

Case No: BR-2020-000333  
Neutral Citation Number: [2021] EWHC 1313 (CH).

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**BANKRUPTCY COURT**

Royal Courts of Justice  
7 Rolls Buildings  
London EC4A 1NL

Friday, 23 April 2021

BEFORE:

**MR JUSTICE MORGAN**

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**IN THE MATTER OF ERROL ANTHONY LUESHING**  
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**MR J TITMUSS** appeared on behalf of the Applicant  
**MR A LUESHING** appeared on behalf of the Respondent

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**SENTENCING REMARKS**  
(Approved)  
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1. MR JUSTICE MORGAN: On 26 March 2021 Mr Errol Lueshing was found guilty of contempt of court. He did not attend the hearing on 26 March 2021. In a judgment that I gave on that day I stated that I was satisfied that he knew about the hearing and he had chosen not to attend. I was also satisfied that it was not in any way unfair to him to proceed with that hearing in his absence. I found him guilty of a number of breaches of an order of the court, an order made by ICC Judge Jones on 27 May 2020. His breaches of the court order were deliberate and persistent.
2. The consequences of his breaches for his trustees in bankruptcy were that the trustees were unable to make proper progress in relation to the administration of his bankruptcy and they incurred significantly higher costs that ought to have been incurred. Further, instead of monies being paid by tenants to his trustees Mr Errol Lueshing intervened with his tenants and either received monies himself or prevented the tenants in practice paying monies to the trustees. I was told at the hearing this morning that some of the tenants have not paid Mr Errol Lueshing and are holding the money, but that ought not to have happened, because the monies ought to have been paid promptly and regularly to the trustees and Mr Errol Lueshing's conduct has brought about that state of affairs. The period of time involved in his intervention in this way has been some 11 months since the order of 27 May 2020. The sums that the trustees have not received are likely to be substantial. Those monies did not belong to Mr Errol Lueshing; they belonged to the trustees in bankruptcy.
3. The contempt of court took the form of a breach of a court order in this case, but it is also right to say that the circumstances in which Mr Errol Lueshing committed his breach and persisted in his breach have been in every sense contemptuous of the court process. He has refused to accept that he is bound by orders of the court. His stance has been that he is not bound by any statutes, he is not bound by any court orders and any court order made against him can be simply got rid of by his unilateral statement that the court order is void and can be ignored. That attitude has been persistent for a lengthy period of time. It is without any legal foundation. His approach has been wholly wrong. He has been told that it is wholly wrong, but it has not prevented him continuing with that behaviour.

4. At the hearing today his brother, Mr Andrew Lueshing, has suggested that things will now change. However, this is the third time that I personally have dealt with this case. In February of this year I had a hearing not attended by Mr Errol Lueshing but attended by Mr Andrew Lueshing and Mr Errol Lueshing's niece. I was asked then to take a merciful attitude, in the expectation, I was told, that if Mr Andrew Lueshing and the niece spoke to Mr Errol Lueshing things would change. They did not change. Mr Errol Lueshing's absurd conduct in asserting that he was not bound by court orders persisted and indeed was escalated.
5. Mr Errol Lueshing was convicted of contempt of court on 26 March 2021, about four weeks ago. There has been no attempt to change his attitude. Indeed, his attitude has been repeated since his conviction. I am asked today to put off the time when Errol Lueshing is sentenced for his contempt of court to allow him to change his attitude and to reform his conduct. I have no confidence whatever that any of that will happen. It did not happen when he was given an opportunity to do so in February of this year. It did not happen following the hearing in March. I fear that if things are put off we will simply be back here on another date when I am asked to put things off yet again. I will not put things off today; I shall proceed with the matter.
6. I have to decide what sentence to pass for the contempt of court that I found established on 26 March 2021. I have power to impose an immediate custodial sentence of up to two years. I ought to explain that if I impose a custodial sentence Mr Errol Lueshing would be entitled to unconditional release after serving one half of that sentence. I say that to explain what such a custodial sentence would amount to in practice, but I am not entitled to take into account the effect of halving the sentence when I decide on the length of sentence to impose. If I impose a custodial sentence I can suspend it. I can also impose an unlimited fine.
7. The purpose of any sentence is twofold: to punish Mr Errol Lueshing for his contempt and to attempt to compel him to comply with the earlier court order. A custodial sentence should be as short as possible, consistent with the circumstances of the case. Suspension of a custodial sentence is normally the first way of securing compliance with an earlier court order. There are no formal guidelines for sentencing for civil contempt. However, there is a large number of cases where the relevant principles

have been considered. I will apply those principles in this case in the way I describe below.

8. I consider that I should ask myself the following questions in order to decide what sentence to pass: (1) was the contempt deliberate; (2) was it persistent; (3) were the trustees prejudiced by the contempt; (4) is the prejudice capable of being remedied; (5) was the contempt serious; (6) has Mr Errol Lueshing admitted the contempt, and if so, at what stage did he do so; (7) does Mr Errol Lueshing now realise he has behaved wrongly; (8) has Mr Errol Lueshing made a sincere apology for his wrongdoing; (9) are there mitigating circumstances; and (10) are his character antecedents relevant?
9. I answer these questions in the following way. I have already dealt with some of these matters in my earlier remarks, but I shall draw the strands together. Mr Errol Lueshing's contempt of court was deliberate, and it was persistent. It prejudiced his trustees in bankruptcy. If he were now belatedly to comply with the court order then that would remedy some of the prejudice for the future. If he has received money from his tenants, complying for the future would not result in his paying back the monies he has already intercepted. If the tenants have kept money to abide the outcome of the dispute with the trustees then it may be that the tenants would pay the trustees. There would still be delay in administering the bankruptcy. In other words, this prejudice is not all capable of being remedied by future conduct.
10. Taking all matters together, I consider that the contempt of court was serious. Mr Errol Lueshing has not even today admitted his contempt of court. I asked him if he wanted to say anything, and he referred me to an affidavit, which he had earlier tendered, that purported to have the effect that he was free to disregard orders of the court. That is not an admission of a contempt of court. Does Mr Errol Lueshing realise he has behaved wrongly? He has shown no sign of that. His brother has indicated today that if I put matters off Mr Errol Lueshing can be spoken to and he may change his attitude, but he has not said that himself, and he has not said it yet. He has not said it despite there being two earlier court hearings, in February and March, as I have described. Has Mr Errol Lueshing apologised for his wrongdoing? He has not.

11. Are there any mitigating circumstances? I understand that Mr Errol Lueshing suffered a stroke in 2018. Earlier in this case there were concerns expressed about his mental capacity, but all of the material that I have been given on that subject does not give any real grounds for those concerns. The view he adopted was a completely nonsensical view that he was not bound by orders of the court, but this is a view that is peddled on the internet and elsewhere, and others have found it convenient to adopt that view. I cannot take the view that someone who puts forward that nonsensical point of view lacks mental capacity or even that his capacity is seriously impaired; rather, it is a somewhat cynical attempt to break free of the rule of law, the statutes of the country and the orders of the court.
12. It is also said that if Mr Errol Lueshing is to be given a custodial sentence that would have an impact on his mother. His mother, I am told, has dementia. She plainly has another son, Mr Andrew Lueshing, and I do not know the detail of the family, but Mr Andrew Lueshing tells me that the mother recognises Mr Errol Lueshing and the fact that he would be available to visit her would be highly relevant to her care and her condition. None of that is in evidence, although I bear in mind in general terms the point that is made, and I do take it into account to an appropriate extent.
13. As to Mr Errol Lueshing's antecedents, I was shown information about proceedings in the Crown Court at Woolwich against Mr Errol Lueshing. He was charged with six offences under section 179 of the Town and Country Planning Act 1990 in relation to a property he owned at 7 Kent House Road, London SE26. Mr Errol Lueshing was convicted of all six offences on 14 May 2019. There were then proceedings where the Crown applied for a confiscation order under the Proceeds of Crime Act 2002, and the Crown Court judge sentenced Mr Errol Lueshing. He was due to be sentenced on 13 March 2020. He wrote to the clerk of the court on 12 March 2020. He said he would not be attending the court hearing for his sentence, on the grounds that the initial order against him, by which I think he meant the conviction, had been avoided. I understand that to mean that he by his unilateral action had stated that the conviction was of no effect because he has able so to declare.
14. Mr Errol Lueshing also accused the judge in the Crown Court of failing to comply with statutory procedures and committing a crime. He said the judge did not have authority

or jurisdiction to deal with the matter. I have a note of the judgment of the Crown Court judge. He referred to the conviction for six offences. He addressed the question of whether Mr Errol Lueshing was living a criminal lifestyle. He held that he was living a criminal lifestyle. In other circumstances that might sound very serious, but, as I read it, it is a somewhat technical question as to the jurisdiction to make orders under the Proceeds of Crime Act 2002.

15. What does appear from the judgment of the Crown Court judge is that Mr Errol Lueshing was wholly uncooperative with those proceedings; he did not provide any information about his means or his circumstances. The judge ordered that the amount to be confiscated was £74,100. The judge then sentenced Mr Errol Lueshing for his criminal conduct. He sentenced him to a fine of £5,000 per count, being a total of £30,000. He also ordered him to pay costs in the sum of £23,414.75. Those sums were payable within three months. The judge said that he would sentence Mr Errol Lueshing to a term of imprisonment in default of payment. The term of imprisonment was to be nine months in default of the confiscation order and eighteen months in default of the fine. I am told that Mr Errol Lueshing has not paid any of these amounts. The London Borough of Lewisham, who might be the relevant prosecutor in this case, has not asked the Crown Court to activate the sentence of imprisonment.
16. It must be recognised that Mr Errol Lueshing has been bankrupt since the sentence was passed upon him in the Crown Court. He, it seems, has taken money by way of rent. Although I am not in a position to make findings as to how much, he has not made any payment towards the fine. Indeed, at all points during my involvement in the case when I have received communications from Mr Errol Lueshing he has persisted in saying that court orders against him are void. That has been his attitude to the order in the Bankruptcy Court and also to, it seems, the order in the Crown Court.
17. On the question of antecedents it is the case that Mr Errol Lueshing does not have a clear criminal record. He has been convicted of criminal offences. He has not made redress for his criminal offences. I cannot therefore treat good character as a mitigating circumstance. I am not sentencing him today for the subject matter of the Crown Court proceedings (I am solely sentencing him for his civil contempt of court), but, as I have indicated, he cannot say that he is a person of good character.

18. In my judgment, the right sentence in this case is a custodial sentence. The appropriate sentence should certainly be more than six months; my initial approach is to say that it should be a sentence of approximately twelve months. However, I bear in mind two things. I bear in mind to an extent the point about Mr Errol Lueshing's mother. I also bear in mind the fact that the country is subject to the Covid-19 pandemic. During the last year, at any rate, and this is possibly continuing at the present time, a sentence of imprisonment has been considered to be harder on prisoners in a number of ways. The principal way is that they are kept in their cells for much if not all of the day; further, they and their relatives are concerned about the prisoner catching Covid in prison, although against that I was told by Mr Andrew Lueshing at an earlier hearing that Mr Errol Lueshing had already had Covid.
  
19. Taking all the relevant matters into account, I consider that the right length of sentence is ten months in prison. The next question is: should the sentence have immediate effect, or should it be suspended? I have to ask myself whether Mr Errol Lueshing if given a suspended sentence would immediately comply with the earlier court order. Even if he were to comply with the immediate court order (and that would serve one purpose of the sentence I pass) I would still have to consider whether he ought to be punished for his contempt of court. My view is that this is a case where he does need to be punished for his serious contempt of court. Further, I have no confidence whatever that he would immediately comply with the earlier court order if I suspended his sentence. He has persisted in asserting for some years that he is not bound by court orders. I do not see what real difference it would make that the court order was a suspended sentence of imprisonment. He has ignored the orders of the Crown Court. He has ignored the orders in the Bankruptcy Court. I think it is unlikely that he would comply with the earlier court order if I passed a suspended custodial sentence only. I shall therefore not suspend the sentence of imprisonment.

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**This transcript has been approved by the Judge**