

IN THE BROMLEY COUNTY COURT

Case No: E01BR613

Court House,
Bromley,
Kent BR1 3PX

Date: Wednesday, 3 July 2019

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Before:

DISTRICT JUDGE CRIDGE

Between:

**LONDON BOROUGH OF GREENWICH
- and -
WARD**

Claimant

Defendant

MR GAVIN RIZZUTO for the Claimant

The **Defendant** was not present and was unrepresented

**APPROVED JUDGMENT and SENTENCING
REMARKS**

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DISTRICT JUDGE CRIDGE:

1. This is an application for the committal to prison of Mr John Ward brought by the Royal Borough of Greenwich for alleged further breaches of the injunction order that was granted on 10 July 2018. I heard today from Mr Gavin-Rizzuto, counsel for the Royal Borough of Greenwich. The defendant did not appear before me although I was satisfied he had been properly served with notice of today's hearing and the application and evidence against him. I considered at the start of today's hearing whether or not I should adjourn today's hearing to give the defendant another opportunity to attend. I gave a short judgment explaining why I decided not to adjourn. In short, I had no confidence that the defendant would attend any future hearing, given that he has so far failed to attend any of the hearings before me, either as part of this application or the hearings concerning the previous application for committal, that was eventually heard in January this year.
2. In coming to my decision, I have read the affidavits of Fred Davis made on 3 April 2019 and Azuka Onoria made on 10 April 2019. I also heard Mr Davis in oral evidence this morning, where he confirmed the evidence in his affidavit. I also heard the submissions of counsel for Greenwich.
3. There are two allegations against the defendant. The first is that on 1 April 2019 he assaulted Fred Davis, an agent of the Royal Borough of Greenwich, in breach of paragraph (e) of the injunction of 10 July 2018. The injunction of 10 July 2018 reads as follows:

“Mr John Ward is forbidden, whether by himself or by instructing or encouraging any other person from...

(e) behaving in a manner which causes or is likely to cause a nuisance, annoyance, harassment, alarm or distress to any of the categories of people set out in paragraph (2) of this order.”

At paragraph (2) of that order it says:

“The following categories of people shall be protected by the provisions in paragraph (1) of this order.”

It then names David Warren (the second claimant), Simon Pearce (the third claimant) and, importantly in relation to Mr Fred Davis, “any employee, contractor or agent of the Royal Borough of Greenwich”, Mr Davis being an agent of the Royal Borough of Greenwich.

4. In his affidavit, Mr Davis said that he attended at the property where Mr Ward and his mother live on 1 April 2019 to serve various documents from the Council concerning these court proceedings. He explained that he attended the property and was met at the door by the defendant. He gave the defendant the documents. The defendant threw them onto the ground and then started ranting that the documents themselves were illegal and that Mr Davis was trespassing. Mr Davis continued that a little while later the defendant then charged up the path that leads from the front door to the street towards Mr Davis. The defendant body-charged him and physically came into contact with Mr Davis on at least 3 occasions. Mr Davis sought to leave the property and the

defendant is then alleged by Mr Davis to have wedged him up against a car and moved in such a way as to stop Mr Davis from leaving. The defendant then insisted on Mr Davis giving his name. Mr Davis gave his surname and in his affidavit states that the defendant asked for his first name, which Mr Davis refused to give, saying this was private. The defendant eventually let Mr Davis go.

5. In relation to that allegation, I am sure beyond reasonable doubt that what Mr Davis has told me is true. I note that in relation to the second allegation (which I will come to shortly) the defendant is said to have sent a letter dated 1 April which makes reference to Mr Davis' attendance at the property, and that is supportive evidence of the fact that Mr Davis was at the property as he says he was. I find him to have been a truthful witness and I accept his evidence entirely. So I find that allegation 1 has been proved beyond reasonable doubt.
6. The second allegation is that on or about 3 April 2019 the defendant sent a letter dated 1 April 2019 to Debbie Warren, the second claimant, in breach of paragraphs (a) and (a)(iv) of the injunction. The injunction of 10 July 2018 at paragraph (a) says that:

“The defendant is forbidden from contacting any of the categories of people set out in paragraph (2) of this order by telephone, email or letter, save in the case of emergency or as set out below.”

Paragraph (a)(iv) says:

“For the avoidance of doubt, the defendant may not email, write to, or telephone Miss Warren or the third claimant.”

I have already referred to the categories of people set out in paragraph (2) of the injunction.

7. I have read the affidavit of Azuka Onoria of 10 April 2019. That says Greenwich received a letter addressed to Debbie Warren from someone who signed off the letter using the defendant's name John Ward. I have read the letter and I note that the letter conforms to the previous style of correspondence that I have seen from this defendant in other correspondence that I have found he has written when I heard the committal application in January 2019. The letter also, concerningly, threatens the use of “lethal force” if anyone (in the defendant's view) trespasses on his property again. Based on Ms Onoria's affidavit I am sure beyond reasonable doubt that this was a letter written by the defendant, which he dated 1 April and which was received at the Royal Borough of Greenwich on or about 3 April 2019.
8. So I am sure beyond reasonable doubt that this is a breach of paragraphs (a) and (a)(iv) of the injunction order. And I find this second allegation to be proven to the criminal standard.
9. I therefore now need to consider sentencing for these proven breaches, and so I will hear from the claimant in relation to sentencing.

(Further discussion followed)

10. I will now give my views on sentencing. Firstly, I consider whether or not I ought to adjourn the sentencing element of today's hearing to give the defendant an opportunity to attend court and explain himself to the court and give a statement in mitigation. I am not going to adjourn sentencing, for similar reasons that I gave in my judgment as to why I did not adjourn today's hearing at all. The defendant has yet to appear before the court in the various hearings that we have had in these proceedings and I have no faith that he would attend were I to adjourn sentencing to give him that opportunity to attend. So I decline to adjourn sentencing.
11. When considering sentencing there are three objectives to be considered. The first is that sentencing is punishment for a breach of an order of the court, and in this regard sentencing must be proportionate to the seriousness of the offence. This is determined by assessing the culpability of the defendant and the level of harm the breach has caused or the level of harm at risk of being caused by those breaches. Also, the objective of sentencing is to secure future compliance with court orders if possible. Finally, it is for the rehabilitation of the defendant.
12. I must give a sentence for each breach of the order that I have found proven. I have also taken into account the Sentencing Guidelines concerning breaches of an anti-social behaviour order, which Guidelines took effect on 1 October 2018. Those Guidelines provide a number of steps the court must take when sentencing in cases of this type. The first is to determine the offence category by assessing the culpability and harm. The Guidelines set out 3 levels: A, B and C. Level A is for very serious of persistent breach; Level B is for a deliberate breach falling between Levels A and C; and Level C is for a minor breach or a breach just short of a reasonable excuse. In my judgment, the correct assessment of culpability is Level B. These were deliberate breaches which fall between Levels A and C.
13. Turning to harm, I assess the level of harm by weighing up all of the factors in the case to decide the harm that has been caused or was at risk of being caused. I have also considered the original activity for which the order was imposed and the circumstances in which the breaches have arisen. The Sentencing Guidelines provide 3 categories of harm: Category 1 is breach which causes very serious harm or distress, or a breach that demonstrates a continuing risk of serious criminal and/or anti-social behaviour; Category 2 is for cases falling in between Categories 1 and 3; and Category 3 is for breach that causes little or no harm or distress, or a breach that demonstrates a continuing risk of minor criminal and/or anti-social behaviour. In my judgment, these most recent breaches fall within Category 3. I say that because in terms of the anti-social behaviour the level of anti-social behaviour is minor. Also taking into account the assault on Mr Davis, in my judgment, in the scheme of crimes generally this was minor criminal behaviour, and so I do assess harm as Category 3.
14. Having assessed culpability and harm, the Sentencing Guidelines then provide the court with a starting point for the sentence and then the range of available sentences above or below that starting point. The Guidelines give a starting point of sentencing of a high level community order, which this court has no power to make, and a sentencing range of a low level community service order through to 26 weeks in custody.
15. I must also take into account any aggravating or mitigating factors that would suggest I should increase or decrease the sentence. I have also considered whether there are

other factors which would suggest that the appropriate sentence falls outside of the sentencing range that the Guidelines suggest. In my judgment, the aggravating factors are these. This was a repeated breach following earlier proceedings and following an earlier conviction for breach of the order which I found proven in January of this year. There is a history of disobedience of the court orders by Mr Ward, and the victims of these most recent breaches, Mr Davis and Miss Warren, are both people that the injunction order was intended to protect. Those are the aggravating factors.

16. I accept that there is a potential mitigating factor, in that I'm told by counsel the defendant is likely the sole carer for his mother with whom he lives. I take this into account in coming to my provisional sentence in this case.
17. Taking all those matters into account, in my judgment the appropriate provisional sentence in this case is 4 weeks in custody for each of the breaches. But is a custodial sentence necessary in this case? Are the breaches as proved sufficiently serious to justify a prison sentence? In my judgment, they are. I say that because there has been no compliance to date with the orders of this court, and I note with some concern that defendant's behaviour has deteriorated given the assault on Mr Davis and the threat of the use of lethal force in the letter of 1 April sent by the defendant.
18. Having decided to impose a custodial sentence for each of the breaches, I also need to decide whether those sentences should run consecutively or concurrently. I also take into account the principle of totality; in other words, whether the total sentence is just and proportionate to the overall offending behaviour. Because of the similar nature of the breaches and the time period over which they have taken place, in my judgment, the sentences for these two breaches are to run concurrently.
19. I pause here to consider the issue of activating the sentence I made in my committal order of 23 January of this year in which I sentenced Mr Ward to 14 days' imprisonment. I suspended that sentence on condition that Mr Ward complied with the injunction of 10 July 2018. As has been proven today, Mr Ward has breached the terms of that injunction, and so has therefore breached the terms of his suspended sentence.
20. Considering the deterioration in his behaviour in these latest two breaches and the fact that Mr Ward is continuing to breach the court's order, I consider that I should activate the full 14 days in that sentence. I also order this to run consecutively with the sentence that I have imposed today. So there will be a total custodial period of 6 weeks (42 days). I also consider whether the sentence that I am imposing for today's proven breaches should be suspended. Suspending the sentence may help in meeting two of the objectives of sentencing: to secure future compliance with the court's order and to secure the defendant's rehabilitation. This is the second time the defendant's committal has been sought concerning this order. I am also mindful that these breaches are repeated breaches of the order of last year.
21. So taking all of the matters that I have discussed now and earlier in my sentencing remarks into account, it seems to me that this is not a case where the sentence that I have imposed today should be suspended. So I impose a sentence of 4 weeks for each of the two breaches, running concurrently, and I consider that this marks the serious view the court has taken of the defendant's behaviour and of his contempt by not complying with the order of the court. Those concurrent sentences of 4 weeks are to

run from and after the time that the defendant has served the 14-day sentence that I previously imposed upon him, which I now activate. I also now issue an order for the immediate arrest and removal of the defendant to prison at HMP Belmarsh to serve the 6 weeks' sentence of imprisonment that I have imposed today.

This judgment has been approved by the Judge.