IN THE COUNTY COURT AT BRISTOL

Case No: 0029 of 2016

Courtroom No. 13

2 Redcliff Street
Bristol
BS1 6GR

Monday, 10th October 2022

Before:
HIS HONOUR JUDGE PAUL MATTHEWS

B E T W E E N:

STRINGER

and

POTGIETER

MR G CHAMBAY appeared on behalf of the Applicant
NO APPEARANCE by or on behalf of the Respondent

JUDGMENT
(As Approved)

HHJ PAUL MATTHEWS:

1. I now have to consider the sentence for the contempt of court which I have found the respondent to have committed. I bear in mind, at the outset, that I am not just sentencing for the particular conduct, but also for conduct which breaches the order of the court. It is not the offence in itself; so much as the offence against the administration of justice, which is important here. However, I also bear in mind that the Court can impose an unlimited fine, but a maximum prison sentence of only two years.
2. Now, the starting point in a contempt sentencing case is nearly always that given in the Sentencing Council guidelines, which were referred to by the Supreme Court in *Attorney General v Crosland* [2021] UKSC 15, [44]. The judge derives a starting point in the guidelines by looking at two things: the culpability involved in the breach; and, the harm that has been caused by it.
3. Insofar as culpability is concerned, the court generally looks in terms of A, B and C bands, A being the most serious and C being the least serious. Here I have to say that we have the case of deliberate, and several times repeated, refusal to comply, indeed, to an extraordinary degree, which I have not experienced before. In terms of culpability there is no question but that this is a very clear band A.
4. In terms of the harm caused, the whole point of the bankruptcy system is to gather in the bankrupt's estate, and to realise it for the benefit of the creditors insofar as possible. That is what simple justice requires. But that process has been, effectively, put on hold with regard to this property, because the respondent has entirely failed, for the last four years, to make the property available to the trustee in bankruptcy to realise it and distribute the proceeds. Therefore, she has frustrated the whole process. In terms of the harm that has been caused, this is the most serious harm that can be caused in a bankruptcy, and I, unhesitatingly, call that Level 1, which is the highest.
5. Now, the starting point in the Sentencing Council guidelines for A1 cases is two years' imprisonment. That, of course, is the maximum for contempt of court applications, and I have to ask myself, "Is this the worst possible case I can imagine?" I do not think that it is. I can imagine worse cases. This is pretty serious, but not the worst case. Therefore, I must pitch a starting point lower than two years, and I think it should be 18 months.
6. Are there any aggravating factors? Yes. There was a deliberate retaking of possession on at least two occasions after having been evicted. This was more serious on the second

occasion than the first, because the trustee in bankruptcy had gone to the trouble and expense of protecting the property with metal shuttering, which the respondent, or somebody on behalf of the respondent, appears to have removed, so that she was able to force her way into the property again. Again, I regard that as a very serious matter, showing a complete disregard for the rule of law.

7. Are there any mitigating factors? The respondent has entirely failed to engage with the process, even with the bankruptcy itself; has failed to attend numerous hearings; has had restraint orders made against her; has not cooperated in any way; insists that everything is everyone else's fault; and has refused to apologise or admit that any of her conduct amounted to a contempt of court, when, in fact, on the evidence, it is the plainest possible contempt. Therefore, there is no mitigation there. Insofar as I am aware on the evidence, the respondent has no dependents or other persons on whom there could be any impact caused by this sentence.

8. I, therefore, turn to the question whether a custodial sentence is necessary, or whether a fine would be sufficient. Well, first of all, I observe that the respondent is, and remains, bankrupt, and a fine would, in effect, be no penalty at all. Indeed, on one sense, it would, actually, be worse for the applicant and the creditors, because it would reduce the return to the creditors. However, even if that were not the case, in my judgment, these matters are far too serious to justify a mere fine. This is a case which necessitates a custodial sentence.

9. Therefore, the next question is whether that custodial sentence should be suspended. Once again, I remind myself that there has been no attempt at compliance. There is no mitigation. But is there any likelihood of compliance, if the order were suspended? Is it likely to encourage the respondent to say, "Oh yes, right, well, rather than go to prison, I will do this. I will give up"? There has been absolutely no sign of this. At all times, the respondent's attitude has been, "I will see you in Court. I will fight this. I am going to defend this".

10. Therefore, I can see, at the moment, on the material before me, no likelihood that the respondent will comply if the sentence is suspended. I suspect that she would take it as a partial victory that she had not been sent to prison, as she would see it. In my judgment, there is no alternative here but to commit the respondent to prison.

11. Now, beginning with my starting point of 18 months, I look at the aggravating factors, and the fact of there being no mitigation. I think that, in those circumstances, the appropriate sentence, the shortest sentence to reflect the gravity of the offence, is 20 months' imprisonment. In practice, of course, the respondent will only serve half of that in most

cases.

12. I will also order a transcript to be made of my rulings at the public expense, so that they can be placed on the public website, as is usual in contempt of court cases.

End of Judgment

Transcript from a recording by Ubiqus
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