IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

No. QB-2021-004502

[2022] EWHC 2081 (QB)

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 14 June 2022

Before:

MR JUSTICE JACOBS

B E T W E E N :

PADDINGTON GARDEN COMPANY ONE LIMITED Claimant

- and -

(1) MOHAMMED ALI ABBAS RASOOL
(2) PERSONS UNKNOWN Defendants

MR T. GALLIVAN (instructed by **Clarke Willmott**) appeared on behalf of the **Claimant.**

MR S. FARRELL QC and **MS E. CRINE** (instructed by **DBT & Partners and Brabners LLP)** appeared on behalf of the **Defendants.**

J U D G M E N T

MR JUSTICE JACOBS:

1 The immediate question is whether I should sentence Mr Rasool, in respect of contempts which have been established, in his absence. The alternative is to adjourn sentence in this matter to a period of time when Mr Rasool may be here, assuming that he has been arrested, and when Mr Farrell QC (who has been extremely helpful throughout this case in terms of submissions) can attend. That would be at the earliest 28 June 2022 when, for reasons which are perfectly understandable, Mr Farrell becomes free again after a number of prior commitments.

2 I take the view that it is appropriate, in the circumstances of this case, to proceed to sentence in Mr Rasool's absence. The position is that Mr Rasool has made, in accordance with my earlier judgment on the substance of the contempt application (see [2022] EWHC 1492 (QB)), numerous applications to this court, and he has been perfectly capable of attending court on many occasions if that is what he wants to do. Most recently, he attended court for a full day on 29 April 2022, when it was at that stage anticipated that the hearing would be concluded with sentence being passed. Mr Rasool has known for some considerable time that the hearing would be resumed today. He has not attended today. I understand that he gave indications earlier on today, when enquiries were made with him, that he knew about today's hearing and, indeed, that he would be attending.

3 I have received some psychiatric evidence from Dr Hasanen Al-Taiar, including his responses to various questions which I asked. The effect of that evidence was that, as far as Dr Al-Taiar was aware, Mr Rasool was physically in a position to attend today's hearing, notwithstanding certain mental health issues which had been diagnosed. His evidence was also that Mr Rasool was in a position, with the assistance of his family, to give any further necessary instructions to Mr Farrell.

4 Mr Rasool has decided not to attend. There is a suggestion that he has injured himself. I have, however, no medical evidence that Mr Rasool has suffered any injury at all. All I have is a statement from Mr Rasool, through Mr Farrell, that Mr Rasool has attended an A&E department after having injured his ankle. It does not seem to me that that is an appropriate reason, even if it were true, for not attending court. A person can attend court with an injury to their ankle, at least in the absence of clear medical evidence to the contrary. In any event, for reasons which will be apparent from my judgment on the contempt application, I have to treat with extreme scepticism anything Mr Rasool has said, unless it is corroborated independently by objective evidence.

5 I will trespass briefly into the question of the appropriate sentence in this case, because another aspect of Mr Farrell's submission is that I should defer sentence in any event in order to obtain further psychiatric reports with a view to possible suspension of a prison sentence with a mental health treatment requirement. I do not consider that that is a realistic approach.

6 First, there is evidence as to Mr Rasool's mental health which is already before me. I have been provided with three reports from Dr Al-Taiar and, most recently, a further report from a further psychiatrist Dr Roger Singh. All of these reports give me an insight into, and evidence of, Mr Rasool's state of mental health to the extent to which it is relevant to the sentencing exercise. I have also had the benefit of asking Dr Al-Taiar this morning a number of questions about his reports and, again, that has added to the insight which I have.

7 Secondly, I am bound to say that in a case such as this, I do not consider that an approach of the suspended sentence, with or without a mental health treatment requirement, is appropriate. Mr Farrell has accepted in his submissions, realistically, that the custody threshold has been crossed: in other words that a custodial sentence is in principle appropriate. The question of mental health is a potential factor which comes into sentencing when the questions arise as to whether sentences should be suspended. The Sentencing Council has published a guideline, effective October 2020, in relation to sentencing offenders with mental health issues: "Sentencing offenders with mental disorders, developmental disorders or neurological impairments". Paragraph [22] states:

> "Where an offender is on the cusp of custody or detention, the court may consider that the impairment or disorder may make a custodial sentence disproportionate to achieving the aims of sentencing and that the public are better protected and crime reduced by a rehabilitative approach. Where custody or detention is unavoidable, consideration of the impact on the offender of the impairment or disorder may be relevant to the length of sentence and to the issue of whether any sentence may be suspended. This is because an offender's impairment or disorder may mean that a custodial sentence weighs more heavily on them and/or because custody can exacerbate the effects of impairments or disorders. In accordance with the principles applicable in cases of physical ill-health, impairments or disorders can only be taken into account in a limited way so far as the impact of custody is concerned. Nonetheless, the court must have regard both to any additional impact of a custodial sentence on the offender because of an impairment or disorder, and to any personal mitigation to which their impairment or disorder is relevant."

8 I bear that passage well in mind in relation to the question of whether it is appropriate to impose a suspended sentence in the present case. I must also consider the Sentencing Council's guideline relating to suspending sentences. This is contained in the guideline on the "Imposition of community and custodial sentences". That guideline sets out a number of factors indicating the circumstances relevant to the decision as to whether or not to suspend. It would not be appropriate to suspend a custodial sentence.

9 In relation to the factors indicating that suspension is inappropriate: the first is that the offender presents a risk/danger to the public. As I indicated to Mr Farrell in the course of argument, I do not consider that that is really a point which is in play in the present case; particularly in light of the fact that I am going to impose, as indicated in my main judgment, a general civil restraint order on him.

10 The second factor against suspension is that appropriate punishment can only be achieved by immediate custody. That is very often a critical factor and, in my judgment, it is a very important factor in the present case. There is a considerable amount of authority to the effect that if people make dishonest claims then they can expect immediate custody. In the present case, there were a very large number of dishonest claims. In my view, this is a case where appropriate punishment can indeed in this case only be achieved by immediate custody.

11 The third factor which, under the guideline, tells against the suspension of a sentence is history of poor compliance with court orders. That is relevant in the present context. Mr Farrell submits that I might be able to impose a suspended sentence with a mental health treatment requirement. However, there has been a history, albeit in a different context, of poor compliance with court orders which I have set out in my judgment. In practical terms, whenever Mr Rasool was ordered to do something by the court he generally did not do it. I

think there was hardly any occasion when complied with any of the orders made, whether to issue a claim form, or to serve evidence, or to carry out similar steps.

12 On the other hand, I do have to take into account factors which, in accordance with the guideline, indicate that it may be appropriate to suspend a custodial sentence. Those are as follows.

13 First, I must consider whether there is a realistic prospect of rehabilitation. There is no real or satisfactory evidence that there is a realistic prospect in this particular case.

14 Secondly, I must consider whether there is strong personal mitigation. I do not consider at the moment, albeit that I have not heard Mr Farrell's full submissions, that there is strong personal mitigation here.

15 Nor do I consider that the third factor referred to in the guideline (immediate custody will result in a significant harmful impact on others) is applicable here. Mr Rasool in his evidence has indicated that other members of his family will suffer if he is put into prison. Again, that evidence is not corroborated.

16 But in any event, even if I were to be persuaded that some factors favouring suspension were present, this is a clear case where, in my view, appropriate punishment can indeed be achieved by immediate custody.

17 In those circumstances, I am not going to suspend any sentence. It will be an immediate custodial sentence. I will hear submission from Mr Farrell on any mitigating factors relevant to the length of sentence. Given that there will be a sentence of immediate custody, the possible inclusion of a mental health treatment requirement as a condition of suspension does not come into play. Such a condition might come into play if the sentence were to be suspended, but I do not consider that a suspended sentence can possibly be justified in the present case.

18 So, for those reasons, which to some extent foreshadow my decision in relation to sentence, I am not going to adjourn sentence today. This case has been around for a very considerable time. There has been time for Mr Rasool to put in psychiatric evidence and he has done so, and I can consider that. There has been full notice of today's hearing to Mr Rasool, not simply on the previous occasion but with contact being made with him by various people yesterday and today. He has decided not to attend. No doubt he finds it difficult, as many defendants do, to face up to the punishment which is likely to be imposed in the present case. However, in my view, that is not a justification for his non-attendance and it is not a reason to adjourn sentence today. So I am going to proceed to sentence in his absence.

L A T E R

19 I need to decide upon the appropriate sentence for the contempts of court committed by Mr Mohammed Rasool as set out in detail in my judgment which I delivered earlier today: see [2022] EWHC 1492 (QB). I have already indicated, for the reasons previously explained, that the sentence which I impose will be a custodial term of imprisonment rather than a suspended sentence. I use the term "sentence" and "custodial term", but (as the case law explains) the correct terminology in the present context is committal to prison for contempt. It is, however, convenient to speak in terms of sentence and imprisonment. Since I am ordering immediate imprisonment, Mr Rasool will serve half of that sentence: the cases make it clear that he is entitled to automatic release without conditions after serving one half.

20 The recent decision of the Court of Appeal in *Lakatamia Shipping Company Ltd v Su* [2021] EWCA Civ 1355 sets out relevant principles for sentence in the context of breaches of court orders known colloquially as "civil contempt", where a party has breached a court order. That case restates earlier authority to the effect that a comparatively broad range of conduct can fairly be regarded as falling within the most serious category of contempt and therefore justifying a sentence at or near the maximum. In other words, even if it is possible to envisage more serious cases of contempt, it does not follow that a particular case of contempt does not, itself, warrant a sentence at or near the maximum. The court in *Lakatamia* also made it clear that there may be some cases in which there is no material mitigation which justifies a reduction downwards from the maximum sentence of two years.

21 In the present case, I am not concerned with "civil" contempt relating to breaches of court orders, but what is colloquially called "criminal contempt". The present case concerns dishonest claims accompanied by false statements of truth and false evidence. However, the approach in *Lakatamia* is equally appropriate in this context. Furthermore, in the context of dishonest claims, the courts have made it clear that immediate custody will usually be appropriate and that imprisonment substantially in excess of twelve months will be the starting point. That point has been made in the context of claims, with which the court is regrettably familiar, where there are motor accidents which are staged, or dishonest claims of that kind. A number of cases make it clear that prison sentences of that length and immediate custody are appropriate. I refer, for example, to the decision of the Divisional Court *Liverpool Victoria Insurance Co v Bashir* [2012] EWHC 895 (Admin), a decision of Thomas LJ (later Lord Chief Justice), and also *South Wales Fire and Rescue Service v Smith* [2011] EWHC 1749 (Admin). In the latter case, Moses LJ said that when people make serious false and lying claims, that undermines the administration of justice. He went on to say:

> "Those who make such false claims if caught should expect to go to prison. There is no other way to underline the gravity of the conduct."

22 So I bear those principles in mind. I also bear in mind the guidelines discussed in my earlier ruling concerning sentencing Mr Rasool in his absence, and in particular the guideline on sentencing offenders with mental disorders to which I will return later in this judgment.

23 The question is therefore the length of appropriate sentence in the present case. I am here dealing with a series of dishonest applications. This was not simply one dishonest claim but, in substance, five dishonest claims relating to four different properties. Mr Rasool's conduct, which is described in my earlier judgment, has had very significant effects. The court has had to allocate a considerable amount of time to deal with a series of urgent applications most of which were made late in the day or at night. There have been a large number of hearings in the underlying cases in which Mr Rasool advanced or sought to maintain his false case.

24 In many personal injury or other dishonest claim cases, the main burden of dealing with the dishonesty usually falls upon the other party to the proceedings. Very often, the court itself does not have to address the dishonesty in a major way, because it is exposed by the work of the defendant in the course of the progress of the case, and this results in the case being discontinued and therefore not being the subject of any significant decision by the court. Here, however, the nature of the claims gave rise to a number of applications for urgent relief. This meant that the court's processes for dealing with urgent applications were invoked, with the consequence that substantial amounts of court time had to be expended in dealing with false claims. That is particularly so in the case of Paddington where there was the initial false claim to Foster J and a number of subsequent decisions by her. This was then followed by the 29 November 2021 application to Julian Knowles J and then a series of hearings on 30

November, 8 December, and 17 December with a number of orders being made by the court prior to dismissal of the application on 17 December 202.

25 In addition to the impact on the court, Mr Rasool's conduct has plainly had a significant impact on both Lonpane, the owner of the Oxford Street property, and Paddington. In Lonpane's case, expense was incurred in dealing with the injunction which had been obtained. Orders for costs have been made against Mr Rasool but it is my understanding they have not been complied with. The case was pursued aggressively, both when Mr Rasool sought to gain access to the Oxford Street property and when an application, now shown to be completely preposterous, was made to commit Mr Sakhai for contempt. As for Paddington, the owners of Betula House have been put through a significant number of hearings between 16 November 2021 and 17 December 2021, even leaving aside the subsequent committal proceedings. They lost control of their property as a result for a substantial period of time. At least one order for costs has been made but, again, it is my understanding that that has not been complied with.

26 Accordingly, it seems to me that, viewed in the round, this is a case where there is very high culpability and significant harm. It is in my view a case whose seriousness is at the top end of the range, and it merits the highest sentence available at least unless there is material mitigation which justifies a downward reduction. As already indicated, the seriousness of this case means that appropriate punishment can only be achieved by immediate custody to use the language of the Sentencing Council in its guideline concerning custodial sentences.

27 I therefore turn to the matters of mitigation which have been relied on. A number of matters were advanced in the written argument for Mr Rasool on the earlier hearing in April and in Mr Rasool's witness statement served for the purposes of that hearing, and various points have also been made and again by Mr Farrell in his submissions today. Mr Farrell focused on a number of key points.

28 First, he submits that Mr Rasool has shown some degree of remorse. Some admissions were made by Mr Rasool in his 19 April 2021 witness statement. However, it is my judgment that Mr Rasool has shown no real remorse. The admissions made were not as to the full extent of the false statements which I have found to have been proved. In addition, throughout cross-examination, Mr Rasool gave no indication of accepting any real responsibility even for the false statements that he admitted had been made. His case was ultimately that the falsity of his statements was essentially all the fault of his advisors who let him down. That does not seem to me to be true remorse and I rejected that case in any judgment. Furthermore, Mr Rasool maintained falsely that he had valid tenancy agreements in relation to all of the properties. That was the main subject of cross-examination and, ultimately, my judgment. Therefore, this is not a case where there is any significant remorse or, in my judgment, where significant credit should be given for admissions made.

29 Secondly, a number of other factors are relied upon by Mr Rasool in his evidence. For example, he says that he has caring responsibilities for his parents and that his business and the welfare of his employees will be affected. It will be apparent from my earlier judgment that I did not consider that anything that Mr Rasool says, which is uncorroborated by other independent evidence, can be accepted. There is no independent evidence in this case which corroborates his case that he has caring responsibilities. The evidence indicates that he has two sisters, one of whom is in court today. There is no evidence that, if any caring is required, other members of the family will not be able to carry it out.

30 As far as the impact on the business of property lettings is concerned, Mr Rasool's evidence – that his business will suffer – disregards the fact that he was barred at the beginning of this

year from operating the business on which he is engaged. Therefore, the fact that he appears still to be running it, and was running it in April 2022, shortly before the hearing which took place on the committal application, is itself a matter of concern. It should, in my judgment, be reported to Camden Council who obtained the barring order in the first place. The barring order having been put in place, it is not a material matter of mitigation that the business will suffer if Mr Rasool is sent to prison. In any event, even if there were no barring order, I would not have regarded this as a material matter of mitigation. In short, if Mr Rasool was concerned about his business, he should not have acted in the way that he did.

31 Thirdly, it is said that Mr Rasool is a person of good character. That is not completely the case because, as Mr Farrell accepts, he has recently been barred by the local authority in Camden in contested proceedings. I do, however, accept that it is a factor to take into account that he will be going to prison for the first time, although, as I have said, any sentence will be subject to early release at the halfway point.

32 Ultimately, the principal point pressed by Mr Farrell was the evidence from Dr Al-Taiar and, more recently, Dr Singh, as to Mr Rasool's mental health. There is no doubt that, currently, Mr Rasool's mental health has been affected by these proceedings. The evidence indicates that, in recent weeks, Mr Rasool has suffered, because he is facing a prison sentence for the misconduct which I have described in my main judgment. He is in the same position, in my judgment, as very many defendants in criminal proceedings who must find it hard to come to terms with the fact that they are going to go to prison for conduct which, to a greater or lesser extent, they may with the benefit of hindsight regret.

33 I have taken into account the guideline of the Sentencing Council in relation to how mental health issues are to be approached. The mental health of a defendant may be relevant in two respects. The guideline indicates that, principally, it is possible that the defendant's mental health may reduce culpability for the relevant offence. However, the guideline makes it clear that culpability will only be reduced if there is a sufficient connection between the offender's impairment or disorder and the offending behaviour. The offending behaviour in the present case occurred over a 5- 6 month period between June and November and December 2021. It is therefore unconnected with Mr Rasool's recent problems arising the fact that he is now facing these proceedings and a prison sentence.

34 Was there a sufficient connection between mental health issues and the offending behaviour? I did not consider that there was. Dr Al-Taiar gave evidence in his reports and this morning. I think that it is fair to say that his reports were not well prepared. Mr Farrell took him through a number of errors in those reports, where it was clear that what he had done was simply to reproduce standard text from other reports which may have been appropriate in other contexts but had no application to Mr Rasool. More importantly, as a matter of substance, Dr Al-Taiar had not reviewed Mr Rasool's medical records. He said that he had made some attempt to obtain them, but he had apparently not pressed for them. Therefore, there is no clear or reliable evidence as to what Mr Rasool's mental health actually was at the time that he was committing these various offences.

35 Furthermore, it seems to me that the basic reason for the offending was that Mr Rasool considered that his court proceedings would bring him some commercial advantage. He explained to Dr Al-Taiar and, to this extent, there may possibly be a degree truth in what he says, that he was under pressure from his family, in the context of having lost various properties from their property portfolio as a result of problems arising from the pandemic. One can certainly see, in relation to Oxford Street and his conduct there, that he was concerned to try to recover a property which had been lost to the family. It was not lost directly because of the pandemic, but lost because of improper activities which were being carried out there

leading to a termination of the relevant contract. Mr Rasool appears to have considered that it was to his commercial advantage to reclaim the property by using court processes.

36 The same story, as I see it, emerges in relation to the Betula House property. The position there was that there was a lease agreement with Remi News which, at one point, had a connection with Mr Rasool. That was a one-year contract entered into just before the pandemic, but the result of the pandemic was that the property was unoccupied and rent was not paid. Nevertheless, Mr Rasool considered that there might be commercial advantage to be had by recovering that property using court processes for that purpose.

37 The evidence that this was the result of pressure from his family, rather than simply Mr Rasool's approach to recovering the properties, is not corroborated by any evidence from any members of his family.

38 Overall, I am not satisfied that there really is any sufficient connection which has been shown between any mental health issues which Mr Rasool may have faced and the offending which took place during the period June to December 2021.

39 I therefore come back to my decision as to the appropriate sentence in this case. I take into account that, in accordance with the Sentencing Guidelines Council, this sentence will weigh heavily upon Mr Rasool. I also take into account that it will have an impact on his family. However, at the end of the day, this is a case of considerable seriousness at the top end of the range. I consider it is a case which merits the maximum sentence of two years and as in the decision of *Lakatamia Shipping Company Ltd v Su*, I do not consider that there is any mitigation which would, in the present case, justify any sentence lower than the maximum.

40 Accordingly, the sentence which I impose in this case is one of two years' imprisonment. No doubt the relevant authorities will take steps to try to find Mr Rasool and to enable him to start the sentence as soon as possible.

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