

IN THE COUNTY COURT AT SLOUGH

The Law Courts
Windsor Road
Slough, SL1 2HE

Date: Thursday 18th August 2022
Start Time: 15.37 Finish Time: 15.56

Before:

HIS HONOUR JUDGE RICHARD CASE

Between:

WOKINGHAM BOROUGH COUNCIL

Claimant

- and -

DAMION DE BURGH

Defendant

MS LUCAS for the Claimant
THE DEFENDANT appeared in Person

JUDGMENT

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JUDGE CASE:

1. The claimant, Wokingham Borough Council, is represented by Ms Lucas, solicitor. The defendant, Mr De Burgh, represents himself. On 11 August this year, I made six findings that the defendant had breached the terms of an anti-social behaviour injunction granted by District Judge Nicholson on 14 December 2021 and varied by District Judge King on 17 February 2022. I will set out those breaches later in my judgment.
2. I listed this hearing for sentence. The defendant was not present in court on 11 August 2022 and had not attended court on previous occasions despite being personally served with my orders requiring his attendance to which penal notices were attached. In the circumstances, I issued a warrant for Mr De Burgh's arrest providing for him to be brought to court today. The warrant was executed and officers produced him at court before lunch. I understand from the solicitor for the local authority that he has been in custody since around 9 o'clock this morning.
3. At the outset of the hearing I informed Mr De Burgh of his right to appeal. I informed him that he did not require permission to appeal but, if he wished to appeal, he must apply to the Court of Appeal pursuant to section 13(2) Administration of Justice Act 1960 and that he must make that application within 21 days. The reason for informing him of that at the outset of the hearing is that I was concerned that he would not remain in court. He did, in fact, remain in court long enough to hear part of the submissions made by the claimant but he left on at least two occasions. He remained in court long enough to present his mitigation.

4. I adjourned for a period of time to consider my decision and was told that he had left the court but, in fact, having come back to court after the period of adjournment he has re-attended. Prior to delivering this judgment, I explained to him the sentence that I am passing and the consequences of it.
5. The sentences that are available to the court today are as follows. Firstly, I can make an immediate order for Mr De Burgh's committal to prison; secondly, I can suspend an order for his committal to prison; thirdly, I can adjourn for consideration of a penalty at a later date; fourthly, I can impose a financial penalty; and, finally, I could make no order.
6. The solicitor for the local authority has referred me to the case of *Hale v Tanner* [2000] 1 WLR 2377 and, in particular, she refers me to the judgment of Hale LJ, as she was, at paragraphs 26 to 35 and she paraphrased it in the following way:
 - i) These cases come to court on an application to commit as that is the only procedure available. It does not follow that imprisonment is to be regarded as the automatic consequence of breach. However, there is no principle that imprisonment is not to be imposed on the first occasion. It is, however, common practice and usually appropriate to take some other course on the first occasion.
 - ii) There is difficulty as the alternatives are limited.
 - iii) If imprisonment is appropriate, the length of the committal should be decided without reference to whether or not it is suspended.

- iv) The length of the committal depends on the objectives of the court, those being disapproval of disobedience and to secure future compliance.
 - v) The length of committal has to bear a relationship to the maximum available.
 - vi) Suspension does not have to be an exceptional case. It is usually the first way of attempting to secure compliance.
 - vii) The length of any suspension requires separate consideration.
 - viii) The context needs to be borne in mind.
 - ix) It is desirable for the court to give an explanation as to why a particular order has been made.
7. The solicitor referred me to *Solihull Metropolitan Borough Council v Willoughby* [2013] EWCA Civ 699 and invites me to accept that that guidance is extended to civil proceedings, and I accept that it is. She also refers me to other authorities which indicate that I must consider the Sentencing Guidelines that are set out for criminal sentencing with necessary amendments, and I accept that is also the case.
8. The maximum sentence that I can impose in a case of this nature is two years' imprisonment. Under the criminal law, breach of a criminal behaviour order carries the maximum sentence of five years. I have to bear that difference in mind when reading the guidelines that have been produced for sentencing for criminal matters. The breaches that I have found proved on 11 August are as follows:

- 1) In breach of paragraph 3 of the injunction (not to communicate with any officer except Simon Price):
 - a) On 15 February 2022 the Claimant's Housing Needs Department received a telephone call from a male purporting to be acting on behalf of the Defendant but actually the Defendant.
 - 2) In breach of paragraph 4 of the injunction (when communicating not to threaten violence, or use language likely to cause fear, harassment, alarm or distress):
 - a) On 6 February 2022 Simon Price received a voicemail from the Defendant in which he said that 'if some knob head wants to have a go at me, then they pay the consequences.' Further 'if they wanna mug me, they're the ones who are gonna get hurt'.
 - b) On 7 February 2022 Simon Price received a voicemail from the Defendant in which he said "About this risk assessment, well if someone wants to get heavy handed with me, they pay the consequences, don' t they?"
 - c) On 9 February 2022 the Claimant received a letter from the Defendant describing Simon Price as a liar, uses bad language, and threatening that the Defendant's belongings should be returned by 10 February 'or I do it my way'.
 - d) On 15 February 2022 the Claimant's Housing Needs Department received a telephone call from a male purporting to be acting on behalf of the Defendant but actually the Defendant the concluding words spoken by the male are 'My opinion, between your Simon Price and Damien, it is too dangerous for them in the same room'.
 - 3) In breach of paragraph 5 of the injunction (not to use discriminatory or derogatory language based upon race, sexuality or gender):
 - a) On 9 February 2022, Simon Price was left a voicemail by the Defendant in which he said 'And also, if I was black, paki, muslim or one of them other fucking idiots crossing the channel I'd be in the rent by now, wouldn't I, in the BnB. Yeah, so come on, this is England, I'm white. I'm white and English, my country. Come on put me up somewhere.'
9. The Breach Offences Definitive Guideline effective from 1 October 2018 in respect of breach of a criminal behaviour order and breach of an anti-social behaviour order indicate a number of steps that the court must go through in reaching a determination as to the appropriate sentence. Step 1 is to determine the offence category having regard to culpability and harm. As regards culpability, there are three levels: (a) is for very serious or persistent; (b) is for deliberate breach falling between (a) and (c); and (c) is for a minor breach or breach just short of reasonable excuse.

10. No reasonable excuse has been advanced. The defendant told me that he thought he could contact Simon Price. He could. The injunction did not prevent him from doing that. In fact, Simon Price was the only person he was permitted to contact at the claimant. That is not a reasonable excuse for the breaches that I have found proved. In the circumstances, the breaches that I find proved appear to fall in bracket (b), namely they were deliberate breaches falling between (a) and (c).
11. As to harm, the guidelines indicate that harm is to be determined by weighing up all the factors of the case to determine the harm that is caused or at risk of being caused and, in assessing it, consideration should be given to the original offence or activity for which the order was imposed and the circumstances in which the breach arose. Again, there are three categories. Category 1 is for breach causing very serious harm or distress. Category 2 is falling between categories 1 and 3. Category 3 is a breach causing little or no harm or distress.
12. Breach 1(a) - that is making a telephone call to the claimant's housing needs department when the order prevented the defendant from communicating with any officer except Simon Price - is, in my judgment, a category of harm causing little or no distress. In relation to the other breaches, I would categorise those as being more serious. They expressly or implicitly threaten physical harm in the case of breaches 2(a) to (d).
13. In the case of breach 3(a), it was a grossly offensive comment to black and Pakistani people and to immigrants who, as the defendant described them, were crossing the English Channel. Accordingly, I categorise breach 1(a) as category 3 and the other breaches as category 2.

14. The next step, step 2, is to consider the starting point in the category range of sentence. The guidelines set out a matrix of culpability along one axis and harm along the other. That matrix suggests a starting point for all of the breaches except for 1(a) at a level of 12 weeks custody and, in respect of 1(a), a high level community order. Of course, I do not have a power to impose any community order and I have to bear in mind that that guidance is on the basis of a maximum sentence of imprisonment of five years whereas I have a power only to impose a maximum sentence of two years imprisonment.

15. Next, I have to consider aggravating and mitigating factors. So far as aggravating factors are concerned, the local authority in making submissions designed to assist the court suggest that there are two aggravating factors; firstly, the defendant's conduct throughout the proceedings by which was meant his failure to attend previous hearings, in particular perhaps the hearing on 11 August at which I made the findings, despite me having attached penal notices to a requirement on the defendant to attend; and the second aggravating feature being that the breaches occurred shortly after the order was made.

16. I do not consider that it would be appropriate to take account of the defendant's failure to attend at various hearings in these proceedings. That failure is not related to the breaches themselves, but I do take account of the fact that the breaches did occur shortly after the order was made. The first breach was on 6 February. The injunction in its original form had been served personally on the defendant on 17 December and so the first breach occurred within around six weeks of service.

17. So far as mitigation is concerned, the defendant asserts without producing any evidence in support that if he is sent to prison he will not get a medical appointment for diabetic treatment, or at least will not be able to keep an appointment for such medical treatment. He was not able to say when the appointment was. He thought it might be in the next week or two. He also says that he has difficulty sleeping lying down and has to sleep sitting up and he has had trouble being in a building because he cannot breathe.
18. He expressed what he termed deep sorrow - I am not sure if that was deep sorrow for being in the position he is in or deep sorrow for harm to the victims of the breaches that I have found proved - and he said that he is doing voluntary work at a food bank and a soup kitchen. He helps on fun runs as a volunteer and he picks up litter and drug needles, making use of his time.
19. The absence of any evidence in support of those assertions makes it difficult to attach any weight to them.
20. I also bear in mind in considering the appropriate sentence that the defendant was detained for a period of hours earlier today.
21. My judgment is, taking into account those various features, in relation to breach of 1(a) a period of imprisonment of two weeks is appropriate and, in relation to all the other five breaches, a period of four weeks imprisonment is appropriate.
22. Next, I have to consider the totality principle. The guidelines effective from 11 June 2012 provide that I need to consider the sentence for each individual offence and then determine whether the case calls for concurrent or consecutive sentences. Concurrent sentences, the guidelines indicate, would ordinarily be

appropriate where the offences arise out of the same incident or facts or there are a series of offences of the same or similar kind, especially when committed against the same person. Where concurrent sentences are to be passed, the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences. Consecutive sentences would ordinarily be appropriate where they arise out of unrelated facts or incidents or they are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.

23. I am satisfied that these breaches amount to a series of breaches of the same or similar kind within a relatively short period of time and in respect, in this case, of the same claimant. In those circumstances, my judgment is that all of the sentences should run concurrently. Stepping back, I am satisfied that the period of four weeks' imprisonment adequately reflects the overall "criminality" involved.

24. The next matter that I have to consider is whether that period of imprisonment should be suspended and I refer to the guidelines effective from 1 February 2017. Factors indicating it would not be appropriate to suspend a custodial sentence are that the offender presents a risk or a danger to the public, appropriate punishment can only be achieved by immediate custody, or that there is a history of poor compliance with court orders. Factors indicating it may be appropriate to suspend the custodial sentence are that there is a realistic prospect of rehabilitation, strong personal mitigation or that immediate custody will result in significant harmful impact upon others.

25. I am satisfied that I should suspend the period of imprisonment of four weeks on the basis that the breaches were committed over a relatively short period of time, there is no evidence before me that there have been further breaches of the injunction after February of this year and there is a prospect, therefore, that the suspension of the term of imprisonment would give a realistic prospect of continued compliance by the defendant. The terms of the suspension will be compliance with the injunction granted by District Judge Nicholson on 14 December as varied by District Judge King on 17 February.
26. The final matter that I have to consider is how long that suspension should last for. The injunction, as originally granted, will expire in December of this year. It is regrettable that the matter has taken as long as it has to get to court. In large part, that is the result of the defendant failing to attend on various occasions.
27. I am satisfied, given the nature of the breaches that have been proved, the fact that the defendant at no stage indicated that he accepted responsibility for the breaches and his otherwise compliance, as it would appear, from February of this year, indicates that it should run for a period of 12 months from today's date, in other words it will expire 12 months from today. He must comply with the terms of the injunction, therefore, notwithstanding that the terms of the injunction would otherwise have expired at the end of this year. That concludes my judgment.

JUDGE CASE: Ms Lucas, is there anything that you need to raise?

MS LUCAS: Nothing further, your Honour, save just to clarify, the effect of this order will be to extend the term of the injunction ---

JUDGE CASE: Yes.

MS LUCAS: --- as amended by District Judge King for a period of 12 months from today to tie in with the suspension?

JUDGE CASE: Yes. Are you inviting me to formally extend the term so that that is clear?

MS LUCAS: I think it may well be clearer otherwise we have a conflict.

JUDGE CASE: Yes, I will do that. So there will be an additional paragraph in the order and I will draft the order.

MS LUCAS: I am grateful.

JUDGE CASE: That the injunction dated 14 December 2021, as varied by order dated 17 February 2022, is extended to 4.00 pm on 17 August 2023. Need for re-service dispensed with, the defendant being in court when the order was made.
