



Neutral Citation Number: [2025] EWCA Civ 67

Case No: CA-2024-002686

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN WALES
CIRCUIT COMMERCIAL COURT (KBD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/02/2025

Before :

LORD JUSTICE DINGEMANS

and

LADY JUSTICE FALK

Between :

MR GRAHAM DARBY

Appellant

- and -

MR ZI WANG

Respondent

Helen Pugh (instructed by **Janes Solicitors**) for the **Appellant**
Daniel Scott (instructed by **Curzon Green Solicitors**) for the **Respondent**

Hearing date: 16 January 2025

Approved Judgment

This judgment was handed down remotely at 12, noon on 04/02/25 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Dingemans:

Introduction and issues

1. This is the hearing of an appeal by Graham Darby, who is a 50 year old man of previous good character and who was a cryptocurrency trader, against his committal to prison for contempt of court on 24 July 2024.
2. It is now common ground that Mr Darby acted in contempt of court by failing to disclose assets of 100 Bitcoin pursuant to a disclosure order made under a freezing order dated 2 August 2021. The 100 Bitcoin had an estimated value of about US \$4 million at the time of the committal, and was worth about US \$10 million at the date of the hearing of the appeal on 16 January 2025.
3. Mr Darby was committed to 18 months imprisonment on 24 July 2024 by His Honour Judge Keyser KC, sitting as a Judge of the High Court (the judge) in the Circuit Commercial Court of the Business and Property Courts in Wales. The judge said that six months was the punitive aspect of the sentence and 12 months represented the part that might be set aside if Mr Darby purged his contempt.
4. During the committal proceedings Mr Darby, who had been represented earlier in the proceedings, was unrepresented. Mr Darby was unrepresented at the adjourned sanctions hearing, although it appears that Mr Darby had been attempting to get legal representation for that hearing. The fact that the sanctions hearing took place without an adjournment, in circumstances when Mr Darby was unrepresented after he had attempted to get solicitors to represent him, formed the main ground of appeal.
5. Mr Darby had an appeal as of right, but it appears that after his committal to prison he suffered a form of breakdown. It was only with the assistance of his daughter that Janes Solicitors were instructed with the benefit of legal aid to act on his behalf.
6. An appeal was made to this court. By an order sealed on 13 December 2024, Males LJ ordered that Mr Darby, who had then served 146 days imprisonment (some 4 months and 24 days, which is equivalent to a sentence of over 9 months), should be released on bail. At the conclusion of the hearing on 16 January 2024 judgment was reserved, and Mr Darby's bail was extended.
7. By letter dated 14 January 2024, sent just before the hearing of the appeal on 16 January 2024, Janes solicitors wrote serving an amended psychiatric report on Mr Darby dated 14 January 2025 from Dr Ajat Sanikop, a consultant in forensic psychiatry (the psychiatric report). The letter also recorded that Mr Darby, with the benefit of legal advice, accepted that he was in contempt of court, and apologised for his contempt of court. These new materials were relied on in support of the grounds challenging the length of the sentence and whether it should have been suspended. After the hearing Helen Pugh, counsel for Mr Darby, and Daniel Scott, counsel for Mr Wang, produced a helpful note outlining the ways in which the fresh materials might be taken into account by the court hearing an appeal from an order committing a person to imprisonment.
8. The court heard oral submissions from Ms Pugh and Mr Scott at the hearing of the appeal. By the conclusion of the hearing, it was apparent that the issues to be addressed

by this court were: (1) whether the judge should have adjourned the sanctions hearing on 24 July 2024 in light of the fact that Mr Darby was unrepresented and said that he had been trying to obtain lawyers to represent him; (2) whether the sentence of immediate committal to prison was wrong, because any sentence should have been suspended; (3) whether the sentence was too long; and (4) whether, in light of the letter dated 14 January 2025 showing that Mr Darby had apologised for his contempt of court, or the psychiatric report, the sentence ought to be reduced or suspended.

9. After the hearing, and while this judgment was being prepared, Curzon Green, solicitors for Mr Wang, wrote a letter dated 28 January 2025 (but misdated 28 February 2025) stating the parties had agreed an overall settlement, and that in the circumstances the appeal against the order committing Mr Darby to prison was not opposed and that a reduction of sentence to six months would not be opposed. A draft consent order dealing with the discharge of the freezing orders and consequential matters in the Cardiff Circuit Commercial Court was attached.
10. These further developments mean that the issue now is whether the appeal should be allowed, so that the sentence be reduced to one of time served.

The factual background

11. Given the recent developments, the background can be summarised briefly. There was a dispute between Mr Wang, an Australian cryptocurrency trader who was aged about 22 at the material time, and Mr Darby over a swap of crypto-currencies involving Tezos and Bitcoin pursuant to contracts made between them. Mr Wang's case was that Mr Darby had agreed to take 400,000 Tezos for the purposes of stake "bonding" and "baking".
12. The evidence showed that "baking" was not dissimilar to "mining" for Bitcoin. Mr Wang's case was that Mr Darby did not return the Tezos at the end of the transaction. Mr Darby's case had been that all obligations had been discharged and that Mr Wang felt he had done less well out of the transaction.

The proceedings

13. The proceedings by Mr Wang against Mr Darby started on 2 August 2021 when a without notice freezing order was granted. This freezing order contained standard provisions about disclosing assets by letter, later verified by a statement of truth.
14. Mr Darby did not disclose the existence of 100 Bitcoin. These 100 Bitcoin had been identified in expert evidence by Richard Sanders of CipherBlade, a blockchain and cybercrime investigative firm. He had, from other information, identified from public ledgers 100 Bitcoin which was likely to belong to Mr Darby, but he needed further information from Mr Darby to confirm it.
15. Mr Darby denied that he owned the Bitcoin, contending that he had poor memory, had put all his wallets into a hard drive and forgotten the password, but he did disclose some other transactions. As a result of this information Mr Sanders produced a further report in which, having taken account of the transactions which Mr Darby had disclosed, he reported that his confidence that the 100 Bitcoin belonged to Mr Darby had increased.

16. In the interim Mr Darby had applied for security for costs and failed, and was ordered to pay £30,000 for the costs of that application. He failed to pay. An order was made ordering him to pay failing which his defence would be struck out. Again Mr Darby did not pay, and the defence was struck out. His solicitors came off the record. Damages were assessed.

The contempt proceedings

17. Contempt proceedings were commenced in respect of the failure to disclose the existence of the 100 Bitcoin. The new form of Part 81 application was used. That gave notice to Mr Darby of his right to obtain legal aid. It is apparent, from the medical evidence and the psychiatric report, that Mr Darby has had problems with his memory, which are very likely to have been related to his mental state and the pressure of court proceedings. It is fair to record that Mr Darby has not coped well with these proceedings.
18. After various adjournments, there was a hearing to determine whether the contempts were proved. Mr Darby did not attend. The judge found that Mr Darby: (1) breached paragraph 13(1) of a freezing order dated 2 August 2021 requiring Mr Darby to disclose all his assets worldwide exceeding £5,000 in value, including a complete inventory of his cryptocurrency holdings. Mr Darby had 100 Bitcoin which were worth in August 2021 approximately \$US 4 million; (2) breached paragraph 14 of the same order dated 2 August 2021 requiring Mr Darby to provide Mr Wang's solicitors with a witness statement, supported by a statement of truth, verifying the information set out pursuant to paragraph 13(1) of the order. Again Mr Darby failed to disclose the existence of the Bitcoin; and (3) made a false statement to the effect that the contents of the disclosure letter dated 11 August 2021 were true and accurate, when they were false because he had failed to disclose his 100 Bitcoin and because he said he was unable to access his Bitcoin because he had forgotten his password and he had mental health problems which had caused him to forget.
19. There was a directions hearing providing for a separate hearing for sanctions. Mr Darby finally attended at this hearing, and disclosed that he had attempted, unsuccessfully, to instruct solicitors. The judge found that Mr Darby had put his head in the sand. The hearing proceeded and the sanction was imposed.

Appeal allowed

20. In the light of the fact that Mr Darby has, albeit belatedly, complied with the court's orders and apologised, I would allow the appeal, and reduce the sanction on Mr Darby to a committal to prison for the equivalent of time served. He has served 146 days which is equivalent to a committal to prison of 292 days (a period of over 9 months).
21. That means that it is not necessary to determine the other grounds of appeal. It might be said, however, that if a person is facing a sanction of committal to prison for contempt of court and that person belatedly engages with the court process, there are many reasons to grant a short adjournment to ensure that the person in contempt has the benefit of legal representation. This ensures fairness to that person, in circumstances where many contemnors only come to their senses at the 11th hour and 59th minute, see generally *Haringey London Borough Council v Brown* [2015] EWCA Civ 483; [2017] 1 WLR 542 at paragraphs 41 to 44. In many cases this will also be to

the advantage of the side seeking the order for committal. This is because the contemnor's legal representatives are likely to have more success in persuading the contemnor to purge his contempt and comply with court orders. That will also assist the court in ensuring that there is compliance (albeit on a belated basis) with its orders.

Conclusion

22. For the detailed reasons set out above I would allow the appeal to the extent of reducing the sanction on Mr Darby to a committal to prison for the time served, being 146 days, which is a sentence of 292 days.

Lady Justice Falk

23. I agree.