



Case No: FD21F00024

Neutral Citation Number: [2022] EWFC 33

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 April 2022

Before:

MR JUSTICE MACDONALD

Between:

Her Majesty's Attorney General

Claimant

- and -

**Mr Elavi Dowie (also known as Mark Vincent
Dowie)**

Defendant

Ms Kathryn Howarth (instructed by the Government Legal Department) for the Claimant
The Defendant appeared in person

Hearing date: 13 April 2022
In Public

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Mr Justice MacDonald:

INTRODUCTION

1. On 3 March 2022 I found Mr Dowie in contempt of court for the reasons set out in my judgment of that date. In accordance with the rules, that judgment was published as *Attorney General v Dowie (Committal Proceedings)* [2022] EWFC 25. That judgment was given following an application by Her Majesty's Attorney General for an order committing Mr Elavi Dowie to prison for contempt arising out of his alleged interference with the administration of justice. That application was brought under Part 19 of the FPR 2010 pursuant to FPR r. 37.3(3). Once again, Mr Dowie represented himself at this hearing. Once again, in circumstances where Mr Dowie is a serving prisoner, the hearing took place over CVP.
2. This court was due to sentence Mr Dowie for his contempt on 1 April 2022. However, due to an administrative error the case was not listed in open court at the court centre at which I was sitting, namely Preston, in accordance with the Lord Chief Justice's Practice Direction: Committal / Contempt of Court – Open Court of 26 March 2015 (and as amended on 20 August 2020). Rather, the case was listed in open court at the Manchester Civil Justice Centre. Given the strict nature of the procedural requirements pertaining to committal proceedings, I declined to proceed to sentencing in light of that administrative error and adjourned sentencing to today. As required, this matter has been listed in the Cause List at the Royal Courts of Justice as concerning committal proceedings regarding Mr Dowie and as being heard in public.
3. Within this context, and as required, sentencing proceeds as a separate and discrete exercise, with a break between the committal decision and the sentencing of the contemnor. The contemnor must be allowed to address the court by way of mitigation or to purge his or her contempt and Mr Dowie has been repeatedly offered that opportunity during this hearing.

SENTENCING PRINCIPLES

4. The general legal principles applicable to the sentencing of a contemnor are now well established and can be summarised as follows:
 - i) The court can order imprisonment (immediate or suspended) and/or a fine, or adjourn consideration of penalty for a fixed period or enlarge the injunction.
 - ii) In sentencing the contemnor, the disposal must be proportionate to the seriousness of the contempt, reflect the court's disapproval and be designed to secure compliance in the future.
 - iii) Committal to prison is appropriate only where no reasonable alternative exists.
 - iv) Where the sentence is suspended or adjourned the period of suspension or adjournment and the precise terms for activation must be specified.
 - v) Imprisonment is not the starting point and is not the automatic response to a contempt of court.

- vi) Equally, there is no principle that a sentence of imprisonment cannot be imposed on a contemnor who has not previously committed a contempt.
 - vii) In assessing the seriousness of the contempt, it is right to have regard to the purpose for which it was committed and the likelihood of any risk to the process of justice.
 - viii) In circumstances where the disposal chosen must be proportionate to the seriousness of the contempt, where an immediate term of imprisonment is appropriate it should be as short as possible having regard to the gravity of the contempt and must bear some reasonable relationship to the maximum sentence of two years imprisonment that is available to the court.
 - ix) Where a term of imprisonment is the appropriate sentence, the length of the term should be determined without reference to whether the term is to be suspended or not.
 - x) Having determined the length of the term of imprisonment, the court should expressly ask itself whether a sentence of imprisonment might be suspended.
 - xi) The court should briefly explain its reasons for the disposal it decides to impose if it finds the contempt proved.
5. As Marcus-Smith J made clear in *Patel v Patel and Ors* [2017] EWHC 3229 (Ch) at [22] and [23], a penalty for contempt has two primary functions. First, it upholds the authority of the court by marking the disapproval of the court and deterring others from engaging in the conduct comprising the contempt. Secondly, it acts to ensure future compliance. In some cases therefore, and in particular those cases where the contempt arises from the breach of a court order, a penalty will have the primary objective of ensuring future compliance with that order. In this case however, the relevant proceedings are concluded. In the circumstances, in this case the objective of any penalty for the contempt is to uphold the authority of the court by marking the disapproval of the court of the contemnors actions and to deter others from engaging in the conduct comprising the contempt.
6. That latter objective will have particular resonance in cases where the conduct in issue has impeded the proper administration of justice (see *Chelmsford County Court v Simon Abraham Ramet* [2014] EWHC 56 (Fam) at [30]). Each committal application will, of course, turn on its own facts, both with respect to the question whether the contempt alleged is proved, as it has been in this case, and with respect to the sentence that is appropriate where that contempt is proved. However, as part of the sentencing exercise in this case, I have also borne in mind the need to deter others from recording private family proceedings and publishing those recordings online by making abundantly clear that by doing so they will place themselves at grave risk of an immediate sentence of imprisonment.
7. In circumstances the seriousness of the matter and the contemnor's culpability are the primary considerations for the starting point for any penalty, and for the question whether the custody threshold is passed, I note that, whilst a criminal case, in *R. v. Montgomery* [1995] 2 Cr App R 23 Potter LJ held that "an immediate custodial sentence

is the only appropriate sentence to impose upon a person who interferes with the administration of justice, unless the circumstances are wholly exceptional".

8. Having established the appropriate starting point, the court will then go on to take into account any matters that aggravate the offence and any factors in mitigation. With respect to mitigation, the factors will include any admission, whether any admission was made early, any apology for the contemptuous conduct and also any evidence of personal circumstances. In the context of publication contempts, aggravating factors may be assessed by reference to the factors identified in *Re Yaxley (Practice Note)* at para.80, as follows:

“(a) the effect or potential consequences of the breach upon the trial or trials and upon those participating in them; (b) the scale of the breach, with particular reference to the numbers of people to whom the report was made, over what period and the medium or media through which it was made; (c) the gravity of the offences being tried in the trial or trials to which the reporting restrictions applied; (d) the contemnor's level of culpability and his or her reasons for acting in breach of the reporting restrictions; (e) whether or not the contempt was aggravated by subsequent defiance or lack of remorse; (f) the scale of sentences in similar cases, albeit each case must turn on its own facts; (g) the antecedents, personal circumstances and characteristics of the contemnor; (h) whether or not a special deterrent was needed in the particular circumstances of the case.”

9. A further issue arises in this case in circumstances where Mr Dowie is already serving a custodial sentence having been convicted at the Bradford Crown Court on an eight count indictment concerning breaches of a restraining order imposed by Liverpool Crown Court on 29 November 2019 and further serial breaches of the non-molestation order imposed by Preston Family Court on 22 December 2017 and amended on 4 December 2020. Following his conviction, Mr Dowie was sentenced to eight years imprisonment. Mr Dowie has stated that he is appealing his conviction and sentence. As I set out in my previous judgement, this court accepted the submission of the Attorney General that there is no factual overlap between the breaches of the restraining order and non-molestation order for which Mr Dowie was convicted and sentenced in the Crown Court and the breaches that were the subject of the application to commit before this court, and proceeded to hear and determine the committal application in this circumstances.
10. Within this context, the additional question that falls for consideration when dealing with the principles governing sentencing is whether, if it decides to impose a custodial sentence, the court can impose that sentence consecutive to Mr Dowie's current term of imprisonment, or whether that sentence must be concurrent. In this regard, the decision of the Court of Appeal in the case of *R v Anomo* [1998] 2 Cr App R (S) 269 is instructive.
11. In *R v Anomo*, the Court of Appeal was concerned with the question of whether the Crown Court could pass a sentence of imprisonment to run consecutively to a sentence of imprisonment imposed by the County Court for a civil contempt. Having regard to the terms of s.47 of the Senior Courts Act 1981, the Court of Appeal held that, just as the County Court and High Court had power to impose consecutive sentences of imprisonment, the Crown Court had power to impose a term of imprisonment for

contempt to take effect consecutively to another sentence, including a sentence of imprisonment to run consecutively to a sentence of imprisonment imposed by the County Court for a civil contempt. The basis of the court's reasoning was the existence of clear authority for the proposition that consecutive sentences can be passed at common law, the Court of Appeal noting the rationale for this position articulated by Wilmot CJ in *Wilkes* [1770] 19 St Tr 1075:

“We cannot explore any mode of sentencing a man to imprisonment, who is imprisoned already, but by tacking one imprisonment to the other, or as is done in the present case. It is not letting the judgment for the first offence vary the punishment, or influence the quantum of it in the other: but only providing, from the situation of the delinquent to effectuate the punishment the Court thought his crime deserved...the necessity of postponing the commencement of the imprisonment under the second judgment arises from the party's own guilt which had subjected him to a present imprisonment.”

12. In these circumstances, and having regard to the common law power of this court to impose consecutive sentences, I can see no principled reason why this court should not impose a custodial sentence for contempt to run consecutive to any current custodial sentence imposed by the Crown Court if the circumstances of the case so justify, subject always to that consecutive sentence not exceeding the maximum term that this court has the power to impose. To adopt the words of the Court of Appeal in *R v Anomo*, this approach accords with good sense and the principles of good sentencing.

DISCUSSION

13. As set out in my previous judgment, having heard the parties in this matter I was satisfied that the Attorney General had proved beyond reasonable doubt that Mr Dowie brought into court for use and used an instrument for recording sound without the leave of the court and that he had published the resulting recordings of legal proceedings by uploading videos containing the recordings to YouTube on 2 June 2020, 17 June 2020 and 1 July 2020, thereby also publishing information relating to proceedings under the Children Act 1989 before a court sitting in private. I was further satisfied that Mr Dowie knew that the proceedings he recorded were proceedings that were being heard in private. Finally, in circumstances where I was satisfied that Mr Dowie's actions did not fall within the strict liability rule under s.1 of the Contempt of Court Act 1981, I was satisfied that he intended by his actions to interfere with the due administration of justice.
14. Within this context, I consider that there are a number of aggravating features in the contempts of which Mr Dowie is guilty by way of recording proceedings and then publishing those recordings online:
 - i) The recording uploaded on 2 June 2020 and entitled “*An Open Message to His Honour Judge Brown: Here is the Evidence*” includes the cross-examination by Mr Dowie of a psychologist whom he alleges in his video is “a criminal”.
 - ii) In the same recording published on You Tube Mr Dowie makes unsubstantiated allegations that the District Judge has fabricated evidence.

- iii) In publishing the video entitled “*False Allegations in the Family Court*” on 7 June 2020, Mr Dowie had recorded and then published audio of him cross-examining the mother in respect of an allegation of rape.
 - iv) In the same video Mr Dowie made public unfounded allegations that the mother’s counsel had committed a fraud against the Legal Aid Agency.
 - v) In the video published on 1 July 2020, entitled “*Cafcass and the Destruction of my Children’s Rights*”, Mr Dowie published a recording of the Cafcass Officer’s evidence and linked that with a baseless accusation that Cafcass has an agenda for “paedophilic individuals” to have access to children.
 - vi) In the foregoing context, the use by Mr Dowie of recordings of proceedings held in private to level unfounded allegations and to paint a highly partial and partisan account of proceedings is apt to further undermine the administration of justice more widely.
 - vii) As the court has found, Mr Dowie was well aware at the time he published the videos that information concerning proceedings was sensitive and the subject of special considerations regarding publication.
 - viii) The recordings made by Mr Dowie were made covertly.
 - ix) Mr Dowie committed repeated contempts and the videos that comprised those contempts reached a sizeable audience, Mr Dowie’s website having some 1790 followers, with views on the three videos of 820, 1291 and 1054 respectively.
 - x) Mr Dowie has flatly refused repeated requests to remove the videos containing material from YouTube. As such, all three videos remain available online.
 - xi) Mr Dowie’s children, the subject of the proceedings in respect of which recording publication has taken place, are still minors and the family’s circumstances are still the subject of some litigation under the Family Law Act 1996.
 - xii) Mr Dowie has previous convictions for breach of court orders.
15. Within this context, Mr Dowie not only recorded private proceedings in breach of the prohibition on doing so, he published deeply private matters to the public concerning intimate details relating to the mother and the children, including as I have said, a cross examination of the mother regard an alleged rape. In addition, he used the recordings to make public serious and entirely unfounded allegations against the judge, counsel, the psychologist and the Cafcass officer. He has refused to mitigate this position by removing the offending videos from the Internet, although as he points out, he is in custody.
16. Mr Dowie was, or course, provided with an opportunity at this hearing to offer mitigation prior to his being sentence. It was a struggle to get Mr Dowie to concentrate on mitigation as opposed to other matters which plainly cause him concern but fall more appropriately to be raised in any appeal. In the end he stated that he did not wish to put

any mitigation before the court. However, having regard to other information before the court I have taken into account the following factors in any event:

- i) Mr Dowie conceded in his signed affidavit dated 30 September 2020 that he made the series of recordings of the family proceedings. He has never sought to disguise that fact.
- ii) Mr Dowie further conceded in his April 2021 response to the application of the Attorney General for permission to issue proceedings that he had uploaded the videos to YouTube containing the recordings made in court. Again, he has never sought to disguise that fact.

17. As I have noted, I am also satisfied that it is appropriate for the sentence imposed on Mr Dowie not only to mark the disapproval of the court of the contemnors actions and to deter others from engaging in the conduct comprising the contempt. The prohibition on recording family proceedings and on publishing certain information relating to family proceedings is vital to the integrity of family proceedings. As I noted in my previous judgment, the statutory prohibition on recording in court without the permission of the court, and on publishing such recordings, reflects what Parliament considers to constitute a serious risk to the administration of justice if those actions are taken. If those giving evidence in private proceedings were to be required to do so in the knowledge that their evidence may be recorded and relayed to the public at large they will be reticent in giving full and frank evidence to the court in the future. The same risk arises if parties know that deeply personal matters relayed in evidence in private proceedings risk being disseminated to the public at large.
18. Within this context, it is important that those involved in family proceedings appreciate that if they fail to adhere to the statutory prohibition on recording in court without the permission of the court, they are interfering with the administration of justice and will likely face a sentence of immediate imprisonment.
19. Finally, with respect to the scale of sentences in similar cases, each matter falls to be decided on its own facts. However, I note that the case of *Attorney General v Hartley* [2021] EWHC 2473, a case concerning the repeated publication on Facebook of material relating to proceedings involving a child in the Family Court, and in which the defendant had disobeyed orders not to post such material and to remove it and had “expressed his defiance in a deeply offensive manner towards the mother, the CAFCASS officer and the judge” in “video posts with vulgar invective”, the defendant was sentenced to an immediate period of 10 months’ imprisonment.

CONCLUSION

20. Having regard to all of these matters, and taking account of the early admissions given by Mr Dowie as set out above, I am satisfied that the appropriate sentence in this matter is a total of eight months imprisonment for contempt. In circumstances where I am satisfied that I have power to impose a custodial sentence for contempt to run consecutively to any sentence imposed for a separate criminal conviction, I direct that that sentence of imprisonment to be served consecutive to his current criminal sentence. The effect of this is that Mr Dowie will serve a term of eight months imprisonment for his contempt, to commence at the conclusion of his current term of imprisonment following his criminal convictions.

21. The Attorney General also applies for her costs of this application. The court has before it a statement of costs in Form N260. That form sets out counsel's fees in the sum of £9,498.33. The Attorney General does not seek any solicitors costs.
22. It is not fair that Mr Dowie pays the costs of the adjourned sentencing hearing, which adjournment was necessitated by a failure on the part of HMCTS to list the case correctly in accordance with the Lord Chief Justice's Practice Direction: Committal / Contempt of Court – Open Court of 26 March 2015 (and as amended on 20 August 2020). It will be a matter for the Attorney General whether she seeks to recuperate that part of her costs from HMCTS. If the Attorney General seeks to proceed in that manner then HMCTS will need to be given an opportunity to make representations before any order is made.
23. Save for that, I am satisfied that it is appropriate for the court to order that Mr Dowie pays the costs of the Attorney General, minus the costs referable to the aborted hearing on 1 April 2022 (Ms Howarth confirmed at the end of the hearing that the Form N260 does not include the costs of the aborted hearing).
24. That is my judgment.