Neutral Citation Number: [2020] EWHC 498 (Admin)

Case No: QB-2000-000001; QB-2000-000002

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/02/2020

**Before**:

**LORD JUSTICE LEGGATT**
**- and -**
**MRS JUSTICE MAY DBE**

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**Between:**

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| HER MAJESTY'S SOLICITOR GENERAL | **Applicant** |
| - and - | |
| MICHAEL O'NEILL | **Respondent** |

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**Mr W Hays** (instructed by **the Government Legal Department**) for the **Applicant**
**Mr R Taylor** (instructed by **Alan Harris Solicitors, Plymouth**) for the **Respondent**

Hearing date: 5 February 2020

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# Approved Judgment

**Lord Justice Leggatt:**

1. This is an application brought by Her Majesty's Solicitor General for an order to commit to prison the respondent, Michael O'Neill, for contempt of court in deliberately disobeying a court order. The order which he disobeyed is an injunction issued on 8 January 2001 in anticipation of the release from custody of John Venables and Robert Thompson. They had been convicted in 1993 of the shocking murder of a two-year-old boy, James Bulger. At the time of the murder, Venables and Thompson were children themselves, being only 10 years old. To make possible their reintegration into society when they reached the age of 18 and became eligible for release from prison on licence, and to protect them from serious threats to their safety and indeed danger to their lives from vigilantes, they were given new identities. For the same reasons, the court granted an injunction prohibiting the solicitation or publication of any information as to the physical appearance, whereabouts, movements or new identities of Thompson and Venables upon their release from custody. The injunction was granted for an indefinite period and took effect against the whole world.

2. In 2012, the injunction was amended so as to cover any publication purporting to depict or identify Thompson or Venables. That amendment was made so as to avoid the need, in order to prove a breach of the injunction, to confirm that the identification was accurate and thereby potentially defeat its purpose. The amendment was also found to be necessary because of evidence that individuals had been falsely identified as Thompson or Venables and had been subjected to threats and put at risk as a result.

3. Regrettably, over 19 years after the injunction was originally granted, the need for it has not abated and remains as great as ever. In a judgment given in March last year, the President of the Family Division of the High Court, Sir Andrew McFarlane, rejected an application to lift the injunction as regards Venables, following his conviction of offences involving child pornography. The President found that there continues to be a real risk of substantial harm to Venables if his identity is revealed: see *Venables v News Group Papers Ltd* [2019] EWHC 494 (Fam).

4. The breach of the injunction committed by Mr O'Neill, which he has admitted, occurred on 12 February 2018 at 2.26am, when he shared on his Facebook account a post previously made by another individual. The post contained photographs of Venables and Thompson taken by the police after their arrests in 1993. Above those photographs was a heading "Early 1990s". Immediately to the right of those images were two further photographs showing two men apparently in their 20s under the heading "Late 2000s". Next to the photographs was text which read: "The most two evil bastards, they should rot in hell. The police are trying to stop this picture circulating on the internet as it will expose and uncover the real identity of John Venables, top, and Robert Thompson, bottom, who kidnapped a two year ..."

5. The existence of the injunction prohibiting attempts to disclose the identities of Thompson and Venables is very well known, certainly to anyone who has taken an interest in them and news stories about them. It is clear that Mr O'Neill knew that what he had done was wrong, because only a few minutes later, at 2.35am, he made a further Facebook post stating: "I bet I'm blocked tomorrow".

6. Mr O'Neill's account was not in fact blocked, but his posts later came to the attention of the police when he was investigated in connection with other posts made on Facebook and Twitter which were racially offensive. He was arrested for those matters on 5 July 2018, and charged under section 19(1) of the Public Order Act 1986 with 10 offences of stirring up racial hatred. He was convicted at a trial of eight of those offences, and was sentenced on 13 December 2019 to two years' imprisonment, to which was added a further month for breach of an earlier suspended sentence order. He is currently serving his sentence at HMP Channings Wood and has attended this hearing by video link.

7. Mr O'Neill is 61 years old. He is unemployed. We are told that he lives an isolated existence, has no contact with his children or other members of his family, knows very few people, and is in very poor health. We are also told that he has earlier convictions, dating back some years, including convictions for other racially aggravated offences. The judge who sentenced him for the most recent offences in December 2019 described him as a man with entrenched racist and extremist views for whom there is no real prospect of rehabilitation.

8. Notice was given to him by a letter from the Government Legal Department dated 30 May 2019 that proceedings against him for contempt of court were being contemplated based on his Facebook post which purported to identify Thompson and Venables. A copy of the relevant Facebook page was enclosed with the letter, and he was invited to respond and give any reason why proceedings should not be brought. A number of attempts were made to serve Mr O'Neill with this letter personally at his home address. However, he appears to have deliberately avoided service, including on an occasion on 26 June 2019 when he was attending Plymouth Crown Court for the plea and trial preparation hearing in the criminal proceedings. Eventually, on 10 July 2019, the solicitors acting for him in those proceedings acknowledged the letter from the Government Legal Department on his behalf, but gave no substantive response other than to suggest that it was not appropriate for there to be proceedings for contempt in the High Court while proceedings in the Crown Court were pending.

9. The committal application now before the court was issued on 19 November 2019, and in light of Mr O'Neill's previous attempts to avoid service an order was sought and made on 28 November 2019 dispensing with the need for personal service of the application and providing for service on his legal representative and by post to his home address. On 25 January 2020, Mr O'Neill's solicitors wrote on his behalf to say that he had been granted legal aid for these proceedings and had had a conference with counsel and that they were now instructed to advise that he would admit the contempt.

10. Today Mr O'Neill has confirmed that he admits his contempt of court, and the question for the court is, accordingly, whether to make an order for his committal to prison for his contempt in publishing on his personal Facebook page photographs purporting to be of Venables and Thompson in breach of the court injunction. If such a committal order is made, two further questions arise. One is whether such an order should take effect consecutively to or concurrently with the term of imprisonment imposed by the Crown Court which Mr O'Neill is currently serving. The second is whether any committal order should be suspended. It is not in dispute that the High Court has power to make an order of either of those kinds, or indeed to make an order

which is both consecutive and suspended. The maximum term of committal that can be imposed on any occasion by the High Court is two years.

11. This is by no means the first case in which the court has had to decide what order to make for breaches of this injunction. Previously reported cases were recently reviewed in *Her Majesty's Solicitor General v Wixted* [2019] EWHC 2186 (QB) at paras 12 to 20. Lord Justice Bean, giving the judgment of the Divisional Court in that case, observed at para 22 that it had in previous cases been repeatedly stated that, save in exceptional circumstances, a deliberate breach of this injunction should result in immediate custody. That was so, he said, because breaches pose a substantial risk to Venables or Thompson and also because they pose a substantial risk to innocent members of the public who might be mistaken for them, as occurred in 2010. A further reason why a sentence of immediate custody will generally be appropriate is the need to take into account the importance of upholding the rule of law in two respects that were emphasised by Sir John Thomas, President of the Queen's Bench Division, in *Her Majesty's Attorney General v Harkins and Liddle* [2013] EWHC 1455 (Admin) at para 29. Those are, first, that this court has made an injunction about which there can be no room for argument, and, secondly, that it is important to emphasise that no one should contemplate taking the law into their own hands by encouraging punishment of an offender by others. Punishment is imposed by a court alone, and it should not be necessary to say that vigilantism has no place in a civilised society.

12. In the *Wixted* case, the court saw nothing exceptional in the circumstances and imposed a sentence of nine months' custody with immediate effect. It is right to say that in a number of other cases sentences imposed for breach of this injunction have been suspended, and a gloss that we would add to what was said by Bean LJ is that the reference to "exceptional circumstances" should not, in our view, be read as indicating the likely frequency or number of cases in which an order for committal will be suspended, but rather should be understood as emphasising that strong mitigating factors will need to be present before the court will consider suspending an order for committal for contempt of this injunction.

13. In this case, Mr Taylor on behalf of Mr O'Neill accepts, as he is bound to do, that an order for committal to prison is inevitable. However, he invites the court to consider suspending the order. He relies in mitigation on the fact that Mr O'Neill has admitted his contempt of court, and on his personal circumstances: the fact that he is not in good health, the fact that he is an isolated individual who does not have the sophistication to initiate posts but re-published someone else's work (as he also did when he made the racially offensive posts) and that he did so at a time when he was drunk on his own in his flat in the middle of the night. Mr Taylor points out that there is no evidence that this post was widely seen or viewed. It appears that Mr O'Neill has only a small number of Facebook friends. He also emphasises that Mr O'Neill made no attempt to disguise what he was doing. Indeed, he posted photographs of himself at his computer very shortly before this particular post was made - a post which he made on his own Facebook account.

14. In considering the appropriate penalty to impose, the court should start, as in any sentencing exercise, by considering the level of harm and culpability caused by the offence, or in this case breach of the injunction. It is right to say that this breach, serious as it is, is at the lower end of the scale in terms of harm – in that we are

concerned with one post, there is no evidence that it was viewed by a significant number of people, and it can be said that the purported pictures of Thompson and Venables were, and indeed purported to be, some 10 years old. Those same features are also relevant to culpability, as is the fact that Mr O'Neill's act consisted of sharing another post rather than initiating the propagation of material himself. It cannot be said in Mr O'Neill's favour that he admitted his culpability promptly. Indeed, he seems to have stuck his head in the sand and tried to avoid or ignore attempts to serve papers on him. But it can be said that, after he had received legal advice and legal aid for these proceedings, he did admit his contempt of court and has avoided the need for a contested hearing. We also take account of the mitigation already mentioned, consisting of his current apparently very poor health, including possible dementia as well as pancreatic cancer, and the other personal circumstances to which we have referred.

15. In all the circumstances, we have no doubt that there must be a committal order made. But for the fact that Mr O'Neill is serving a sentence of imprisonment already, it would have been longer. But in those circumstances and in view of what is effectively a guilty plea to the contempt, the committal will be for a period of four months. We are also persuaded, in light of the mitigating factors to which we have referred, that we should suspend the operation of the order. Because Mr O'Neill is currently in custody and we are told has a release date of 21 December 2020, we consider that the appropriate order to make is one that has a period which will extend significantly beyond his release date, so that when he is released from prison, should he commit any further breach of the injunction, the four-month term of imprisonment would take effect. The order that we propose to make is a committal order for a term of four months which is suspended for a period of two years, to run from today's date.

16. There will also be an order limiting access to court documents. In particular, we will order that no copy of the Facebook post which Mr O'Neill made that is held on the court file may be released without the permission of the court, though it is difficult to envisage circumstances in which the court would give such permission. Since Mr O'Neill has no money, making an order for costs – which would otherwise follow the event – would serve no purpose, and for that reason only we make no order for costs.