

IN THE COUNTY COURT AT BIRMINGHAM

Case No. F01BM462

Courtroom No. 503

Priory Courts  
33 Bull Street  
Birmingham  
B4 6DS

Thursday, 5<sup>th</sup> May 2022

Before:  
HIS HONOUR JUDGE MURCH

B E T W E E N:

CHIEF CONSTABLE OF WEST MIDLANDS POLICE

and

YOBEL WERIE

MR BROWN & MISS MORRIS appeared on behalf of the Claimant  
MR RICKETTS appeared on behalf of the Defendant

JUDGMENT  
(Approved)

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HH JUDGE MURCH:

1. This matter comes before me today by way of two contempt applications as a result of separate breaches of an injunction which was made in this court on 22 August 2019. There is no dispute that the defendant has been served with a copy of the injunction. I shall deal first with the procedural history of the committal applications.
2. Starting with the terms of the injunction; on the 22 August 2019 an order was made in the following terms:

“The court ordered that Yobel Werie, whether by himself or by instructing, encouraging, or allowing any other person shall not:

- a. enter the area edged red on the map attached to this order and marked exclusion map between the hours of 22.00 (10pm) and 07.00 (7am). If Yobel Werie wishes to enter the area edged red on the map marked as ‘Exclusion Map’ between the hours of 22.00 (10pm) and 07.00 (7am) he must request permission in writing from the Duty Inspector for Birmingham Central Neighbourhood Policing unit and give no less than 48 hours’ notice;
- b. possess white powder in any zip lock bag in a ‘Public Place’, public place includes any highway, and any premises or place to which at the material time the public have or are permitted to have access whether on payment or otherwise.

This injunction shall last until midnight on 21 August 2022, the respondent may apply to vary to set aside the injunction and must give 72 hours’ notice, the claimant, if he wishes to set aside or vary this injunction”.

3. The order was marked with the usual penal notice which read in bold, block capital letters in the following terms, “If you, within named Yobel Werie, do not comply with this order, you may be held to be in contempt of court and imprisoned and or fined or your assets may be seized”. Advice was given to seek the help of a solicitor, the legal advice centre or Citizens Advice Bureau if anything in the order was not understood.
4. I refer to all of that because although this is the interim injunction in this case, there has not been any application to set the injunction aside or to vary its terms, and on a number of occasions, as I shall set out, the matter has come back before the court when the defendant has had the benefit of legal advice.

5. There are, as I say, two applications before me today. The first is dated 20 November 2021 and relates to an admitted breach on 11 December 2021, when at 00.40 the defendant was found in the exclusion area.
6. It is further alleged that on 10 April 2022, the defendant was in the exclusion area at 00.25. Following an arrest, that matter came before Her Honour Judge Kelly in this court, on 11 April 2022. The following recital appears:

“Upon the defendant’s solicitor accepting service of the claimant’s draft N600 contempt application dated 11 April 2022, and witness statement of PC Nandra dated 10 April 2022”.

Then it goes on to say, “it is ordered that:

2. The claimant has permission to proceed with this matter by way of a N600 contempt application and must issue this application forthwith.
  3. personal service of the claimant’s N600 application is dispensed with”.
7. It was recorded that on that occasion the defendant admitted being in breach of the injunction in circumstances I have set out. Her Honour therefore ordered that committal application be issued forthwith. I have been taken to email correspondence where it is accepted by the defendant that at 16.00 on that day, the senior solicitor for the claimant wrote to the court, attaching an N600 application, together with witness statement dated 10 April of PC Nandra, and a copy of the injunction of His Honour Judge Rawlings, to which I have already referred. The PBA number for payment of the court fee was set out as well.
  8. It seems that despite the claimant’s best endeavours to comply with the order of Her Honour Judge Kelly on that day, the court has not formally issued the application. I think the defendant, through Mr Ricketts, has taken the pragmatic approach that the claimant has done everything it can to issue the application. This matter is not one that is going to go away, and in those circumstances, he accepts that the court can and should impose sentence in relation to the breach on the 10 April 2022.
  9. There are therefore two applications before me for consideration today.
  10. Against that summary of procedural background, I will now set out the history of this matter because it is relevant, I think, to the exercise, I need to perform today. On 22 August 2019, His Honour Judge Rawlings sitting in this court, made the injunction on the terms of which I have already set out. On 7 September 2019, within a month of the grant of the injunction, the defendant was in breach of the order by being present in the exclusion area. That matter came before District Judge Rich in this court on the 25 October 2019, when he imposed a sentence of 14 days, suspended until 21 August 2022, namely the expiry of the injunction.

11. Then on 2 December 2019, some six weeks after that hearing before Judge Rich, the matter came before District Judge Shorthose in this court, when the defendant admitted that he had breached the injunction on that same day. At a sentencing hearing on 19 December 2019, District Judge Shorthose imposed a sentence of 35 days imprisonment, being 21 days' imprisonment for the breach of the matter before him, and the activation of the suspended sentence which District Judge Rich had imposed. To that extent therefore, the slate was wiped clean by the activation of the suspended sentence, and sentencing for the breach before for Judge Shorthose.
12. A period of 17 months then elapsed before the matter came before the court again on 13 May 2021. On that occasion Her Honour Judge Ingram was faced with an admitted breach on 16 April 2021, again being in the exclusion zone. Her Honour imposed a sentence of 20 days' imprisonment, suspended until 21 August 2022.
13. Within seven months the matter came before me, when on 8 November 2021, I was faced with the defendant having admitted, again, being in breach of the injunction on 7 November 2021 by being present in the exclusion zone. I was persuaded on that occasion not to activate the sentence of Her Honour Judge Ingram, and to impose a further 14-day suspended sentence, on terms that the defendant comply with the terms of the injunction. I was told on that occasion that the defendant accepted that he had breached the injunction, and that he was the main breadwinner for his family and against that background and the contrition that was shown, I was persuaded to pass a further sentence of suspended imprisonment.
14. It is common ground that I need to determine today, whether either or both of those sentences need to be activated today. The matter came before me again on 21 February 2022, where following a committal application, the defendant admitted being in the exclusion zone on 11 December at 00.40. On that occasion I adjourned matters for sentence until today. I was concerned, given that I was faced with the requirement to consider whether to activate the suspended sentences and also impose a further penalty for the admitted further breach, and for that reason I wanted to give Mr Werie a further chance to show that he could comply with the terms of the injunction. Unfortunately, on 10 April 2022, Mr Werie was found again in the exclusion zone in breach of the terms of the order of Judge Rawlings from August 2019, and the suspended sentence terms which I had imposed in November.
15. I need to consider then each of these matters in turn as the appropriate penalty to impose. Turning first to whether I should activate the suspended sentence imposed by Her Honour Judge Ingram on the 13 May. This was a sentence of 20 days suspended, it followed a period

of about 17 months where there had been no breaches of the terms of the injunction. In circumstances though where there have been three further breaches since Her Honour passed that sentence, I do not see that I am left with any alternative other than to activate that sentence. I make some reduction for the fact that seven months passed between Her Honour imposing that sentence and the matter coming before me on 8 November 2021 and rather than 20 days, I activate 14 days of that sentence.

16. Turning then to the sentence which was suspended by me on 8 November 2021, that was a period of 14 days suspended, following as I say, the earlier suspension of Her Honour Judge Ingram. I suspended that on condition that there be further compliance with the terms of the injunction. That was on 8 November and the matter was brought before the court in February of this year, following a breach which was admitted on 11 December 2021. That was within a month of me making that suspended order. I see that leaves me with no alternative, other than to activate the full 14 days of that suspended term of imprisonment.
17. Turning now to consider what sentences I should impose for the two most recent breaches. Looking first at the sentence on the breach of 11 December 2021. My attention has been drawn to the guidelines put down by the Sentencing Council and also the Civil Justice Council. The latter terms reflect perhaps more fully the reality, that the Sentencing Council Guidance relates to offences where the sentencing powers are greater than the two years maximum, I have in cases such as this, but broadly follow the same approach.
18. In relation to the breach on 11 December 2021, I need to determine first the culpability of the defendant, looking at the different categories, be it A, B, or C. Having heard the submissions of the parties on this point, I am satisfied that this was a deliberate breach falling within culpability A, being a very serious or persistent breach and minor breach where there is breach just short of reasonable excuse. I do so because by December 2021, the defendant was fully aware of the terms of the injunction, having previously been sentenced for breaches of it; and therefore, the argument that it was a minor breach, or a breach just short of reasonable excuse, I think can no longer apply in this case.
19. Turning then to the harm which is caused by the 11 December breach. I accept and acknowledge what Mr Ricketts says on behalf of the defendant, namely that there is no allegation of any other breach of the order, and no allegation of any further antisocial behaviour. The harm which is caused is being in breach of the order, which in itself is an important matter reflected generally in this process but I accept this is a Category 3 harm because there is no suggestion of third parties being harmed.

20. I have to consider whether custody threshold is therefore part in relation to the 11 December breach. I am afraid that I consider that it is. Given the history of this matter and the rapid succession of breach following the previous hearing before me, I have to conclude that the custody threshold is met in this case. I am satisfied that the appropriate sentence to pass would be one of 21 days' imprisonment. I have regard to the fact the defendant is the main breadwinner in his family. He has four siblings ranging from 23 to 14 in age and he also looks after his mother, that is mitigation but can only take the matter so far. The starting point is 21 days, but I make a reduction of one third for the prompt and immediate guilty plea and therefore impose a sentence of 14 days in relation to 11 December breach.
21. Turning then to 10 April 2022 breach, much the same consideration applies in that case for the reasons I have already set out. This was a Category B in terms of culpability in this matter, the defendant being fully aware of the terms of the injunction by that time, but Category 3 in terms of harm because as I say there is no allegation of any other breach of the terms of the order or any other antisocial behaviour on part of the defendant. Again, I have regard to the effect it will have on the defendant, I am told that he is due to start work next Tuesday, his induction takes place in Coventry. He will be working in a Boots warehouse overnight in circumstances where he will not need to enter the exclusion zone, because the times of his transport. Nonetheless, I have to have regard to the importance of complying with injunctions and again, I am satisfied that a period of 21 days' imprisonment is the correct starting point; but again, make a reduction of one third, giving full credit for the guilty plea which has been entered.
22. I then stand back and ask myself what is the totality of sentence which is required in this case. What best meets the need to make it clear to the defendant there be compliance with court orders, in circumstances where there has been a history of a failure to do so? I think if I do stand back, it would be unjust to impose each of these sentences on a consecutive basis, that would be too far and would be too great a punishment for the level of breach which has been committed by the defendant, albeit on a number of occasions. Standing back though and applying the totality principle to the activation of the two suspended sentences and the two further breaches, I am satisfied that an immediate custodial sentence of 28 days is the appropriate penalty in this case and that is the penalty which I shall impose.

**End of Judgment.**

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