Neutral Citation Number: [2021] EWCA Civ 102

Case No: A3/2020/2150

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)
MR JUSTICE SNOWDEN
[2020] EWHC 3537 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 February 2021

Before :

LORD JUSTICE BEAN
LADY JUSTICE ROSE
and
LADY JUSTICE SIMLER

- -

Between :

JOHN LOCKETT	**Appellant**
- and –	
MINSTRELL RECRUITMENT LIMITED	**Respondent**

- -
- -

Peter Gilmour (instructed by Cartwright King) for the **Appellant**
Martin Budworth (instructed by **Knights plc**) for the **Respondent** by way of written submissions only

Hearing date : 27 January 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 1 February 2021 at 10.30 a.m.

Lady Justice Rose:

1. The Appellant, Mr Lockett, appeals against the sentence imposed on him by order of Mr Justice Snowden on 21 December 2020. Snowden J imposed a sentence of 12 months immediate imprisonment, having found Mr Lockett in contempt by reason of a number of breaches of the orders of the court, as described in his judgment at [2020] EWHC 3537 (Ch). Mr Lockett was represented before us and before Snowden J by Peter Gilmour and the Respondent ("Minstrell") by Martin Budworth. The Respondent made written submissions but did not appear at the hearing.

2. At the close of the hearing the court announced the result of the appeal which is that the appeal is allowed to the extent that a sentence of eight months imprisonment is substituted for the sentence of 12 months imposed. These are my reasons for coming to that conclusion.

The background

3. Minstrell is a recruitment agency providing workers for short term engagement in the construction industry. Instead of engaging the different skilled workers themselves, contractors carrying out a building project on site go to Minstrell and agencies like it who have a number of different workers on their books. The worker provides his services at the building site for as long as he is needed; the construction company pays Minstrell rather than the worker directly and Minstrell then passes on that pay to the worker, having deducted income tax and national insurance as appropriate as well as their own fee.

4. Mr Lockett started working for Minstrell in June 2017 as a recruitment consultant, placing workers with construction company clients, some of whom he identified himself and some of whom were passed to him by Minstrell. In May 2018 he told Minstrell that he wanted to leave and set up his own business. Mr Lockett's business became Lion Recruitment Services Ltd ('Lion'). When he decided to leave, Mr Lockett had a discussion with Minstrell's director and main financial backer, Mr Andrew Parish. A dispute later arose about what had been agreed. Mr Lockett said that it was agreed that he could take with him to his new company the construction industry clients that had always been with him but that he agreed that he would not take any clients that were on Minstrell's database before he joined the company. Mr Lockett says that he thought this entitled him to approach the clients he had brought to Minstrell and ask them to rehire the workers who were currently being provided to them by Minstrell so that they would thereafter be provided by Lion. Mr Parish said that the agreement did not extend to rehiring workers who had already been placed with construction companies whilst Mr Lockett was with Minstrell and was only to apply after the expiry of the restrictive covenants in his contract.

5. This difference of view led to a great deal of bad feeling between Mr Lockett and Minstrell. It was supposed to be resolved by a compromise agreement but by July 2018 Mr Lockett was posting comments which were said to be inappropriate and defamatory of Minstrell on the LinkedIn website. Written undertakings were given by Mr Lockett to Minstrell on 2 August 2018 that he would not solicit business from certain clients or make disparaging remarks. But Mr Lockett did not comply with those undertakings and Minstrell issued proceedings against him.

6. The first order made in the proceedings was an interim order made by HHJ Hodge QC on 24 August 2018 ('the Hodge Order'). This included a non-solicitation and non-dealing injunction and an injunction against the making of untrue disparaging comments: see [52] of Snowden J's judgment. The Hodge Order also required by paragraph 3a that Mr Lockett deliver up any property of Minstrell that he still had in his possession and, if he said he had none, then he was directed to verify that by a witness statement under a statement of truth. Mr Lockett did not comply with that part of the Hodge Order either by delivering up any property or by providing a witness statement.

7. On the return date for the injunction, 28 September 2018, the matter came before HHJ Eyre QC in Manchester. He held that it was appropriate to grant an injunction preventing Mr. Lockett soliciting or dealing with certain clients of Minstrell. He considered whether it was appropriate to make an order prohibiting Mr Lockett from making untrue disparaging comments about Minstrell. He considered in particular whether this was a proportionate restriction of Mr Lockett's right to free speech and held that it was. He said:

> "However, to avoid any ambiguity and to limit the scope for argument about what is meant by disparaging, the order will be qualified so as to be confined to untrue remarks about the claimant. But I make it clear that it will be confined to remarks which are objectively untrue and that it will not be confined to remarks which the defendant mistakenly believes to be true. It follows if [Mr Lockett] chooses to make disparaging comments about the claimant and those remarks turn out to be untrue he will do so at the risk of contempt of court proceedings."

8. HHJ Eyre made an order dated 28 September 2020 ('the Eyre Order') which had a penal notice on the front. It provided so far as relevant as follows:

> "IT IS ORDERED THAT
>
> INJUNCTION
>
> 1. Until 21 December 2018 or the conclusion of a trial whichever shall be the earlier, [Mr. Lockett and Lion] shall not, directly or indirectly solicit business from or conduct Restricted Business with any Restricted Client as defined at clause 1 of the Restrictive Covenant Agreement ("RCA") dated 19 May 2017.
>
> 2. Paragraph 1 shall not apply to –
>
> (a) Clients with whom [Minstrell] had no prior relationship as at 5 June 2017 AND
>
> (b) Where [Mr. Lockett] was directly responsible for the client subsequently becoming a client of [Minstrell] solely by reason of his dealings with that client prior to 5 June 2017.

> 3. Until the conclusion of a trial in this matter….[protection of Confidential Information belonging to Minstrell].
>
> 4. Until the conclusion of a trial in this matter [Mr. Lockett and Lion] shall not make or cause to be made any untrue disparaging comments about [Minstrell], its directors and managers, or refer to [Minstrell] in detrimental terms to any third party save only to the extent that [Mr. Lockett and Lion] may be required by law to provide any information upon the legitimate request of a third party.
>
> 5. By 4 pm on 13 October 2018 [Mr. Lockett] must file and serve an affidavit setting out in detail and exhibiting to it relevant documents on,
>
> (a) the steps taken by him … to comply with paragraph 3a of [the Hodge Order] dated 24 August 2018…,"

9. I note here that the non-solicitation injunction in paragraph 1 of the Eyre Order would expire on 21 December 2018 but the prohibition on making disparaging comments in paragraph 4 was not so time limited.

10. On 30 November 2018 a further order was made by HHJ Halliwell ('the Halliwell Order') extending the time by which Mr Lockett should comply with paragraph 5 of the Eyre Order.

11. On 7 February 2019 Minstrell issued an application to commit Mr Lockett to prison for contempt of court. The Schedule of breaches attached to the application listed:

    i) 64 breaches of paragraph 4 of the Eyre Order by the making of untrue, disparaging comments;

    ii) Four breaches of paragraph 1 of the Eyre Order by the solicitation of business from a client, Paneltec, specified in the Eyre Order as covered by the injunction;

    iii) One breach of paragraph 3a of the Hodge Order in that Mr Lockett failed to deliver up any of Minstrell's property or to provide a witness statement confirming that he did not have any such property.

    iv) One breach of paragraph 5 of the Eyre Order in that Mr Lockett failed to comply with the requirement to serve an affidavit.

    v) One breach of the Halliwell Order which was a repetition of the allegation of the breach of paragraph 5 of the Eyre Order.

12. Mr Lockett at first contested the application but following the withdrawal of some of the allegations, as I describe later, he submitted a 'basis of plea' on the first day of the hearing before Snowden J. In this plea he admitted the allegations numbered 10 – 64 in the Schedule to the committal application, all of which related to the making of disparaging comments.

The judgment

13. In a thorough and even-handed judgment, Snowden J made findings about the matters that remained in contention. I can describe his findings in relation to the allegations other than those admitted by Mr Lockett briefly because Snowden J made it clear that he was not imposing any sanction in respect of them and Mr Lockett's appeal to this court relates only to sentence, not to any findings of breach.

    i) Allegations numbered 1 – 5 alleged the making of disparaging comments very shortly after the making of the Hodge Order. These allegations were withdrawn by Minstrell once it became clear that Mr Lockett's comments which formed the basis of the allegations had been provoked by a dishonest pretence on the part of Minstrell's Divisional Manager Mr Richard Pogmore. I discuss this further below.

    ii) Allegations 6 to 9 were not pursued.

    iii) The breaches of paragraph 1 of the Eyre Order allegedly committed by Mr Lockett soliciting business from Paneltec in December 2018 were dismissed as not proven to the necessary standard: [194] – [198].

    iv) The breaches of the three different Orders arising from the failure of Mr Lockett either to hand over any Minstrell property that he still held or to provide a witness statement or affidavit confirming that he had no such property were dealt with by Snowden J at [176] onwards. The judge held that he was not satisfied that Mr Lockett had received the Halliwell Order and so dismissed that allegation: [193]. He found that the breach of paragraph 3a of the Hodge Order was proved in that Mr Lockett had failed to comply with the order to provide the confirmatory witness statement: [179]. The similar breach of paragraph 5 of the Eyre Order was also proved: [191]. He said at [248] that he did not consider those breaches as sufficiently serious to warrant separate consideration or sanction and he disregarded them for the purposes of the sanction he imposed.

14. The serious breaches were numbers 10 – 64, all admitted breaches of paragraph 4 of the Eyre Order which prohibited Mr Lockett from making untrue disparaging remarks about Minstrell. At [107] onwards, the Judge described the disparaging comments that Mr Lockett had posted on LinkedIn or Facebook and sent by text between 2 and 31 January 2019. I do not need to repeat them here as the Judge set out a selection of them in his judgment. Broadly, they asserted that Minstrell and its directors were being investigated or prosecuted by HMRC for multimillion pound tax fraud, or engaged in other criminal activity, purporting to warn potential clients against engaging Minstrell's services.

15. The Judge considered first whether the remarks were untrue, since they would not amount to a breach of the Eyre Order if they were objectively true. He described some of the history of Mr Parish's business record. He concluded at [130] that Mr Lockett's remarks had some limited underlying basis in fact but that this did not prevent the remarks from breaching the Eyre Order:

> "130. … Mr. Parish is a businessman who has left a trail of insolvent and dissolved companies in his wake. In particular the two payroll companies have been liquidated leaving significant monies owing to HMRC and other creditors, and have been followed by what appears to be a phoenix company which has simply inherited the same substantial trade with Minstrell. Mr. Parish has also been involved as a defendant in substantial litigation by the liquidators of Mr. Bell's companies which resulted in him being forced to repay significant sums of money to that liquidator.
>
> 131. That chequered business history of Mr. Parish and the fact that there appear to have been two phoenix companies with which he has been associated which have traded with Minstrell does not, however, excuse Mr. Lockett's breaches of the order of HHJ Eyre QC. What in essence I find is that Mr. Lockett falsely exaggerated and misstated the basic facts by referring to Mr. Parish and the other directors as "criminals", to the unpaid debts owing to HMRC as "theft/stealing", and to the insolvencies, investigations and civil litigation in which Mr. Parish has been involved as "prosecutions"."

16. The Judge then considered whether Mr Lockett had genuinely believed that paragraph 4 of the Eyre Order had expired on 21 December 2018 like the non-solicitation paragraphs of the Order. He rejected this excuse at [146]. He held that Mr Lockett's actions were a 'calculated response' to a bankruptcy petition that had been served on Mr Lockett on 2 January 2019 because of his failure to pay a costs order made by HHJ Hodge QC. The judge went on: [148]

> "Mr. Lockett deliberately sought to counter that petition by making false and disparaging comments about Minstrell and its directors to third parties in the hope that as a result of the potential threat of damage to their business and reputations they would discontinue the petition. Mr. Lockett's only concern was to advance his own interests by whatever means were available to him."

17. He held that it had been perfectly clear that Mr Lockett had been aware, at least from 3 January 2019, that he might face contempt proceedings if he carried on with his disparaging posts but "decided, out of bravado and simply not caring whether or not he was complying with the court order, to carry on regardless".

18. Snowden J also described various emails and posts sent by Mr Lockett later in 2019. He then said at [218]:

> "Lest there be any doubt about it, however, I should make clear that these matters do not form part of the contempts for which Minstrell seeks Mr. Lockett's committal. I mention these matters in some detail because they plainly go to Mr. Lockett's general credibility. In my judgment they also illustrate that even after the contempt application had been issued, Mr.

> Lockett continued to have no regard for the truth when he thought that embellishing or misrepresenting the facts might advance his campaign to bring down Minstrell and its directors."

19. This continuing course of conduct also led the judge to conclude that Mr Lockett had not learned his lesson. He held that he could not accept that Mr. Lockett was sincere in his apologies for his conduct or in his repeated protestations that he would never do anything to disrespect the court: [263].

20. Snowden J turned to consider the appropriate sanction at [238] onwards. He cited the recent judgments of the Court of Appeal in *Financial Conduct Authority v McKendrick* [2019] 4 WLR 65 and described the kinds of factors that should be taken into account as summarised by Nicklin J in *Oliver v Shaikh (No.2)* [2020] EWHC 2658 (QB) at [17]-[18].

21. The most serious breaches were those committed in early January 2019 in contravention of the Eyre Order. He considered the sanction for those breaches collectively and disregarded the other breaches he had found proven. He held that Mr Lockett had chosen to commit the breaches knowingly in a calculated attempt to dissuade Minstrell from pursuing its bankruptcy petition against him. Mr Lockett well understood the serious consequences of breaching the court's order but "was so blinded by his hatred of Minstrell and its directors that he simply did not care about compliance with such orders": [251]. He found that there was no evidence that the disparaging remarks had caused Minstrell any financial loss beyond the time and costs incurred in responding to the breaches and having to explain matters to clients whom Mr Lockett had contacted: [229].

22. Snowden J considered a number of mitigating factors. The most important was the misconduct of Minstrell against Mr Lockett in two respects. The first was the evidence that led to the withdrawal of the first five allegations of contempt set out in the Schedule to the application for committal. Those allegations were that starting within 24 hours of the Eyre Order being made, Mr Lockett had sent a series of text messages to a former employee of Minstrell, Ms Gregson, saying that the company had lost its injunction application against him, that they were trading whilst insolvent and the directors were about to be arrested; that they were offering bribes to hiring managers and that they were being investigated by HMRC.

23. In fact the allegation that Mr Lockett had sent these texts to Ms Gregson was untrue and the result of dishonest conduct by Mr Pogmore. A few months after he was served with the committal application, Mr Lockett contacted Ms Gregson and learned from her that she had returned her company mobile phone to Minstrell when she left the company a month or so before the text messages were sent. Mr Lockett raised these matters in his evidence in answer, by an affidavit sworn on 14 June 2019. What later emerged was that Mr Pogmore had commandeered Ms Gregson's phone once she had returned it to Minstrell. He then sent a string of texts to Mr Lockett, pretending to be Ms Gregson and complaining about Minstrell's conduct towards her in the hope that it would provoke Mr Lockett into responding in kind. When this dishonest ruse succeeded, Mr Pogmore then presented Mr Lockett's texts to Minstrell's solicitors as an immediate and egregious breach of the Eyre Order.

24. Mr Pogmore admitted that he had sent the texts in his affidavit of 3 October 2019 but the first five allegations were not withdrawn until shortly before the trial before Snowden J. Mr Pogmore said in that affidavit and maintained at the trial that he had not stated at any point that he was Ms Gregson though he appreciated that Mr Lockett thought he was texting his friend and former colleague. He also asserted that the messages he sent were not connected with the obtaining of the Eyre Order because, he claimed, he had not been at the hearing before Judge Eyre and had not been aware that an injunction had been granted that day. Mr Pogmore also denied that when he sent the text messages to Minstrell's solicitors, he had intended that they would be used against Mr Lockett in the court proceedings. He accepted that he had not told Minstrell's solicitors that it was he who had sent the messages from Ms Gregson's phone.

25. Snowden J concluded at [83] that Mr Pogmore's evidence on this matter was "untrue and a deliberate fabrication": [83]. Mr Pogmore's conduct had been, the Judge held at [93]:

> "deliberately to deceive Mr. Lockett into believing that he was messaging an ex-colleague and thereby to give him the opportunity to act in a way that Mr. Pogmore could present to Minstrell's lawyers as a breach of HHJ Eyre QC's injunction. That was plainly dishonest …,"

26. The judge also noted that the directors of Minstrell who gave evidence at the committal hearing were evasive and "remarkably vague" in their recollection of the incident. He concluded that the directors had not been remotely candid in their evidence to him in this regard. He noted also that they refused to condemn Mr Pogmore's conduct and indeed sought to justify it. Mr Pogmore was never disciplined and remains the Divisional Manager of Minstrell. Snowden J rightly described Mr Pogmore's behaviour as extraordinary and disgraceful.

27. The second course of conduct which the Judge took into account in mitigation was the campaign of harassment that Mr Lockett was subjected to for a week or so after 11 January 2019. This was described by the judge at [155] onwards and included the sending of threatening and frightening WhatsApp messages to Mr Lockett by someone giving their name as "Mr Brow" and the posting of a private video of Mr Lockett online. A Minstrell employee and an accomplice were arrested as the culprits. Mr Pogmore and the Minstrell witnesses denied having any connection with the culprits' actions but the judge rejected as implausible the suggestion that the culprits would have acted in this way of their own accord. He held that the likely explanation was that they had been prompted to act by Mr Pogmore who had provided them with the video of Mr Lockett.

28. As a result of finding that people at Minstrell were behind the campaign of harassment, Snowden J held that one contempt count should be dismissed: [171]. Unfortunately due to an administrative error at the CPS, the two individuals responsible for the campaign were not prosecuted. The Judge held that:

> "258. Whilst these last two matters cannot excuse Mr. Lockett's own contempt for the court because he was unaware of them when he started his campaign in early January 2019,

> the subsequent discovery of those matters will have contributed to Mr. Lockett's overall sense of injustice, and may well have served to increase the stress and pressure on him. To that extent Mr. Lockett has already suffered some punishment, and I take the view that such matters allow me to reduce materially the sanction that I would otherwise have been minded to impose upon him."

29. As to Mr Lockett's mental state, the Judge was not persuaded that the concerns were sufficiently severe or unusual that they could not be addressed and that Mr. Lockett cannot be safeguarded by the authorities whilst in custody, even in these challenging times: [261]. They did not outweigh the need for a custodial sentence to mark the seriousness of the contempts in this case. Finally, Snowden J noted that Mr Lockett was of previous good character and that he deserved some limited credit for his admissions of contempt, albeit that these had come very late in the day: [253].

30. The Judge concluded as to sentence:

> "As a consequence, I must conclude that this is a case that is so serious that a fine is not appropriate and no other penalty than an immediate committal to prison is appropriate. This is not a case in which a suspended sentence would serve a rehabilitative purpose and I have no confidence whatever that any additional and more sweeping restrictions on Mr. Lockett of the type suggested by Mr. Gilmour as the condition for imposing a suspended sentence would be complied with, any more than was the more focussed injunction imposed by HHJ Eyre QC.
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> 265. As I have indicated, I regard this case as involving contempt that is at the upper end of the range of sentences that are available to me, but I am able to reduce the length of sentence significantly to reflect the misconduct by way of harassment and falsification of charges of contempt that employees of Minstrell engaged in. I should also, but to a far more limited extent reduce the term of imprisonment to reflect Mr. Lockett's admissions at the start of the trial. I also take into account the fact that imprisonment in a time of the COVID pandemic is likely to be even more of a punishment and restrictive of liberty than normal.
>
> 266. Nevertheless the least sentence that I can pass which is consistent with the seriousness of the contempt in this case is one of twelve months imprisonment."

The appeal

31. Mr Lockett does not challenge the findings of breach made by Snowden J. In its written submissions, Minstrell reminded us that an appellate court should be reluctant to interfere with a judge's decision on sentencing for contempt of court and should only do so if the judge made an error of principle, took into account immaterial factors or failed to take into account material factors or reached a decision that was

outside the range of decisions reasonably open to the judge: see *McKendrick* cited earlier, at [37]. Mr Gilmour in his concise and persuasive submissions accepted that there was no error of principle of that kind. He argued however, that the sentence was plainly wrong in that it was outside the range of decisions reasonably open to the Judge and that on that basis this court is entitled to reverse the decision below and remake it.

32. Mr Gilmour listed eight factors which he said should lead to a reduction in sentence but at the hearing before us he realistically focused on the five factors which in my view are the only possibly relevant ones. The most significant is his submission that the Judge did not give a sufficient reduction in the sentence to reflect the misconduct on the part of Minstrell. The other factors were the lack of financial harm caused to Minstrell by Mr Lockett's conduct; Mr Lockett's poor mental health; Mr Lockett's admissions in the 'basis of plea' document lodged at the court on 15 October 2020; and finally the conditions pertaining in prison because of the Covid -19 pandemic.

33. In my judgment the Judge's assessment of the relevance of the absence of financial harm (see [228] and [229] of the judgment) and of Mr Lockett's mental health (see [234] and [261]) cannot be faulted. Certainly if breaches of the court's orders have led to financial loss to the claimant or to third parties that may be an aggravating factor when considering sanction. It does not follow that the absence of such loss is a mitigating factor. The damage caused by contempt of court is damage to the administration of justice and the rule of law, both of which require a person who is subject to the order to comply with its terms regardless of the financial consequences of non-compliance. Mr Gilmour compared Mr Lockett's sentence of 12 months with the sentence of six months imposed on Mr McKendrick in the case cited earlier. This was half the sentence imposed on Mr Lockett, even though investors had potentially suffered from Mr McKendrick's dissipation of assets in breach of court orders. I do not accept that it is legitimate simply to compare sentences imposed in very different contexts in order to suggest that Mr Lockett's sentence is too harsh. In *McKendrick* the Court of Appeal held that the first instance judge had given a generous reduction of six months from a starting point of 12 months to reflect Mr McKendrick's admissions.

34. As regards Mr Lockett's mental health, the Judge considered the expert psychology report of Dr Arthur J Anderson dated 27 November 2020, as have I. Snowden J rejected Mr Gilmour's description of Mr Lockett as "a broken and desperate man lashing out in frustration": [235]. He considered the report describing Mr Lockett's mental health and the effect that imprisonment might have on him: [260]. Dr Anderson expressed the view that Mr Lockett met the criteria for generalised anxiety disorder with elevated depression and panic attacks. Dr. Anderson also expressed the opinion that Mr. Lockett was suffering from post-traumatic stress disorder and had a severe fear of being harmed due to the threats of violence that he has received and the long-term process of his dispute with Minstrell. He advised that Mr. Lockett's condition may well deteriorate significantly if he were in prison. In my judgment, the Judge was entitled to balance that evidence against the evidence of Mr Lockett's bravado in continuing to breach the Eyre Order after he had been warned clearly by Minstrell's solicitors that he was at risk of a term of imprisonment if he continued in his course of conduct.

35. I do, however, consider that Dr Anderson's report is relevant to the consideration of the final point raised by Mr Gilmour on Mr Lockett's behalf. The Judge said at [265] that he bore in mind that imprisonment in the time of the Covid pandemic is likely to be even more of a punishment and restrictive of liberty than normal. This reflects the decision of this court in *R v Manning* [2020] EWCA Crim 592 where the Attorney General had referred a sentence to the court as being unduly lenient. This court, presided over by the Lord Chief Justice, stated at [41] that the conditions in prisons as a result of the pandemic represent a factor which can properly be taken into account because the impact of a custodial sentence is likely to be heavier during the current emergency than it would otherwise be. Those in custody are confined to their cells for much longer and are unable to receive visits. They and their families are likely to be anxious about the transmission of Covid-19. Mr Gilmour stressed that the situation in HMP Forest Bank where Mr Lockett is being held is very difficult as a result of the pandemic. Not only are prisoners kept in their cells for 23 hours a day, but there is a serious problem with obtaining clean clothes so that prisoners wear the same clothes for many weeks. Mr Lockett's access to the kind of mental health support that Dr Anderson has recommended is also very limited. It is clear now, which it may not have been to Snowden J on 21 December 2020, that those conditions are likely to last for the whole of the period in which Mr Lockett is in prison. Those factors, together with his fragile mental state, are matters to be weighed in considering the ultimate sentence that should have been imposed.

36. I turn now to the principal submission made by Mr Gilmour that the reduction that the Judge made to reflect the serious misconduct on the part of Mr Pogmore and Minstrell should have been greater. Snowden J rightly condemned that conduct in trenchant terms and said that it enabled him to make a material reduction in the sentence he would otherwise have imposed. However, there are some factors that indicate to me that a further reduction is appropriate. First, Mr Pogmore's conduct, condoned by Minstrell, was not only an attack on Mr Lockett but also an attempt seriously to mislead the court. The requirement to avoid misleading the court is particularly acute where contempt proceedings are engaged. Minstrell should have been scrupulous to ensure the accuracy of the material on which they relied to commit Mr Lockett to prison. Mr Pogmore deliberately provided false information to Minstrell's solicitors and the committal application was drafted and lodged with the court containing the falsehood. If Mr Lockett had not discovered what had happened from his discussions with Ms Gregson, it may never have come to light. It was therefore not only Mr Lockett who was tricked, but also the solicitors who included the false description of the recipient of the text in the Schedule to the committal application and signed an accompanying statement of truth. I should say the solicitors had no suspicion that the information provided to them was untrue.

37. Snowden J returned to Minstrell's misconduct when considering the costs of the application. At [270] – [272] he concluded that the appropriate way to reflect his disapproval of their conduct was to disallow 50% of the costs that Minstrell would otherwise recover on a detailed assessment. Mr Gilmour pointed out that Mr Lockett has been made bankrupt on Minstrell's petition. This adjustment to the normal costs award therefore has had no real effect either in terms of benefiting Mr Lockett's financial position or in terms of punishing Minstrell. In so far as the Judge regarded the costs order as a means of mitigating the effect of the outcome of the application on

Mr Lockett additional to the reduction in sentence, it has not, in the event, had that effect.

38. Although the Judge had regard to each of the factors relied on by Mr Gilmour in this appeal, I have concluded that they should have been accorded greater weight in mitigating the length of the sentence he imposed, for the reasons I have given.

39. I would not, however, accede to Mr Gilmour's invitation to substitute a suspended sentence for the immediate custody imposed by the Judge. Mr Lockett's conduct was a serious, deliberate and persistent flouting of the court's authority for which the Judge found he had expressed no genuine remorse or apology. They are breaches at the more serious end of the spectrum requiring an immediate custodial penalty, and if it had not been for the mitigating factors I have described, together with those taken into account by the judge, a considerably longer sentence would have been appropriate.

40. In all the circumstances, however, I am persuaded that the 12 month period was too long and that a sentence of 8 months should be substituted.

Lady Justice Simler:

41. I agree.

Lord Justice Bean:

42. I also agree.