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IN THE LUTON COUNTY COURT

No.G00RG364

Luton County Court and Family Court
Luton Justice Centre
Floors 4 & 5 Arndale House
The Mall, Luton LU1 2LJ

Tuesday, 25 May 2021

Before:

HER HONOUR JUDGE BLOOM

B E T W E E N :

THAMES VALLEY POLICE

Applicant

- and -

SUKH PAL SINGH

Respondent

MR C. MONIGHAN appeared on behalf of the Applicant.

MS C. WALKER appeared on behalf of the Respondent.

J U D G M E N T

(Via Cloud Video Platform)

HHJ BLOOM:

- 1 This is a sentencing hearing after the court found that Mr Singh had breached the order that was made on 9 December 2020 by going inside the exclusion zone and in particular to 38 Oakridge Road in breach of the order that Her Honour Judge Clarke made last December.

- 2 There is something of a long and convoluted history as regards 38 Oakridge Road and these injunction proceedings. There are separate but linked proceedings which involve Mr Singh and his family in which a possession order has been made in relation to 38 Oakridge Road. Mr Singh asserts, notwithstanding that order, that it is his home. He is still seeking to get back into it. It has been made clear to me today through his counsel today and also because I have had other dealings with Mr Singh in relation to the claims before this court, that he feels very strongly that this is his home and that something has gone very wrong in that he has had a possession order made against “his property”. I take into account the genuineness of his feelings that something has gone wrong ending with a possession order.

- 3 As against that, there are court orders, injunction orders and a possession order that are not in his favour and do not permit him to be at the property as things stand. Therefore, however much he may feel aggrieved, he has an obligation to comply with those court orders.

- 4 As long ago as 9th March of last year, when the pandemic was raging but we were not yet in lockdown, the Chief Constable for Thames Valley applied for an order under s.1 of the Anti-Social Behaviour, Crime and Policing Act.

5 The background to that application was not just about Mr Singh's family, but about other people and a course of conduct that was considered to be inappropriate towards a number of different people involving threats and racial abuse and also allegations in relation to domestic violence against a Ms Natalie Johnson, who he was then in a relationship with. My understanding is he is no longer seeing her and he has a different girlfriend here at court today. Relationships move with the times, but as at today's date it would appear that that relationship is at an end.

6 District Judge Cominsky made an interim order on 9th March 2020. On the 9th December 2020, a final order was made. In that order, amongst other things, there was an exclusion zone. Mr Singh was aware that he was not entitled to enter the excluded area which, without any doubt, included his property at 38 Oakridge Road.

7 If he had been in doubt, he certainly would not have been for much longer because on 17 August 2020 he was found to have breached the interim order. DJ Cominsky concluded that on five occasions he had wrongly entered the exclusion zone. He was therefore fully aware of the terms of the order and he got a period in prison on that occasion of 28 days' immediate custody for the various breaches that the judge found. Four of them involved actually being at 38 Oakridge Road and another one involved just being in the area, but there could have been no doubt that he knew he was not to be at 38 Oakridge Road.

8 Regrettably, on 28 January of this year, His Honour Judge Rochford found further breaches had been established. To be fair to Mr Singh, he pleaded guilty to entering the exclusion zone on one occasion, but he was found guilty of telephoning his brother, Karim Singh, on two occasions and entering the exclusion zone on another occasion.

On that occasion, the judge sentenced him to a suspended sentence. The totality of

that sentence was 14 weeks suspended for 12 months from January. He was in court with counsel on that occasion and there can be no doubt he knew what the terms of the order were.

9 On 30 April this year, so a few months after the events before His Honour Judge Rochford further matters arose. I say a few months but the breaches had been in the summer of 2020 but the sentencing was in January of this year. In any event Mr Singhe returned to the property on 30 April and he was found there by the police. I was satisfied that that had been proved when the matter came before me on 12 May. On that date, Mr Singh did not attend court. He had provided evidence suggesting he had symptoms of Coronavirus and he was unable to attend remotely. Fortunately for him, Ms Walker was here, but I took the view that I must proceed notwithstanding his absence. My previous judgment explains why I proceeded in his absence.

10 From what I have heard from Ms Walker, I understand that if he had been here on 12 May he would have admitted that breach. He would have been in difficulties in not admitting it, if I can be fair, because he was arrested by police at the premises. So it might have been quite difficult if they had body cam footage for him to deny it. I do not formally have from him an admission, but I do not think he would seriously have sought to say he was not in breach.

11 On his behalf what is said is that because of the Covid 19 pandemic and the fact that he was excluded from his own property, he was in great difficulties and could not really find anywhere else to stay. He did know he should not go back there, but he did not know what else to do. He was given some temporary accommodation by the police in 2020 but that was in a property where he was surrounded by addicts and therefore it forced him back to his own home which led to the earlier breaches and also then led

to the breach that he says occurred on this occasion.

- 12 Having been arrested under the power of arrest, he did, however, provide the address of his now girlfriend who I am told is waiting outside for him. He is staying in Aldridge Close, Chelmer Village in Essex and therefore that appears to have been an address that was available to him on 30th April as he provided it and was bailed to go there. I am afraid that rather undermines the concept that he had nowhere else to go.
- 13 It is right to say that when he came in front of the court yesterday he was still very concerned to be allowed back into the property and maintains it is his property and therefore he should be allowed back into it. But what is said on his behalf today is that if he did not understand the terms of the order before, he now really does understand them and he will not go back again as long as the order is in force and that he will stay elsewhere and that he has learnt his lesson and the court can be satisfied of that because since 30 April he has not gone back and here we are on 25 May, so i.e. for a month he has avoided returning to the property.
- 14 He also asks me to take into account that he would be able to pay a financial penalty. He, through counsel, draws my attention to the case of *R v Manning* [2020] EWCA Crim 592 . This case was on 1 April 2020, at the height of the pandemic, where the point was made by Burnett LJ that at that time a custodial sentence had rather different implications during the lockdown because people were spending a great deal of time in their cell, there was a limit to visits and the impact was probably greater and there was obviously a risk about transmission of Covid 19. I do take that into account, but I also have to take into account we are now in May 2021, most people of a certain age, if I can put it that way, have had one vaccine if not two. Visitors are being permitted and the relaxations are gradually reducing and, therefore, whilst it is a factor, we are

nowhere where we were a year ago. It is in a different category, but I do take that into account.

15 I am also told that Mr Singh has some mental health problems and he has been to speak to a counsellor at Mind. I am asked to bear that in mind in sentencing him that if he is sentenced to a custodial sentence, he may not be able to maintain his contact with his counsellor. I am also told he has an appeal hearing in the criminal courts on 1st June which he wishes to attend. It is an appeal against an order in relation to harassing his sister, I believe, and I do have that also in mind.

16 I have a helpful note from counsel for the Thames Valley Police setting out the legal provisions. Counsel for Mr Singh does not in any way seek to go behind the legal framework that Mr Monighan has drawn to my attention. He reminds me that when considering what penalty to impose, the approach in *Hart v Hart* [2018] EWHC 2966 is of assistance. It is not automatic that imprisonment should follow breach of an order. The full range of criminal sentencing is not available but there are a range of options which can include no action, a fine, or a further suspended sentence. If imprisonment is considered to be appropriate, the court should decide the term first and then whether to suspend separately. The court is looking both to mark its disapproval of the breach of the order and also to try to secure future compliance. It has to be borne in mind that when looking at the sentencing guidelines that the starting point from the criminal situation, where you can have up to five years in prison, is different to the civil situation where the maximum prison sentence the court can impose is two years.

17 I am also taken to the case of *FW Farnsworth v Lacy* [2013] EWHC 3487 which set out a number of checklists: whether the claimant has been prejudiced by virtue of the

contempt and whether the contempt is capable of remedy. As far as that is concerned, the prejudice to the claimant is the time and expense that has been spent by the claimant in having to come back to court on a number of occasions due to the committal application and police officers who are required for far more serious and important matters having their time spent in this courtroom. Is the contempt capable of remedy? No, it is a one-off breach that cannot be remedied.

18 The extent to which the contemnor acted under pressure and whether the breach of the order was deliberate or unintentional? Well, Mr Singh says he was under pressure because he lacked accommodation. There is no doubt it was a deliberate breach, there is no question about that. Mr Singh has known for over a year that he has an order that prevents him returning to the property. He has breached it to the knowledge of the court on at least six occasions prior to this occasion, twice in relation to the January order and five times in relation to the order when it was in front of District Judge Cominsky. Thus it is a very clear deliberate breach.

19 As far as acting under pressure, he was not under pressure, save that he tells me that he had nowhere else to go. The difficulty with that statement is that he plainly was able to go somewhere else because that very day, having been arrested under the power of arrest, he went to stay with the lady he has now brought to court as his girlfriend.

20 The degree of culpability is extremely high, there is no question about that. This is a flagrant breach; there is really no excuse for it. Is the contemnor placed in breach by reason of the contempt? Yes. Did he appreciate the seriousness of the breach? It is difficult to see how he could not have appreciated the seriousness of the breach. Only in January this year he was sentenced to a 14 weeks suspended sentence and last year he went to prison for a breach, so it is difficult to see how in that context he could

not understand the seriousness of the breach and the consequences.

21 Has he co-operated? Well, to be fair to Mr Singh, although he did not appear on the last occasion which was annoying, if I can put it in the lowest possible way, he is here today, he has behaved perfectly properly, he has instructed counsel, he has co-operated today.

22 Has he admitted his contempt? Well, no, because he was not here last time, but he has apologised and I take it as a sincere apology and I am grateful to him for that apology.

23 The next factor I am asked to take account of is whether he has previous good character in his antecedents. Regrettably for Mr Singh that is not something I can pray in his aid. He has a chequered history. In one sense it is irrelevant, if I can put it that way. What would be relevant is if he was of good character and this was his first time going to prison where the court might consider very carefully before imposing a prison sentence. However, Mr Singh has a long history of association with custodial sentences, sadly. However, to be fair, I do not think he has recently, apart from the 28 days last year, had any lengthy sentences for some time. I have already mentioned all the personal mitigation he has raised on his behalf and I do take all of that into account.

24 I then turn to look at the sentencing guidelines and the culpability which falls into various categories. In my view, it would be difficult for this court not to put the culpability at a high level given the multiple breaches. Culpability A is where there has been a very serious or persistent breach. I do not think this is very serious in the sense that we are talking about going back to the exclusion zone, but it is persistent. This is, as I say, the seventh or eighth time in the space of a year that this defendant has breached court orders and I cannot see it other than a culpability A.

25 As far as the category of harm that is concerned, the highest category is it causes very serious harm or it demonstrates a continuing risk of serious criminal and/or anti-social behaviour. Category 3 is the bottom which says little or no harm or a continuing risk of minor criminal and/or anti-social behaviour. Category 2 is in between. I find it is in between. On balance, I am satisfied it is in between 1 and 3 because whilst it does demonstrate a continuing risk of anti-social behaviour, it is not the most serious anti-social behaviour, but nor is it minor and therefore I think it comes somewhere in the middle.

26 The starting point therefore at that level is a year's custody. Of course I am not going to sentence this gentleman to a year in custody, that would be grossly inappropriate. I have to take into account the history of the matter though and the continuing breaches in deciding where to start. I note that on the last occasion in front of Judge Rochford the sentence for a single breach for entering the exclusion zone was two weeks in relation to one and six weeks' consecutive in relation to the second occasion when he entered the exclusion zone, so I have to consider those in the context of what sentence to pass. I am not sure what the background was to why in one it was two weeks and one it was six weeks because it seems to be quite a big gap between the one and the other.

27 In my view, given the history of this that this was a one-off matter, it seems to me that the custody threshold is undoubtedly met and the proper sentence would be six weeks for this breach.

28 I am not going to suspend it, Mr Singh must understand that it has come to a point where that is not appropriate. This court has to demonstrate to him that these orders must be obeyed and he has to obey them and the court has to show and hope that by

sending him to prison he will realise that his behaviour has got to stop.

29 There is the second point which is whether the court should activate the suspended sentence and, sadly, I consider that is the only option this court has in this case. It is deeply regrettable that one reaches this point. I have no pleasure in sending people to prison, but the situation is that in the space of six months, two committal hearings have taken place and in the space of a year, three committal hearings have taken place.

30 Mr Singh, it is therefore with some sadness that I am going to send you to prison. It is not something that I do lightly, but I am satisfied that that is the only sentence that can be imposed on you and therefore I am sentencing you to 20 weeks in total. It was 14 weeks from the previous and a further six weeks today, so that is a 20 weeks' sentence that I am going to sentence you to take immediate effect. I believe Bullingdon is the prison that you will be sent or taken to. You will serve, as I understand it - and if get this wrong I apologise half your sentence for a short sentence of this nature, so you will serve ten weeks.

31 Mr Singh, please, I do not want to see you here for a committal again. It does not get better, it only gets worse. You know what the order is, it is not to go there, not go in the area. I understand your concerns about the possession claim and what has happened, but you must obey court orders. They exist. They are not my orders, they are orders of the court and when you break them, then judges of this court have to ensure that there is compliance. It is partly to make sure you do comply, but partly so other people are aware that if court orders are made, they will be enforced.

32 His Honour Judge Rochford gave you the opportunity to behave over the next year and unfortunately you have not taken that, so now I have to activate that sentence and

also to impose a further sentence. So I will be issuing a warrant for your committal to Bullingdon for a period of 20 weeks.

- 33 In terms of any appeal, an appeal would be to the Court of Appeal and would need to be made within 21 days.

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Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

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