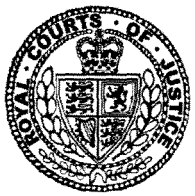

Neutral Citation Number: [2020] EWHC 454 (QB)

Case No: QB-2019-00058

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 25 February 2020
Start Time: 9.38 a.m. Finish Time: 10.13 a.m.

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Before:

ROWENA COLLINS RICE
(Sitting as a Deputy High Court Judge)

- -

Between:

CHELSEA FOOTBALL CLUB LIMITED	**Claimant**
- and -	
GARY NICHOLS	**Defendant**

- -

- -

Mr Charles Raffin for the **Claimant**
Mr Adam Tear for the **Defendant**

- -

Approved Judgment

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

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Ms Collins Rice :

1. Mr Nichols' case comes before me today for sentencing for contempt of court. On 14th January this year he was found by Deputy High Court Judge Margaret Obi to have committed that contempt by having trafficked a ticket for a Chelsea FC football match on 4th December of 2019. This was in breach of an order of the High Court made by Dove J on 19th February 2019 restraining Mr Nichols from that very activity. That order had been amended and continued by Cutts J on 26th February 2019 and further continued by Master McCloud on 2nd May 2019.

2. The wider factual background to this case is set out in Ms Obi's judgment of 14th January, with which this judgment should be read. I do not need to repeat it here. It is, however, important and relevant background to note that in September 2018 Mr Nichols had been found to have trafficked Wimbledon tickets in breach of a High Court order. He was on that occasion sentenced to six months' imprisonment for contempt of court, suspended for two years. He therefore committed the current contempt of court during the currency of that period of suspension.

3. There are no sentencing guidelines directly applicable to contempt of court. The authorities in the decided cases to which I was taken guide me to have regard to comparison with sentencing guidelines for breach of other penal orders such as antisocial behaviour orders and, where appropriate, guidelines for guilty pleas in criminal trials. The authorities themselves also set out a framework particular to sentencing for contempt by which I must be principally guided today.

4. From those authorities, I distil some general propositions about the contempt of court jurisdiction, which I underline at the outset. There is a very clear public interest in having these High Court orders respected. They are not provisional. The High Court is determined to protect those to whom it has given the benefit of an order. There is an inherent seriousness in a breach of an order of the High Court, above and beyond the commission of the underlying mischief which it seeks to restrain on an individual basis. It undermines the public interest - and public confidence - in the administration of justice.

5. I am required to pass the minimum sentence which I consider to be effective to punish the behaviour which has occurred, deter others from doing likewise and secure future respect for court orders from the person having been found to be in contempt. I am directed by the guidelines and the authorities to look at the culpability of the breach, that is how seriously blameworthy it is, and at the harm done.

6. As to culpability, in this case I note that the fact of the breach is undisputed. Mr Nichols says in the statement I have before me that the act of trafficking constituting the contempt was impulsive and made under a degree of personal stress. But however planned or unplanned the act of trafficking may have been, Mr Nichols had a choice. He chose to breach the order. He did so deliberately and for personal gain (albeit modest). I have no evidence that the order itself or the suspended sentence to which he was subject acted as a material restraint on his behaviour. He acted in disregard or defiance of the decision of the court, in a way which inevitably defeated the objectives of the court, contrary to the interests of justice. The apology briefly noted in Mr Nichols' statement before me today does not persuade me that the gravity of this conduct is fully understood, or that an unambiguous attempt has been made to

purge the contempt adjudged by Ms Obi in January and give confidence of restored respect for court decisions. All of this points to a high degree of culpability.

7. As to harm, I have noted what decided cases emphasise about the perniciousness of ticket touting: the harm it does to the business model of sports organisations, the exposure of purchasers to having the tickets rejected or, conversely, the risks posed to public order and public safety by unauthorised and uncontrolled access to sports grounds. Mr Nichols was party to an inherently harmful activity. On the other hand, I also remind myself that there is a single incident before me today with no evidence as to any particular consequences, and that the harm in this case is therefore of a general rather than a specific nature. I consider the degree of harm on the facts before me to be no more than moderate.

8. As the authorities recognise, I cannot read the sentencing guidelines for antisocial behaviour orders directly across to sentencing for contempt of court. Different penalties are available, different scales of penalty are available, and there are real differences, as I have said, between contempt jurisdiction and criminal jurisdiction. However, I do have regard to the sentencing guidelines in calibrating the appropriate sentence for a contempt of the culpability and harm that I have found. I also of course take into account the body of authorities on sentencing for contempt of court.

9. Applying the guidance given by the authorities, it is difficult to see that I can commensurately pass any sentence short of immediate custody. I note that that was the expectation of Ms Obi, having tried the case and adjourned sentencing for the purpose of enabling personal mitigations to be put forward. I am satisfied that nothing less than immediate custody addresses the culpability of this conduct, or is likely to deter others or constrain Mr Nichols' future behaviour. I am reinforced in this view by the fact that the contempt was committed during the currency of a suspended sentence also for contempt, involving ticket touting in breach of an order of the High Court. I consider that to be a seriously aggravating factor. It demonstrates a sustained and apparently undeterred lack of respect for orders of the court and for the administration of justice.

10. When I come to consider personal circumstances I therefore start with the fact that Mr Nichols is not entitled to be treated as a person of good character because this is not the first occasion on which a sentence of imprisonment for contempt of court is being passed on him.

11. I then turn to personal mitigations, bearing in mind as I have said that sentencing was adjourned to today specifically in order to enable Mr Nichols to prepare and submit evidence to the court. The personal mitigations that he has put before the court are those contained in his personal statement, to which a doctor's letter and a prospective employer's letter are attached, together with a brief further supportive statement from his son. The mitigations put forward in these documents are as follows.

12. Firstly, his health. This is not the first time Mr Nichols has put his health in front of the High Court as a mitigating factor. I have an account from Mr Nichols of the state of his health, with a list of his medicines. I do not have a medical report. I have a doctor's letter from last October which confirms that he is diabetic and advises on the management of his condition. None of this helps me very much in trying to understand the relevance of his medical conditions either to his behaviour in

committing contempt of court or to the potential impact of a sentence of imprisonment. But I have noted what is said.

13. Other personal mitigations put before me go to his financial situation and to the impact of imprisonment on his family. Mr Nichols has had his share of personal adversity and misfortune. His wife has a disability which affects the care she can give her family. He has three teenage children only the eldest of whom is in employment. He says social services have been involved in the past and that his family members all to some degree rely on the care and support he provides. He has provided no specific evidence as to his finances, or indeed as to the potential impact of a period of imprisonment on his family. But I give what he and his son say as much mitigating weight as I am able to. I have particular regard to what is said about the impact on his family. His family are the innocent victims of his conduct and I am sorry for the consequences which they are set to face as a result of it.

14. I have said that I consider immediate imprisonment to be inevitable because of the culpability of the contempt, aggravated by the fact that this is a second committal for contempt, Mr Nichols having been undeterred from breaching a High Court order by a still-current suspended sentence of imprisonment for contempt.

15. The maximum sentence for contempt of court is two years. I must sentence for the minimum term commensurate with the relevant circumstances before me. I take as my starting point that this is a culpable breach, but causing no more than moderate harm. Looking at the single incident before me, this contempt of court is towards the lower end of the spectrum of immediately imprisonable contempts. I take as a starting point a sentence of immediate imprisonment of six months. I consider the contempt to be aggravated by having been committed during the currency of a six-month suspended sentence for contempt of court.

16. In mitigation I take into account Mr Nichols' admission of contempt before Ms Obi, but I consider it late. There seems to be room for some doubt about exactly how soon it was after he obtained legal representation, but it was at the door of the court. I take into account insofar as I am able to the limited evidence put forward in personal mitigation, as I have set out. I reduce the sentence from my starting point to five months' immediate imprisonment.

17. Mr Nichols, please will you stand? I am passing a sentence on you of immediate custody of five months in prison. This is a sentence not for ticket touting but for contempt of court. You have breached a court order in circumstances where it is clear that you have not taken it seriously enough. You have thwarted the purpose of the court and harmed a party to which the court has given its protection. You have also inevitably harmed the wider public interest in the administration of justice. You must now leave the court with the Tipstaff to begin your sentence.

MR TEAR: Madam, before that happens can I invite the court-- There is one other issue in relation to health and safety. Mr Nichols has diabetes and has asked that if cuffs are applied, if they have to be, that a health and safety risk assessment is done before they are applied because they could cause him injury. Just if you could explain that to the Tipstaff staff.

MS COLLINS RICE: A point has been made that cuffing him potentially causes injury because of his diabetes and that you will need to take that into account before applying restraints.

THE TIPSTAFF: Okay.

MR TEAR: My Lady, you mentioned about purge and failure to apologise to the court. I invite the court now to allow purging to happen and for Mr Nichols to be able to express himself to the court fully. You have made specific reference to that point and I think that would be reasonable to do so now.

MS COLLINS RICE: I have made specific reference to that, because ample opportunity had already been given.

MR TEAR: Well, my Lady, he has made an apology. You have said----

MS COLLINS RICE: I have read the apology that has been made.

MR TEAR: You said it was not sufficient.

MS COLLINS RICE: I have passed the sentence.

MR TEAR: So purges post-sentence are after the fact. You can only have those after sentence. It is a thing that has been done successfully in other matters I have been involved in the past where a judge had expressed that the apology was not of a sufficient nature and allowed the purge to happen there and then because obviously the purge has to happen before you. If that is the sole issue then I think that is one that could be properly addressed now, my Lady, if you are willing to (**inaudible**)

MS COLLINS RICE: Mr Raffin, have you anything to say about this?

MR RAFFIN: My Lady, no.

MS COLLINS RICE: Well I will hear what Mr Nichols has to say.

MR TEAR: My Lady, do you want him to go to the stand?

MS COLLINS RICE: He can speak from there.

THE DEFENDANT: Basically, I'd like to apologise to Chelsea and yourself. It's a big mistake I've made and hopefully the best can come out of this. When I come out of prison I'll get a proper job. I'm sorry.

MR TEAR: My Lady, obviously Mr Nichols has made a heartfelt apology. You can see he is distressed. He has been very clear; he has apologised to the court from day one and he continues to do so. The issues in this matter are serious but accepted and he has made a (**inaudible**) apology in the matter to both yourself as the court and also to Chelsea Football Club, which he never had to do but he has done of his own will. My Lady, I would invite you to consider reducing the sentence in relation to now having heard that full apology.

THE DEFENDANT: I made a massive mistake and it's something I regret but it's done and I apologise.

MS COLLINS RICE: I have listened to what has been said. As you understand, a purging of contempt has to do not simply with the distress which inevitably attends the passing of a custodial sentence but also with recognition of the seriousness of contempt of court. As I have said, this is not a matter of sentencing the underlying behaviour. It is in this case a repeated failure to respect the jurisdiction of the court. That is a matter which is treated in all the authorities as something of considerable seriousness in its own right. The sentence I have passed is the sentence I consider to be the least I can possibly pass to mark the gravity of the contempt and I have already mitigated it to the extent that I consider I am able to do, particularly to take account of what I have been told about the impact on Mr Nichols and his family. I am not able to mitigate it further.

MR TEAR: My Lady, thank you. In relation to (**inaudible**) make an application for permission to appeal to you. My Lady, it is always difficult in these situations and I will make it as professional and as quick as I can. Your starting point was the maximum of two years. In my submission that was wrong to say. Whilst setting it as two years that gave the impression very much that you were starting from that two year point. I accept that you then moved to six months. From that six months you gave a reduction of 17 per cent in recognition of the mitigating factors that you had before you. Now, my Lady, that is a very low reduction. Even if you had just heard a

guilty plea and I accept my Lady has found that the guilty plea was not made at the first available opportunity but the Court of Appeal is very clear that that is the first available opportunity. That is certainly what Lane J said and did in this matter. There can be no earlier opportunity to plead. This is not a case where you arrive at a police station having been arrested and you are given legal representation at the police station for free. The only time Mr Nichols got legal representation was shortly before this matter came before the High Court, one day. There was an admission in an email to the defence solicitors and an admission on the day itself. It could not have been any earlier but you have only given a 17 per cent reduction in relation to all factors.

My Lady, you have not given any reduction at all on the basis of what we know of the case where this was a case where the person has come to the defendant and sought a ticket from them. That was the admission basis. If my Lady has taken a different admission basis that evidence should have been tested before the court. The hearsay evidence should have been allowed. The defendant is entitled to make his admission on the facts that he admits on. It cannot without a trial happening be said that he admitted that otherwise. So, my Lady, there is a distinct one quarter missing from the reduction on sentence. There is, further, a quite harsh reduction for guilty plea and there is nothing in relation to mitigation at all on the bare rims(?) of how I recorded your judgment.

My Lady, I appreciate this is difficult. I would only add to that that the Court of Appeal may be minded in the circumstances to review your judgment and as such I would ask that bail is granted pending a full appeal to the Court of Appeal on this matter. As you will be aware, permission is automatically granted to the Court of Appeal and the matter will be listed at the very soonest available date. There is no urgency that the defendant should be imprisoned immediately, save for that sentencing should be actioned. I have identified at least something that might (**inaudible**) strongly. As I say, there may have been an error in your judgment and that is all I need to do before you. If my Lady believes that there may be such an error then bail would be inevitable in the matter. I appreciate you will say there is not an error but in these circumstances this is a case where permission is not needed to the Court of Appeal, the (**inaudible**) of that right. My Lady, that is what I say on bail.

The effects of not granting bail are catastrophic if the defendant were found to be (**inaudible**) at all. That would have a (**inaudible**) never have been (**inaudible**). My Lady, as far as I am aware Mr Nichols has not been sent to prison in his adult life. He was sentenced as a youth. At his age prison is catastrophic (**inaudible**) at Pentonville but it is by far one of the least pleasant prisons we have within the (**inaudible**). I am sure you aware more than most of Pentonville. All I can say is this is a case where the Court of Appeal may well be willing to reduce his sentence. It is a short sentence, I accept, in the grand scheme of things but it is one that I think further reduction should be made.

My Lady, unless I can assist you further with submissions on that I would just urge that bail is granted pending application to the Court of Appeal which will be made within 72 hours.

MS COLLINS RICE: Well, Mr Tear, you have done the most you can for Mr Nichols. I do not accept that I have erred in calibrating the sentence here. I think you will find it is tolerably clear that I made a reference to the maximum sentence simply for the purpose of recording that that is the maximum sentence and that I took a starting point significantly short of that. I indicated that I was concerned about the aggravating factor of the offence having been committed while under a suspended sentence. I also gave as much mitigation as I felt I could for personal factors, on which I have scant evidence, and for an acknowledgement of the contempt at a late stage in the proceedings. I accept that I have to take into account the point at which legal advice was provided. I do not have clear evidence about that. I was told that there was correspondence with lawyers some days before trial. Self-evidently that did not avoid the trial or persuade the claimant to do other than conduct the trial. So I would not have been minded to give permission for an appeal.

MR TEAR: My Lady, I was not seeking permission. Permission is as of right. I am just asking that bail is granted in the interim 72 hours to file with the Court of Appeal.

MS COLLINS RICE: Well what approach must I take to an application for bail?

MR TEAR: Well, my Lady, it must err on the side of caution----

MS COLLINS RICE: No, you will need to take me to the framework of my powers on this.

MR TEAR: In relation to bail?

MS COLLINS RICE: Yes.

MR TEAR: My Lady, it is the common law. There is no power within the CPR. There is no power within anything. You are entitled to stay your own judgment pending appeal to the Court of Appeal. The Court of Appeal have the power to stay on appeal as well and you have the power to stay your own judgment. This (**inaudible**) CPR (**inaudible**) much more (**inaudible**) but that is the power. Whilst I framed it as bail, actually it is a stay order but the same consequences of the issue really are----

MS COLLINS RICE: So you are asking me to stay the order?

MR TEAR: To stay enforcement of imprisonment for a period of 72 hours which, will allow the Court of Appeal to review the matter. The only caveat I add to that is that obviously transcripts are not going to come within that 72 hours but it will mean that a judge of the Court of Appeal can consider the points made and whether to continue the stay or to enforce immediately. The only reason I frame it as that very short period is because effectively the Court of Appeal then have the right to say absolutely this is nothing (**inaudible**) whatsoever, which I am sure my Lady will say, but equally they can say there is something and we will give you a further stay until the actual appeal. What I submit we have to avoid is a position where the Court of Appeal say actually we will reduce the sentence but you have already served that period of time anyway and whilst appeals do come on quickly there is a real risk that some serious harm will happen to the defendant's financial position in the interim. But I say it should be a matter for the Court of Appeal to decide whether to continue your stay if (**inaudible**).

My Lady, it is simply getting the matter into the Court of Appeal under such short circumstances. It is unlikely to happen in terms of getting them to be able to deal with the matter and obviously we are very much on the backfoot not having a transcript and that is why I have asked for the court's mercy effectively to grant a stay in this matter.

MS COLLINS RICE: Well how long would it take to get a transcript?

MR TEAR: My Lady, if the tapes are granted it should come within 48 hours as I understand. I think (**inaudible**) maybe a bit longer but that is what the form says but obviously the actual delay for judgment is for approval of the transcript by yourself.

MS COLLINS RICE: What form of order would it take if I were to stay the effectiveness of my judgment?

MR TEAR: My Lady, all I would say is the form should be that the effect of the judgment should be stayed for a period of 72 hours to enable the defendant to file with the Court of Appeal an application for a stay of judgment and appeal. If that is done the stay continues until the Court of Appeal review that matter. If it is not filed within 72 hours then of course the judgment stands.

MS COLLINS RICE: And the judgment would?

MR TEAR: Be enforced immediately. The Tipstaff would have power to enforce. I mean you could also order Mr Nichols to surrender after 72 hours if the appeal is not filed. I mean I would emphasise that I want to go away and think about the appeal and if there is no appeal then I will of course let the court know and Mr Nichols will arrange to surrender to the Tipstaff. He has no choice.

MS COLLINS RICE: Is there a precedent order for something like this?

MR TEAR: My Lady, I cannot say there is. I have dealt with matters similar to this and have made the point that appeals should be dealt with-- Unfortunately the one case I am thinking of as I talk on my feet, the purge application was successful and that is why there was no need for me to appeal in that case. But my experience is, my Lady, that would be a procedure that would benefit both the Court of Appeal because they are not having to pull resources to hear a (**inaudible**) deal with them in their own time, which will always be (**inaudible**) it will not be (**inaudible**) still be listed for (**inaudible**)

MS COLLINS RICE: Well I am minded to order a stay of 72 hours but first I would like to see a form of that order immediately.

MR TEAR: I am sure between us we will generate something suitable.

MS COLLINS RICE: I am conscious of the time. How long will it take?

MR TEAR: I think 15 minutes. My Lady, we will----

MR RAFFIN: It may be this, my Lady, is that there is a form of order that we prepared for the last hearing and that is-- Bearing in mind the time if I pass up a copy of that at the moment (**inaudible**) if I may? Thank you. (**Same handed**) There is the question of costs obviously we will come back to but on the substance of the order itself my Lady will say it was framed on the basis of the-- Obviously the recital is the previous order but the operative provisions are at provisions 1, 2 and 3 and then the warrant of committal lying at the back of the document. It might be that the document could be amended along the lines of this. That the operative provisions would capture my Lady's judgment. So (**inaudible**) committed to HM Prison Pentonville for a period of five months. The date of his apprehension (**inaudible**) be discharged. Number 2, a warrant for committal be issued for the arrest of the defendant, Mr Gary Nichols, in the form of the attached order, which could then be amended. Number 3, a new 3 could be drafted along the lines of the execution shall be suspended for a period of 72 hours and then just after that if my Lady perhaps formulated the language that my Lady is happy with in terms of suspension.

MS COLLINS RICE: Very well. I am conscious of the time and we still have to deal with costs so I propose that we rise now, that we resume at 2.45 and that we settle the form of a draft order which will record my committal and sentence and effect a stay of 72 hours and we will deal with costs at the same time.

MR TEAR: My Lady, I am grateful. May I ask that the defendant is released pending the adjournment?

MS COLLINS RICE: Yes, to return in one hour's time.

MR TEAR: I am grateful.

MS COLLINS RICE: Thank you.

This judgment has been approved by the Judge.

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