider implications. The difference between today and the pre-internet and social media era is the very easy practical way any individual can breach an order of the court and widely disseminate information."

7 Unfortunately, over the years there have continued to be instances of a deliberate flouting of such injunctions as have been imposed and upheld by the court: often by use of social media and in circumstances of seeking to whip up violent reactions on the part of members of the public and in circumstances of seeking to expose the identity and whereabouts of Venables and Thompson, doubtless in many cases with a view to encouraging vigilante physical retribution. Instances of such cases coming before the court include, but are not limited to, *Harkins and Liddle* [2013] EWHC 1455 (Admin); *Baines* [2013] EWHC 4236 (Admin);

McKeag and Barker [2019] EWCA 241 (QB), cited above; and *Wixted* [2019] EWHC 2186 (QB). In all such cases the court, understandably, has stressed the need to uphold the rule of law, the need to deter unlawful vigilantism and the need to sustain and uphold the injunctions, in order to protect the physical safety not only of Venables and Thompson but also of those wrongly identified as them. In the case of *Harkins and Liddle* at para.36, the then President of the Queen's Bench Division, Sir John Thomas, stated that for the future, any deliberate infringing publication on the internet or by way of social media could be expected to attract an immediate and substantial custodian sentence; although it is right to say that in some of the subsequent cases the court has felt able, exceptionally, to impose a suspended sentence.

8 We turn to the position of the respondent herself, a woman who was born in 1966. On 24 November 2017 the respondent made a post and then made a re-post to her Facebook account. The re-post in the relevant parts stated as follows, it being accompanied by a photograph of an adult man: "This is Jon Venables as he looks today ... Share this as much as possible as this photograph I posted this morning was removed". The inference from that is that she was seeking to frustrate the editors of Facebook to stop this unlawful posting. These posts as made by the respondent were shared over 128,000 times. It was "liked" by 2,800 users, and attracted 3,400 comments. Subsequently, various people warned her of the consequences of her doing what she had done; and the matter was reported to the police. The police saw fit to arrest her and she was subsequently interviewed under caution. In the event, she was released without charge in relation to the posting on 24 November 2017.

9 However, further investigation by the South Wales police into the respondent's Facebook use had shown a pre-occupation on her part with the sexual abuse of children and in particular with the Bulger case. Indeed, it emerged that she had also regularly been

accessing a site called "the UK Database" for these purposes. It transpired that on 20 February 2018 the respondent had made another post on Facebook relating to the Venables and Thompson case. It was shared 627 times. It included a photograph of an adult man, whom the respondent claimed to be Venables, albeit under a different name, which different name she gave. She also provided his alleged location. The words "share, share, share, share" appeared alongside, together with this message: "Share before Facebook remove it ... Meet [name given] also known as Jon Venables". It is a particularly disconcerting feature of this post that the man in question in the photograph in fact appears to be different from the man shown in the November 2017 posting. When further interviewed under caution with regard to this latter posting, the respondent openly admitted being responsible for this post, as indeed she had accepted that she had been responsible for the November 2017 post. She admitted that by the time of the February 2018 post she knew of the injunction in broad terms and she knew of the potential consequences in respect of a deliberate breach of it. Somewhat disconcertingly, she at one stage professed indifference to the prospect of harm to the man shown in the February 2018 post. She had said, amongst other things, that she was "merely trying to raise awareness". However, she did also express contrition in this interview and she concluded the interview by saying that she realised what she had done and by apologising. Subsequently, when notified of these proposed proceedings, she wrote a letter, drafted by herself, dated 15 May 2019, openly admitting what she had done and expressing remorse.

10 The present contempt application is, as we have indicated, based solely on the February 2018 post, although Ms Hardcastle, for the Solicitor General, understandably observes that the previous November 2017 postings remain relevant context. There can be no doubt, as was accepted, that the post in February 2018 was in knowing breach of the terms of paras.1(1)(a), 1(1)(b) and 1(1)(c) of the injunction previously imposed, relating to

publication of anything which might identify Venables or Thompson, their current or previous names, and their current or previous whereabouts. The breach, as we have said, has been admitted, and it is admitted that the respondent knew of the broad terms of the injunctions. That is demonstrated beyond doubt, to the criminal standard, on the evidence. In such circumstances, we are satisfied to the criminal standard that the contempt of court alleged by the Solicitor General in these proceedings has been proved.

11 The only issue therefore is then as to penalty. Mr Hipkin, on behalf of the respondent, draws attention to the frank admissions made at the outset in interview by the respondent. He stresses that she is very remorseful. He further stresses that since her initial arrest there has been no further attempt by her to publicise any information of any kind with relation to the Venables and Thompson matter. He says that the respondent is determined that there will be no more involvement; and certainly there have not been any identified incidents on her part in the intervening period. It appears that she has withdrawn from all relevant campaign groups and has withdrawn from social media in this respect.

12 Mr Hipkin also draws attention to the contents of a psychiatric report by Dr Owen Davies, dated 12 December 2019, and which, in our view, is of considerable importance in this particular case. It is not necessary or desirable to go into great detail. The report describes the very troubled childhood background of the respondent: which may indeed to an extent explain her preoccupation with abuse. The psychiatrist also found that, in accordance with pre-existing diagnoses, there were present anxiety and depression features with regard to the respondent. Further, there were traits suggestive of an emotionally instable personality, and also elements of post-traumatic stress disorder were identified. Nevertheless, it should be made clear that Dr Davies did not consider that her circumstances were such as to justify a mental health order.

13 In the course of argument, we were referred to the definitive guideline issued by the Sentencing Council in relation to the imposition of community and custodial sentences. We were also referred to the guideline issued by the Sentencing Council concerning breaches of a protection order and restraining and non-molestation orders, the maximum sentence for which is five years' imprisonment, in contrast to the maximum available in applications of this kind, which is two years' imprisonment. That guideline no doubt can be taken into account. But, as has been pointed out in other cases, it is at best analogous only and cannot provide a perfect comparator with a committal case of this particular kind.

14 In this particular case, as we are told, there is no evidence to suggest that serious harm or any harm has in fact arisen to Venables or Thompson, or anyone else, by reason of the respondent's posting. But the real gravamen of the breach is the exposure to risk that such conduct can give rise to - as we have said, exposure to risk of harm not only on the part of Venables and Thompson themselves but also on the part of those wrongly identified with them. This, in our judgment, was a very serious breach, given the circumstances, and it is to an extent exacerbated by what the respondent had previously done in November 2017. There can be no question, in our Judgment, but that the custody threshold is passed in this particular case. Indeed, Mr Hipkin has realistically and rightly not sought to argue otherwise. The remaining question thus is whether the inevitable custodial sentence can properly be suspended.

15 Given the seriousness of what has been done, we regard this as close to the line. In our judgment, however, looking at matters as a whole, we think that this can properly be viewed as an exceptional case; and we are persuaded that the custodial sentence can be suspended. In particular, serious though the contempt was, we must bear in mind the early and frank

admissions, the remorse, the stated and evidenced determination not to infringe again, and, not least, the psychiatric report. In all the circumstances, we have concluded that the appropriate penalty to be imposed by this court is one of eight months' imprisonment but suspended for a period of 15 months. The respondent will clearly understand the consequences for her if she breaches the injunctions in that period. Indeed, she should clearly understand the potential consequences for her if she breaches the injunctions after the suspended sentence period has expired. We also wish to make clear that although in this particular case, having regard to its own particular circumstances, this court has thought it appropriate to suspend the inevitable custodial sentence that has to be imposed, it must be clearly understood by those who deliberately flout these particular injunctions (having the potential, as such breaches do, for very serious consequences) that they can anticipate that ordinarily an immediate custodial sentence of some significant length is likely to be imposed.

16 Accordingly, that is the decision of this court.

CERTIFICATE

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