

IN THE CROWN COURT AT MANCHESTER

Case No: **T20160062**

Courts of Justice
Crown Square
Manchester M3 3FL

Date of hearing: **Wednesday, 24th June, 2020**
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Before:

HIS HONOUR JUDGE TIMOTHY SMITH

REGINA

- v -

THOMAS JOHN KNOX

MR. KEVIN JOHN SLACK appeared on behalf of the prosecution
MR. ANDREW WILLIAM SMITH appeared on behalf of the defendant

PERFECTED SENTENCING REMARKS

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Wednesday, 24th June, 2020

SENTENCING REMARKS

(12.07)

JUDGE SMITH: Thomas Knox, you can remain seated for the time being.

In December 2016 you were sentenced by Her Honour Judge Moulder Q.C. in relation to three offences, to which you had earlier pleaded guilty, relating to breaches of the Environmental Permitting Regulations of 2010. Those three separate counts to which you pleaded guilty related to offences committed over a period of almost a year or so between 2014 and 2015. They concerned your wholesale disregard of environmental regulations in relation to the management of a waste site that you operated as sole director of a company over which you had sole control, namely, UK Skip Hire Ltd., and you had operated that company since 2005. You operated from a site at Honey Street in Collyhurst, a site predominantly industrial in nature but surrounded by other industrial units, office space, and in particular an adjacent building the photographs of which show the quantity of waste that was held on that site.

The charges which you then faced related to the breaches of the Environmental Permit which UK Skip Hire Ltd. then held: breaches of an Enforcement Notice and breaches of a Suspension Notice, those notices being issued by the Environmental Agency in 2015; namely, on the 11th February 2015 in relation to the Enforcement Notice and June 2015 in relation to the Suspension Notice. In the course of the sentencing exercise Her Honour Judge Moulder considered that the breaches themselves were deliberate and wilful and justified the imposition of a custodial sentence. The category range, which is not clearly specified but seems to have been, as far as “culpability” is concerned, “high harm Category 2” which would have had a range of up to 18 months’ imprisonment. She determined that your offending was to the top end of that range by imposing a sentence of fourteen months’ imprisonment; however, for reasons I will come to, she determined to suspend the activation of that sentence.

As part of her sentencing exercise, in addition she made an order pursuant to Regulation 44 of the 2010 regulations; that was an order in the nature of a Remediation Order under Regulation 44. That order required you to remove what was then all the waste at that site and take it; not deal with it, not sort it, or in any other way deal with it on site,

A but to remove it. It was simple in its terms: to take all the waste to a registered waste transfer site or other suitably permitted facility. There was a time restraint imposed on that, 4 p.m. 9th June 2018. It was allowing you, effectively, eighteen months to do what you had said, through your counsel, you were able to do and willing to do and would do; in other words, clear that site, and you did not. For two years, between the imposition of that B sentence and June 2018, absolutely nothing happened at all with that site; not one finger was raised to remove any part of the waste on that site at all.

C Now, it is relevant for me to go into some matters relating to the matters that were before Judge Moulder because they are indicative of your approach to authority, to those who give you orders and give you directions, and to that extent also relevant to your D attitude and your approach to court orders and indeed the court order that you were made the subject of. It is quite clear, in the course of the opening before Judge Moulder, which I have considered (in the form of a transcript), and also in the opening I have before me, that you were given every opportunity by the Environmental Agency in 2014 and 2015 to E remove waste from your site. You gave repeated assurances over that time that that is what would happen. In December 2014 you were telling environmental officers: "Yes, it will be removed by January 2015", and it was not. You said again it would be removed and it was not. In fact the waste continued to increase; indeed, far from getting lower, the waste was continuing to be brought onto site and not being removed at all. You gave those F promises, and it seems to me that there was no intention to honour those promises at all and the waste continued to accumulate. It in fact continued to accumulate in a way that was dangerous and carried risks: it carried fire risks, it carried all sorts of polluting risks, environmental risks, to neighbours. The particular fire risk was noted by the Fire Service in the summer of 2015 which led to the Suspension Notice because on that site, at about G that time, the estimate was over 1,000 tons of waste, in large part biodegradable waste. The total waste on the site, which was said to be a conservative estimate, was ten times that permitted by the permit under which you were operating -- "ten times". The waste, as shown in the photographs I have seen, at or about time, piled up against office walls, up to H the windows. The biodegradable material was a fire risk; in hot or warm weather it was at risk of self-combusting, causing danger to other properties, damage to other properties, and the very state of the site itself meant that fire tenders would have difficulty in getting to put

A out any fire at all. So it was not just simply a tip, and a messy tip, and a messy tip with too much rubbish: it was a potential danger, and that is what it was Judge Moulder was dealing with when she came to sentence you in 2016.

B When Judge Moulder came to sentence you on that occasion she was told that it would take eighteen months to clear because of the significant amount of work that was required. You gave her, through your counsel, effectively, an assurance, a determination, to do that and to remove it, and that is what was said by you to the environmental officers in 2014 and repeated to the Probation Service in the form of the Pre-Sentence Report -- all promises given and all promises entirely broken by you. The judge determined your failures to obey and comply with the enforcement notices were deliberate on your part. You failed then to cooperate then with the Environmental Agency by failing to attend for interview under caution. So, the risks were there, you ignored them and you ignored them flagrantly and deliberately.

D The judge, in the course of her sentencing remarks, looked at and had to balance what she considered to be the public interest of having that site cleared and remedying the position. So much so that she felt it would be counterproductive to impose any form of ancillary community orders, but to allow you all the time to focus your full attention into the removal of the waste from the site in the period that you had identified. She therefore made an order that suspended the activation of the term of imprisonment, and in doing so she said: "I am going to give you the opportunity to carry out what you said you will do"; that was effectively the sole reason that she was suspending that sentence of imprisonment at that time. She made the Remediation Order, saying at the conclusion of her sentencing remarks: "If you breach the order, that is, if you fail to clear the site -- not just 'sort it' or do any work on the material, but you must 'clear it' -- you will be committing a contempt of court for which you will be brought back before the court and you are likely to go to prison at that point if you are found to be in breach." What did you do? Absolutely nothing; characteristic of the wholesale contempt that you had for the Environmental Agency and the wholesale contempt you had and have for this court. That is what is displayed by you and you are here for "contempt of court", and it is right to say that that is a perfectly proper description of your attitude: one of contempt for properly made serious orders designed and intended to be obeyed and capable of enforcement.

A It is only, effectively, when steps are taken that you try to react. From January 2016
through to the photographs taken in January 2019, shortly before proceedings were
commenced, the photographs show no change in the state of the site. If anything, there
B may have been more; fly-tipping encouraged by the very nature of the site. There are
suggested reasons put in a chronology about your attempts to gain funding, and no real
evidence in support of those, but you had promises that you had made to the court and I
see no real justification for the failings to do anything to remove the rubbish from the site;
indeed, your counsel has conceded there was a wholesale disregard of the order during the
C period of eighteen months. It is said that you were let down by your solicitors, who, it is
said on your behalf, somebody who has had that disregard for orders in the way that I have
indicated, who says that he was advised by those solicitors not to alert the Environmental
Agency to difficulties that you had and to look for further time. I am prepared to accept
D you were given poor advice; although I have to say that I am somewhat sceptical about
that, but I give you the benefit of the doubt.

E It is only, effectively, and notwithstanding the chronology I have seen, **(the learned
judge pauses due to audio interference and confers with the Clerk of the Court)** after
proceedings for contempt were brought in February of last year that you began to engage,
and you began to engage in a way that was impermissible because by that time the
company that you had been a director of had gone into liquidation ten months after the
F original Remediation Order was made. During that time you would have had the benefit
of the permit, giving you an ability to sort and treat waste on site and remove it in a
cheaper way, but as a result of your own failings that passed you by. However, you
sought then to operate and to deal with the waste in a way which was not permissible;
indeed, there is every indication that that is the way in which you are dealing with matters
G at the moment, by using particular equipment to sort the waste, which is again outside the
terms of/or would require express permission and express permits to be given to cover that
activity.

H Proceedings having been brought, it was only in August of last year, when matters
came before me, that you admitted your contempt and admitted the breaches. When the
matter came before Her Honour Judge Nicholls, after an adjournment, the breaches were
then expressly denied. In July an indication was given that you would be admitting those

A breaches and matter came before me in August when you did so. It is right to say, and I
note, the limited positive effect of this on you, that there was some engagement between
you and your solicitors in 2019, at the time of the hearings before me, with the
B Environmental Agency looking to explore particular plans to remove the waste, to look to
obtain a local permit, effectively, under a local enforcement position, but it was indicated
to you that that would only be provided in exceptional circumstances. There were issues
with what you proposed; you did not accept the answers that were coming your way and I
gave a chance for that to be investigated further and in January of this year it was
C confirmed to you, with full reasons, that that was not an option available to you. It is only
in April of this year, from invoices I have seen, that there is any real effort that has been
made to remove material; knowing full well that sentencing was about to take place. Over
that period of time, from the invoices I have seen, about £42,000 has been incurred or
D spent (two-thirds of the total cost). Of the invoices, again it is of some note to recognise
that those that you have been using included a firm called Barkers, in 2019, who
themselves operated illegal sites; and you, as a site person dealing in waste, have an
obligation, when you are removing waste to another site, to check their own credentials
and you clearly did not, or, if you did, you ignored that. Again, nothing to your credit.

E There are, when I come to consider what is the appropriate action to be taken from
you as a result of your admitted breach, limited options available to me. There are no
similar cases to which my attention has been drawn; counsel have looked but have been
F unable to find any. I gain some assistance from the Court of Appeal's comments in the
case of **R. v. Yaxley-Lennon**. Looking at the scale of the breach here, "considerable":
your level of culpability, in my view, high, aggravated by subsequent defiance or lack of
remorse, and the very fact that you did nothing for eighteen months, indicates, in my view,
G substantial defiance to the terms of the order. The need for a particular deterrent, as there
is, and there must be, because conducting sites of this nature carry with them the risks that
I have identified, and wholesale disregard not only of the Environmental Agency's
directions **but** the orders of the court which are there to be obeyed and respected, and those
H who treat those orders with contempt undermine the justice system.

I have no doubt, in this case, given all the matters that I have indicated, that it would
be appropriate and proper to sentence you to a term of imprisonment. I have no doubt

A about that at all. In doing so, I am also looking, here, not only at the breaches themselves,
which are significant for the reasons I have outlined, but also the fact that those were
effectively breaches of the suspended sentence that was imposed by Judge Moulder; not
B technical breaches but practical breaches of that order, because she gave you a chance to
do something to avoid prison and you didn't do it, and I have to take that into account in
determining, in this case, what is the appropriate order. It is only for the following reasons
C that I felt in your case that I am just in a position to suspend the execution of the committal
order. They are as follows: that there has been recent engagement and a recent removal of
waste, albeit in a way that may not be permitted and that is a matter for you to regularise;
and of more importance to me is the current pandemic and the effect of a sentence of
D imprisonment to anybody in the current times which are of far greater significance and
import, not only to the person who is spending time in custody but also for those with
whom they live, family, children and you wife. It is for those reasons only that I am
prepared to suspend the activation of what otherwise I consider to be the appropriate
sentence.

E In looking at the length of the sentence I am going to suspend, I start with a sentence
of fourteen months' imprisonment. I reduce that to a limited degree to reflect the work
that has been undertaken, but it is a limited degree because it has to be balanced against the
wholesale breaches in the past; that brings me to a sentence of twelve months'
F imprisonment, and reducing that and giving you some credit, which I do, of 15% only, that
reduces the sentence in this case of one of ten month's imprisonment. Now, I am going to
suspend the execution of that committal order for a period of six months -- sorry, I am
going to suspend it on these terms (not for six months): it is suspended on the sole basis
G that you will remove all waste at the site at 23 Honey Street, Collyhurst, Manchester, M8
8RG, and take all that waste to a registered waste transfer site or suitably permitted facility
by 4 p.m. on the 24th December of this year. Now that means this: that if waste is removed
by that time that sentence will not be activated, but be under no illusion that if that waste is
not removed by that time that sentence will be activated, and even if there is a small
H amount left there it will be activated because this is your last chance to show me that you
can do something about it. Do you understand?

A So, the sentence on the admitted breach of the order is one of ten months' imprisonment. I suspend the execution of the committal order on terms that the defendant must remove all waste at the site at 23 Honey Street, Collyhurst, Manchester, M8 8RG, and take all the said waste to a registered waste transfer site or suitably permitted facility by 4 p.m. on 24th December 2020; effectively that wording is exactly the same wording as B the order made by Judge Moulder and so you know its full terms, and unless there are any submissions about its wording that will be the wording that I use.

C I see no reason why you should not pay the costs of the prosecution and the investigation. Those costs are assessed by me in the sum requested of £9,992.43. I will, however, allow you time for payment and I will allow you twelve months to make D payment of the full amount by the 24th June 2021 and a collection order will be drawn up in respect of those costs as far its collection. So, an order for costs of £9,992.43; that is, costs that you have brought on yourself by the breaches and these proceedings.

E If you stand now, please, Mr. Knox. The sentence in relation to your contempt and breach of the Remediation Order is as I have indicated: ten months' imprisonment which will be suspended on terms that you must remove all waste at the site known as 23 Honey Street, Collyhurst, Manchester, M8 8RG, and take all the said waste to a registered waste F transfer site or suitably permitted facility by 4 p.m. on 24th December 2020. If you do not do that you will be going to prison; you will be coming back here and that is what will happen. You will pay the costs, as directed, by the 24th June next year.

F Mr. Slack, in accordance with the practice direction relating to committal for contempt the particulars of the order that I made will be released to the Press. I will be directing a transcript of the sentencing remarks and reasons that I have come to in relation to this which will be uploaded in due course and provided to the parties.

G MR. SLACK: Thank you, your Honour.

JUDGE SMITH: So I will be directing a transcript be obtained; that transcript, which will come to me, I will perfect before it is subsequently distributed.

(12.34)

H **Marten Walsh Cherer hereby certifies that the above is an accurate and complete record of the proceedings or part thereof.**

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