Neutral Citation Number: [2022] EWHC 437 (QB)

Case No: G90BM172

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Birmingham Civil Justice Centre
33 Bull Street, Birmingham

Date: 12/01/2022

Before :

MR JUSTICE JACOBS

- -

Between :

NFU MUTUAL INSURANCE SOCIETY LIMITED — **Claimant**

- and -

NAWZAR KHEDIR — **Defendant**

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- -

Mr William Rankin (instructed by **DWF Law LLP**) for the **Claimant**
Mr Nick George (instructed by **Oliver D'Sa Solicitors**) for the **Defendant**

Hearing date: 12th January 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE JACOBS

Transcribed from the official recording by eScribers
Central Court, 25 Southampton Buildings, London WC2A 1AL
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Mr Justice Jacobs:

1. I need to decide upon the appropriate sentence for contempts of court which Mr Nawzar Khedir (to whom I will refer as "Mr Khedir" or "the Defendant") has admitted. The real question is whether I should sentence the Defendant to a custodial term of imprisonment, or whether any such term should be suspended; and what length of sentence should be imposed. I have used the terms "sentence" and "custodial term", but as the case-law explains the correct terminology in the present context is committal to prison for contempt. It is, however, convenient to speak in terms of "sentence" and "imprisonment". If immediate imprisonment is ordered, then the Defendant will serve half of that sentence. The Defendant is entitled to automatic release without conditions after serving one half.

2. The background to the case is admitted fraud in the context of a motor accident claim.

3. On 8th December 2015 a collision occurred in the car park of Asda supermarket, Nuneaton between (i) an Audi A3 driven by Ms Zoe Green, who was insured by the Claimant insurance company, and (ii) an Audi A5 driven by the Defendant, Mr Khedir.

4. Mr Khedir then pursued a claim for personal injury, recovery, hire and storage charges against Ms Green arising from that accident. However, he discontinued the claim 8 days before the trial which had been due to start on 8th June 2018.

5. Following discontinuance an application was made for a finding that Mr Khedir's claim against Ms Green had been fundamentally dishonest. That application came before HHJ Gregory on 30th April 2019. Having heard oral evidence, including from Mr Khedir himself, a finding of fundamental dishonesty was made by the judge.

6. In November 2020, the Claimant insurer sought permission to commence proceedings for contempt of court together with costs. Permission was granted by Soole J on 26th March 2021. The case was contested by the Defendant, who served further statements in August and October 2021. The case was listed for a 2-day hearing starting on 2 November 2021. At the start of the hearing, however, Mr George – who has appeared on behalf of the Defendant, and for whose able assistance throughout the court is very grateful – sought some further time and (as described below) a *Goodyear* indication: see *R v Goodyear* [2005] EWCA Crim 888. I indicated a maximum sentence of 14 months imprisonment if the Defendant pleaded guilty at that stage.

7. Following that indication, the Defendant admitted contempts which can be summarised as follows: that he lied –

    a) When he alleged the accident on 8th December 2015 was genuine and not induced by him;

    b) In three respects when he gave evidence before HHJ Gregory on 30th April 2019, namely:-

        i. When he alleged he had not signed a witness statement dated 19th March 2018;

ii. When he alleged he had not signed a witness statement dated 13th December 2018;

iii. When he alleged he had not given instructions to his solicitors to discontinue the PI claim;

8. There were two other grounds on which contempt had been alleged, but these were withdrawn by the Claimant.

9. Accordingly, at the heart of this case there was a claim made in respect of an accident which had been induced by Mr Khedir, and which was not a genuine accident. That starting point was then compounded by the lies which were told to HHJ Gregory, at the hearing to determine whether there had been fundamental dishonesty.

10. I should mention in passing that part of the Claimant's case in the present proceedings and indeed before HHJ Gregory, had been that the Defendant had a record of accidents in car parks. The Claimant had submitted that this was likely to indicate that the present accident had been induced rather than was a matter of unhappy but genuine coincidence. But I make it clear that I am sentencing solely on the basis of the one collision with Ms Green. There is therefore only one "index offence" relating to the accident, albeit that the position of the Defendant in terms of contempt was compounded by the evidence which he gave to Gregory HHJ on 30 April 2019.

11. The claim itself, as I have indicated, was originally brought by Mr Khedir and was pursued until it was abandoned shortly before the trial, which was due to take place on 20 June 2018.

12. The position is therefore that I am concerned with dishonesty which occupies a period of time. There was the pursuit of a false claim for a period of some years and then further dishonesty at the hearing before Gregory HHJ, who was deciding the question of fundamental dishonesty.

13. The legal principles which apply in the present context are sufficiently set out in two cases to which I have been referred by the parties. The first decision is that of the former Lord Chief Justice, although he was Sir John Thomas in those days, the President of the Queen's Bench Division, in *Liverpool Victoria Insurance Co v Bashir & Ors* [2012] EWHC 895 (Admin) ("*Bashir*"). I have considered in particular paragraphs [9], [11], [18] and [25]. The substance of the points made in those paragraphs is that fraudulent claims were increasingly common in 2012. I have no reason to think that that is not similarly the position now. Sir John Thomas indicated that custodial sentences were inevitable in cases of this kind, bearing in mind various factors, including the difficulty of detecting and then proving the relevant fraud.

14. The question of sentence was also the subject of a more recent judgment in a case also involving Liverpool Victoria Insurance Company. That case is *Liverpool Victoria Insurance Co v Zafar* [2019] EWCA Civ 392 ("*Zafar*"). I have been helpfully referred by Mr George to a number of passages, in particular what is said in paragraphs [30], [58] and [64] to [69].

15. It is also, in my judgment, relevant to bear in mind the comments of the Court of Appeal, and citations from earlier cases, which are set out in paragraphs [47] and [49]

of the *Zafar* judgment. In paragraph [47], where it summarises the relevant law, the Court of Appeal quotes from an earlier decision involving a fraudulent claim: *South Wales Fire and Rescue Service v Smith* [2011] EWHC 1749. The Divisional Court in *South Wales* had concluded that committal of the fraudulent claimant to prison for a period of 12 months was necessary, but nevertheless the sentence could be suspended in that case. The judgment of Moses LJ referred to the fact that where people make serious false and lying claims, that undermines the administration of justice. He went on to say that:

> "Those who make such false claims if caught should expect to go to prison. There is no other way to underline the gravity of the conduct."

16. In paragraph [49] of *Zafar*, the Court of Appeal quoted from the judgment of Sir John Thomas in the *Bashir* case, including his reference to the great difficulty of detecting fraud in cases of the present kind.

17. As I have indicated, at the hearing on 2 November 2021, when this matter was before me for trial, I was asked to give a *Goodyear* indication. It was in the light of what had been said in particular in *Bashir* that I gave an indication of a maximum sentence of 14 months for a guilty plea at that stage. I had in mind at that time the comments of the Court of Appeal in *Bashir* to the effect that sentences in cases of the present kind have a starting point well in excess of 12 months. I also had in mind that the plea that might be tendered on 2 November 2021, following my *Goodyear* indication, was at a comparatively late stage and therefore would attract a discount in the region of 10 per cent. The 14-month figure reflected, principally, those considerations. But at that stage at least I did not have before me the detailed evidence which I now have as to Mr Khedir's personal background, circumstances, health and relationship with his wife and children.

18. There are two other matters to which I should refer by way of background, in light of the arguments which have been presented to me.

19. First, I have been referred to and have considered the guideline of the Sentencing Council on the "Imposition of community and custodial sentences". This includes guidelines on the approach to suspended sentences. The guideline indicates that the question of whether or not a sentence should be suspended involves the balancing of various factors.

20. The factors which indicate that it would not be appropriate to suspend a custodial sentence are set out in the left-hand side of a table. For present purposes, the relevant factor is that appropriate punishment can only be achieved by immediate custody. On the right-hand side of the table, the Sentencing Council sets out factors which indicate that it may be appropriate to suspend a custodial sentence. Those factors are "realistic prospect of rehabilitation", "strong personal mitigation" and that "immediate custody will result in significant harmful impact on others". The latter two factors are potentially relevant in the present case. The first factor is not really relevant. It is not suggested that there should be particular conditions which should be attached to any suspended sentence order which would involve the probation service, or some other organisation, seeking to ensure that Mr Khedir did not do what he has done in the present case again.

21. It is important to recognise, however, that when a question arises as to whether or not a sentence should be suspended, there may be, and is in this case, a balance which needs to be struck. It may be that there is a case of strong personal mitigation or that immediate custody would have a significant, harmful impact on others, but where nevertheless appropriate punishment can only be achieved by immediate custody. In such cases, the balancing exercise envisaged by the guideline would come down in favour of immediate custody.

22. I will say at the outset that, in my judgment and consistent with the authorities referred to above, this is a case where appropriate punishment can only be achieved by immediate custody. This is notwithstanding (i) the matters of mitigation which have been put before me, which I accept and which I will summarise in due course and (ii) the evidence that immediate custody will have a harmful impact and perhaps a significant harmful impact for a period of time on Mr Khedir's family. I should say that Mr Khedir is not living with his wife and children, but he does play a supportive role financially as far as they are concerned, and in particular plays an important supporting role as far as one of his children is concerned – a child who has various difficulties including autism and ADHD. I will come back to those matters in due course.

23. The other matter which I have considered as part of my sentencing approach is the Sentencing Council's guideline on "Sentencing offenders with mental disorders, developmental disorders or neurological impairments". It has become clear as a result of a psychiatric report provided to me at the time when this matter was first due for sentence on 17 December 2021, and further materials which have been produced as a result of Mr Khedir's non-attendance for sentence on that occasion and indeed non-attendance yesterday, that Mr Khedir is suffering with a mental disorder. There is evidence of depression and potential self-harm and he has been given various medications, comprising an anti-psychotic, an anti-depressant and a soporific in order to assist him sleeping.

24. At the time of the sentencing hearing on 17 December 2021, there was some uncertainty as to the treatment that Mr Khedir would be given, and in particular whether he might be detained under the Mental Health Act. However, he was not detained under the Act on 17 December 2021 or subsequently. He saw a psychiatric nurse only yesterday, when in fact he should have been at the adjourned sentencing hearing. I had the benefit of evidence given yesterday, using the Teams platform, from the psychiatric nurse himself. He had told Mr Khedir yesterday that there was no reason why he should not go home, and he was advised to go home and rest. The nurse was not, however, applying his mind to whether Mr Khedir was fit to attend the sentencing hearing. However, Mr Khedir seems to have gone home in the light of that advice, and did not attend the hearing. I decided that the hearing should not take place in his absence yesterday, and therefore adjourned the hearing so as to take place this morning.

25. The guideline of the Sentencing Council indicates that the mental disorder of an offender may be relevant in a number of ways. Principally, it may reduce the culpability of the relevant offence. However, the guideline makes it clear that culpability will only be reduced if there is a sufficient connection between the offender's impairment or disorder and the offending behaviour. And as Mr George realistically accepted, there is no real evidence that Mr Khedir's culpability in this case was connected with any mental problems that he had.

26. The guideline also indicates the possibility of some reduction of sentence to reflect the fact that the impairment or disorder:

> "…may mean that a custodial sentence weighs more heavily on them and/or because custody can exacerbate the effects of impairments or disorders."

However, it also indicates that such matters can only be taken into account in a limited way so far as the impact of custody in concerned. Nevertheless, it is a matter which I bear in mind in deciding on my approach in this case.

27. Mr George has made helpful submissions in relation to mitigation. The submissions were directed at the proposition, which I do not accept, that there should be no custodial sentence in this case, and also in support of the proposition that a custodial sentence could be suspended. For reasons I have already given, it seems to me that the decisions in *Bashir* and *Zafar* indicate that custody is the only appropriate sentence in a case of this kind, and I consider that the balancing exercise required in relation to suspension comes down firmly in favour of not suspending; because I consider that appropriate punishment can only be achieved by immediate custody.

28. Nevertheless, the mitigating factors are plainly relevant to the length of the custodial term. Mr George has identified a number of mitigating factors and I summarise them. He says that there is evidence, particularly in the psychiatric report, of a degree of remorse and I accept that that is so. He refers to the evidence again in that report that the Defendant had a difficult start in life, experiencing trauma as a young child. He has referred to the Defendant's current mental health and psychological issues to which I have already referred. I accept all of these matters.

29. The focus of Mr George's submission was principally – and again, it seems to me these were matters which have some force – on the impact on the Defendant's wife and children of an immediate custodial sentence. As I have indicated, he is not the primary carer but he does provide money for his wife, whose letter I have read, and for his children. It is apparent from the evidence before me, not simply from his wife but also in the form of a letter from social services dated March 2021, that the Defendant has an important relationship with one of his sons, as I have described. Mr George also refers to the fact that the Defendant has no previous convictions and so this would be the first time that he will serve a custodial sentence. I take into account all of those matters in reaching the decision which I do.

30. I therefore turn to express my conclusions. In deciding the length of sentence, I attach importance (as did the court in *Bashir* and *Zafar*) to the importance of deterring this type of offending. I bear in mind that the case pursued by the Defendant was persisted in over a period of time. The case was started and then pursued almost to trial, and the Defendant then lied at the later hearing before Gregory HHJ. As I have indicated, there is no evidence that any mental health problems were relevant in terms of impacting and causing the Defendant's offending behaviour.

31. In terms of mitigation, I accept the essential points which Mr George has made, in particular the evidence of some remorse, the evidence of the impact on others, the Defendant's mental health albeit in a limited way, his previous good character and his

experience as a young person in Kurdistan, and I balance all of those factors in reaching the sentence which I do. I also bear in mind that some time has passed since the decision of HHJ Gregory as to fundamental dishonesty, including time prior to the commencement of the present proceedings.

32. My conclusion is that balancing the various factors before taking into account the plea, a sentence in the region of 12 months' imprisonment would be appropriate. But I consider that – in accordance with the Sentencing Council guideline on "Reduction in sentence for a guilty plea" – a reduction of around 10 per cent would be appropriate in view of the timing of the plea. I am prepared to round that up in favour of the Defendant so that the sentence which I impose and the period of time for which I commit the Defendant to prison is a period of 10 months.

33. So that will be a 10-month sentence of immediate imprisonment and as I indicated at the start, the Defendant will be entitled to release at the halfway point.

34. I should make it clear and emphasise to those who are going to take the Defendant to prison that the report of the psychiatrist which was provided to me should be made available to the prison authorities. So, also, should the material which was produced by the Defendant or on his behalf two days ago and yesterday: this indicates the latest developments in terms of his psychiatric health and the medication which he is currently receiving. It is obviously important with a Defendant, who is a potential suicide risk, that the prison authorities are well aware of that. It is also clearly important he should continue to receive his medication and such assistance as the prison psychiatrist thinks is appropriate. So those materials should be made available to the prison authorities.

(There followed a discussion on costs – please see separate transcript)
