Neutral Citation Number: [2019] EWHC 2186 (QB)

Case No: HQ 0004737 & HQ 0004986

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1st August 2019

Page Count: 13
Word Count: 4,270
Number of Folios: 60

Before:

LORD JUSTICE BEAN
MR JUSTICE JEREMY BAKER

- -

Between:

HER MAJESTY'S SOLICITOR GENERAL	**Applicant**
- and -	
ANTHONY JOHN WIXTED	**Respondent**

- -
- -

MR WILLIAM HAYS for the **Applicant**
MR BERNARD RICHMOND QC and MR HOWARD COHEN for the **Respondent**

- -

DRAFT 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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Lord Justice Bean:

1. This is the judgment of the court on an application by the Solicitor General to commit the respondent Anthony John Wixted to prison for his contempt of court in breaching a longstanding injunction granted to protect the identity of Jon Venables, one of the killers of James Bulger. The contempt was admitted by Mr Wixted at a previous hearing before this court on 11 June 2019. At that hearing we adjourned the question of penalty in order that a clinical psychology report could be obtained.

2. This is the latest of several cases in which the injunction has been breached. The background facts are very well known and summarised in the judgment of Lord Burnett of Maldon LCJ in *Attorney General v McKeag and Barker* [2019] EWHC 241 (QB) as follows:

> "On 12 February 1993, James Bulger, a two-year-old toddler, was murdered by Jon Venables and Robert Thompson. The haunting images of James Bulger being led away to his death by two children, themselves aged only 10½, will remain forever in the minds of anyone who saw them then or who has seen them since. The murder shocked the nation, and indeed resulted in much soul-searching. How was it that two boys still at primary school could be capable of such a wicked crime? They were prosecuted for the murder in the Crown Court at Preston before Morland J and a jury and were convicted on 23 November 1993. The judge sentenced them to indefinite detention at Her Majesty's pleasure, as he was obliged by law to do.
>
> The criminal age of responsibility in England and Wales was then, and remains, 10, rather younger than nearly anywhere else in the Western world. For example, almost any other country in Europe, these appalling events could not have led to a prosecution. Venables and Thompson would have been dealt with in the care environment, as indeed they would have been if they had been six months or more younger.
>
> At trial Venables and Thompson benefited from the presumption in favour of anonymity, which the law confers on all children who are defendants in criminal proceedings. Reporting restrictions were imposed pursuant to section 39 of the Children

and Young Person's Act 1993, but after conviction the restrictions were lifted. Their names have been public knowledge ever since, together with photographs taken of them after their arrest. The essential reason for lifting anonymity was that details of the boys' background and upbringing were capable of supporting informed public debate about crimes committed by young children. But the judge was acutely aware of the public interest in the rehabilitation of the boys and of ensuring that they had a good opportunity of rehabilitation. For those reasons, he imposed wide-ranging injunctions restricting the disclosure of other information about the two offenders.

By the time they were 18, Venables and Thompson were being considered for release on licence. Yet there had been a sustained level of hostile publicity during the intervening seven years. The two had been the target of hate mail, containing death threats that were taken seriously by the authorities. There was a real concern that on release there would be a risk of physical harm or even death if they could be identified. A plan was developed to provide protection by equipping both boys with new identities, but it was clear that the elaborate (and no doubt expensive) precautions would be compromised if their current appearances or names could be publicised. This was only the second time that such a precaution had been considered necessary for a child murderer.

It was in those circumstances that an application for injunctions was made before the President of the Family Division, Dame Elizabeth Butler-Sloss, over five days in November 2000. Various media organisations were the defendants. Dame Elizabeth heard evidence and argument on behalf of the applicants, the newspapers, and the Attorney General representing the public interest. On 8 January 2001 she granted the injunctions for reasons set out in a judgment reported at [2001] Fam 430.

Injunctions have been in place ever since and have been modified on occasion. The injunctions prohibit, with some specified exceptions, the publication or solicitation of three main categories of information. First, images or voice recordings made or taken on or after 18 February 1993, or any description which purports to be of the physical appearance of Venables or Thompson, their voices or accents at any time since that date. Secondly, any information purporting to identify any persons having formerly been known as Venables or Thompson. Thirdly, any information purporting to describe their past, present or future whereabouts.

Those guilty of heinous crimes do not forfeit their civil rights. It is many centuries since the concept of being an outlaw, literally forfeiting the protection of the law, passed into history in this

> country. The punishment of offenders is the task of the courts, not of vigilantes. So when those who are known to have committed serious crimes are themselves attacked or threatened with death or serious violence, they may seek the protection of the courts. There was a wealth of evidence discussed in the judgment of Dame Elizabeth which demonstrated that Venables and Thompson were vulnerable to attack and death if their new identities and whereabouts were disclosed. The underlying position has not changed. On two occasions the scope of the injunctions has been reviewed by High Court judges, both following the prosecution of Venables for the possession of child pornography.
>
> It has been shown that the threats to the life and physical wellbeing of Venables and Thompson continue and that the importance of preventing the implementation of those threats outweighs competing public interests."

3. The Lord Chief Justice went on to mention a case which came before me in 2010, the first of the two occasions on which Venables has appeared in court on charges of possession of child pornography. It emerged in that case that a perfectly innocent man who had nothing to do with the case but had been mistaken for Venables had endured five days of danger. He and his family had to flee for their lives and he had been threatened with being stabbed to death in a pub. The injunction was maintained by me on that occasion.

4. Returning to the Lord Chief Justice's judgment in *McKeag and Barker*, he continued:

> "These injunctions take effect against the world. Compliance is not optional. Anybody who has been served with or knows of the injunctions and, with that knowledge, acts contrary to their prohibitions is guilty of contempt of court and liable to be punished for the breaches. It is essential in the public interest that these principles should be upheld. It is fundamental to the rule of law that orders of the court are obeyed. An injunction of this sort is granted by a court only after careful consideration of all the evidence, the applicable law and arguments advanced by the parties. If it is suggested that the judge has made an error in granting the injunction, there is the possibility of appeal. It is also possible to apply to vary an injunction if circumstances change. There may well be a temptation for individuals, almost always

> on incomplete or superficial understanding of the position, to believe that they know better and, in a misguided way, to conceive that they are right to undermine the rule of law by breaching an injunction of this sort. There are others who do so appearing to welcome the consequences they might face; and others, particularly in a case of this sort, who are motivated by pure malice to those protected by the injunction, and without any thought for the wider implications. The difference between today and the pre-internet and social media era is the very easy practical way any individual can breach an order of the court and widely disseminate information. [Counsel] for the Attorney General, submits and we accept, that the facility to broadcast and publish material widely makes these breaches worse rather than less serious.
>
> The Attorney General has brought motions on a number of occasions to commit for contempt individuals who have acted in breach of the injunctions with which we are concerned. In doing so, the Attorney General acts to safeguard the public interest, and to uphold the rule of law and safeguard the administration of justice."

5. Since the Lord Chief Justice gave that judgment an application has indeed been made to discharge the injunction. It came before the President of the Family Division who rejected it in a judgment reported as *Venables v News Group Newspapers Limited* [2019] EWHC 494 (Fam). As the President noted in that case, there continues to be a real risk of very substantial harm to Venables if his identity becomes known. I would add there continues to be a real risk of very substantial harm to innocent people who are wrongly thought to be Venables.

6. I turn to the facts of the present case. Mr Wixted has a Twitter account. On 20 February 2018 he posted an image and accompanying message. The image included a photograph of a white male adult wearing glasses with a text saying that this was Jon Venables and giving the new name by which he alleged Venables was then known and the prison in which he was allegedly being held together with the words, "SHARE, SHARE, SHARE, SHARE." In the two

days after the posting Mr Wixted exchanged messages with a Twitter user going by the name of John Player who wrote:

> "By ignoring an order by the High Court you are a criminal just like them, the only difference being they have been dealt with by the CJS [criminal justice system]. You have not. Yet."

Mr Wixted replied:

> "How the hell do you know if I haven't been dealt with by the CJS? If you look at the web this image has been shared by thousands of concerned citizens including by myself."

John Player responded:

> "You don't have to justify its posting to me. It's your justification to a High Court Judge that's important to get right."

Mr Wixted replied:

> "I don't know what your point is. Most people on Twitter think I'm doing a good job of highlighting the problem of CSA [child sexual abuse]. I don't have to justify anything to anyone. I am just clarifying my position."

7. On the day of the posting another Twitter user who is a Professor of Criminal Justice posted:

> "This image breaches an injunction. Now you know, I suggest you take it down immediately."

He added a link to the government website which contains information about the injunction. The respondent did not delete the Twitter post but, on the contrary, added a link to a local newspaper article about conditions at the prison where he alleged Venables was being held. He added the message "LOL", in other words "Laugh Out Loud."

8. A number of users of the respondent's Twitter feed expressed violent sentiments towards Venables. Mr Wixted's Twitter feed apparently had over 15,000 followers. In the three months during which the post of 20 February 2018 about Venables remained on Twitter it had been re-tweeted 47 times and received at least 56 likes. The post was removed on 21 May 2018. That is three months after it had originally been posted.

9. The Government Legal Department wrote to Mr Wixted on 20 November 2018 informing him that the Solicitor General was considering committal proceedings. He was invited to make any representations within fourteen days but did not do so. The application was issued on 21 February 2019.

10. Following the adjournment at the last hearing, a clinical psychology report was indeed obtained. We have it. It is dated 17 July 2019 and it is written by Dr Michael Watts, a chartered clinical neuropsychologist with the North London Forensic Service who is a consultant at Chase Farm Hospital, Enfield and a very experienced consultant in the field. He has written a thirteen-page report which we have considered with care. I will quote from it beginning at para.50:

> "Regarding mental health, based on Mr Wixted's account and a review of the available medical records it is apparent that he has a history of mental instability over many years. By his account, he has suffered from depressed mood since his childhood. I note that he first came to the attention of services in his late thirties, presenting with symptoms of depression and anxiety.
>
> Since 2010 when he was aged 43, the clinical picture has involved an intermittent pattern of mental disturbance, including anxiety, low mood, episodes of self-harm and suicidal ideation, perceptual abnormalities, predominantly a persistent 'voice' largely of a derogatory nature within the background of psycho-social stressors, including loss of employment, isolation and conflict with neighbours as well as variable levels of substance abuse. He has been seen by his local mental health service both in the community as well as in acute settings. He has attracted

> various diagnoses, including depression, generalised anxiety disorder, panic disorder, adjustment disorder and personality disorder unspecified.
>
> I note that there has been a consensus view that he has not presented with broader symptoms consistent with a schizophrenic illness and the 'voice' he has described over many years is best viewed as a pseudo hallucination reflecting personality and mood disturbance or a brief psychotic episode. He has been treated with medication including antipsychotic medication with variable success.
>
> In considering the above, it is my view that the predominant clinical picture has been mood related problems (anxiety and depressive symptoms) with underlying personality dysfunction. These problems likely reflect a combination of constitutional factors and the effects of early childhood adversity. Although his mental health problems have been longstanding, it does appear that his early adult years involved a greater level of mental and social stability. I agree that Mr Wixted's personality dysfunction is mixed, insofar as he does not readily fall within a specific diagnostic category, although it seems to me that emotionally unstable traits are the most prominent feature. In my opinion, there is no evidence that he fulfils the criteria for a dissocial personality disorder."

11. Dr Watts continued at para.56:

> "In my opinion, there is no clear evidence that this aspect of Mr Wixted's functioning [his devoting so much of his time and energy to campaigning against child abuse] is directly related to a mental illness. That said, it seems likely to me that low mood and substance abuse has a destabilising and disinhibiting effect on his functioning at times. Indeed, these are likely to intensify pre-existing beliefs and exacerbate problems with emotional regulation. It should be noted that although his history suggests that he has developed some overvalued paranoid ideas about perpetrators of sexual crimes, particularly during periods of stress, there is no clear evidence of an entrenched delusional belief system underpinning his actions."

12. We have considered previous reported cases about breaches of this injunction. In *Attorney General v Harkins and Liddle* [2013] EWHC 1455 (Admin), a decision given on 26 April that year, Harkins posted photographs on his Facebook profile purporting to show Venables and Thompson as adults. He had 141 Facebook friends but the images came to be shared many thousands of

times. Liddle posted similar images to his Twitter account where he had over 900 followers, he also posted statements indicating he was aware of the injunctions but that it was worth the risk. Both respondents removed the images when told to do so, admitted their contempt and apologised.

13. After taking account of mitigating factors, including the respondents' good character, the court committed them to prison for nine months but suspended the prison terms. This was said to be exceptional. Lord Thomas LCJ emphasised that vigilantism had no place in a civilised society and indicated that any similar publication after the date of his judgment was likely to attract a substantial and immediate custodial sentence.

14. The next reported case is *Attorney General v Baines* [2013] EWHC 4326. This was a decision given on 27 November 2013, although the contempt occurred on 14 February 2013, that is before the decision in *Harkins and Liddle*. Baines used his Twitter account to post purported images of Venables. He responded abusively to warnings and made clear that his intention was, indeed, to harm Venables. The court regarded the case as more serious than that of *Harkins and Liddle*. The prison term was fourteen months but, again, the term was suspended.

15. I turn to *McKeag and Barker* itself. McKeag was the owner and controller of a publicly accessible website. He published on it a long article about Venables, including four photographs of an adult male said to be Venables. The article gave a name purporting to be the name under which Venables had been living and the place in which he was said to have been working at the time. McKeag stated that, "Each time the police issue this murdering paedophile with a new

identity, it costs the British taxpayer £250,000." He urged others to share his article far and wide using all possible means to distribute it across as many websites and fora as possible, "especially if you live overseas." McKeag asserted that "numerous people have been sentenced to prison for exposing Venables in the past," and maintained he was prepared to go to prison himself.

16. Barker was the controller of a Twitter account with more than 600 followers. She posted to that account images of an adult man and adult woman with the caption, "Venables and his fiancée who vows to stand by the paedo child murdering scum." Twitter wrote to her three days later advising her that the post was unlawful. It appears that Twitter removed it. She reposted it and it was then re-tweeted by a number of other users. She posted further abusive comments in the course of which she asked her followers whether they had heard any names that Thompson could be using. The Lord Chief Justice said:

> "We have no hesitation in concluding that Mr McKeag's breaches crossed the custody threshold. Nothing short of a custodial sentence would properly reflect the gravity of his conduct. It was planned and deliberate. It was an attempt to defeat what he knew were the court's objectives. It was persistent in that he continued to publish over a period of two weeks. He intended to defy the court order and, albeit... he did not think through the implications of breaching the order, he must accept that the natural consequences of generating the risk will be attributed to what he did...
>
> The offending was aggravated by Mr McKeag's encouragement of others to commit similar breaches in the course of an article which he held out as a piece of public interest journalism. It might have influenced others."

17. After noting that the nature of a posting of this kind is such that whether it has been widely disseminated or read is not capable of verification one way or the other, the Lord Chief Justice noted as a point in mitigation that McKeag removed the article after about two weeks after a member of his family implored

him to do so. He expressed deep remorse and an apology to the court. He gave a personal guarantee that such behaviour would not happen again. As well as having a very difficult upbringing in the care system resulting from familial abuse, McKeag had a history of serious mental health problems. He had attempted suicide in early 2017 and was thereafter detained under the Mental Health Act. He became a recluse. Just before the court hearing he took an overdose and was in hospital. The Lord Chief Justice commented that that spoke all too loudly of his fragile mental health. He also had significant physical health problems which restricted his mobility and suffered from pancreatitis that left him in constant pain.

18. The court held that the appropriate custodial sentence before discounting for the admission of guilt would have been sixteen months' custody. After discount for the admissions, the court held the appropriate custodial sentence was twelve months. The Lord Chief Justice continued:

> "Were it not for the mental and physical health problems suffered by Mr McKeag, we make it clear that we would not have suspended the sentence. He would have gone straight into custody."

19. Ms Barker's conduct was described as less serious than that of McKeag, although her defiance of attempts to stop her breaching the injunction was described by the court as an aggravating factor. Lord Burnett noted the evidence that Ms Barker suffered from depression and anxiety and a borderline personality disorder. He added:

> "She is on appropriate medication for those conditions. They provide some measure of explanation for her vicious, impulsive and stupid conduct, heedless of the consequences for others and careless for the consequences for herself and her family."

20. He noted that she was a single mother of three children aged 15, 12 and 8. They all lived with Ms Barker's own mother who had a special guardianship order in relation to them. One of the children was "not free from personal difficulty." If Ms Barker were sent to prison, the children would remain in the care of their grandmother but would suffer serious adverse harm. The court imposed a sentence of eight months' custody, twelve months less discount for the early and full admissions, but suspended it for two years. The Lord Chief Justice said:

> "We should make it clear that were it not for the position of the children in this case, the committal order would have resulted in immediate custody."

21. Today we have been assisted by Mr Bernard Richmond QC to whom we are grateful, particularly as he appears *pro bono*. He accepts, inevitably in the light of the previous authorities to which I have referred, that Mr Wixted's case crosses the custody threshold. He urges us, however, to suspend any sentence that we impose. He relies, firstly, on Mr Wixted's admission of contempt. Secondly, he relies on Mr Wixted's personal history. In his client's own words which Mr Richmond passed on to us, Mr Wixted accepts that after leaving the care system in which his experiences had been very unhappy, he had become a very confrontational person. But in the last few weeks since these proceedings were brought home to him Mr Wixted has analysed himself and now has a greater insight than he did into his own state of mind. He is very remorseful. Mr Richmond emphasises that since proceedings were launched, Mr Wixted, although he has continued Twitter posts on the subject of child abuse, has not posted any further material about Venables. Mr Richmond submits that the

interests of the public can be served and would be best served by the wake-up call of a suspended sentence rather than immediate custody.

22. We have given anxious consideration to this. The cases to which we have referred beginning with *Harkins* [2013] have repeatedly stated that, save in exceptional circumstances, a deliberate breach of this injunction should result in immediate custody. That is so not only because breaches pose a substantial risk to Venables or Thompson but also because they pose a substantial risk to innocent members of the public who might be mistaken for Venables, as occurred in 2010. There is in our view nothing exceptional about this case. We take the view that the proper sentence is one of nine months' custody and that it should take immediate effect. The contemnor will be entitled to be released at the halfway point of that sentence in the usual way. He must now be taken into custody.