

**IN THE BRISTOL MAGISTRATE'S COURT**

No. B01BS492

Marlborough Street  
Bristol  
BS1 3NU

Friday, 15<sup>th</sup> April 2016

Before:

**HIS HONOUR JUDGE AMBROSE**

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**Bristol City Council**

**-v-**

**Kenneth Cowan**

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**J U D G M E N T**

(Approved)

JUDGE AMBROSE:

1. The defendant, Kenneth Cowan, has been arrested and brought before this court for breach of an injunction made by this court on 5 June 2015.
2. Mr Cowan is unrepresented today. At the start of the hearing I spent some time going through with him the options so far as representation were concerned. He has been offered representation and he is adamant that he does not wish to be represented and wishes to proceed today without representation. I have checked at each stage of proceedings whether that remains the case, in other words before we began, before the allegations were put and before I went on to consider what flows from his admitted breaches and at each stage he has reiterated that he does not wish to be represented.
3. The injunction made on 5 June 2015 contained 2 prohibitions, the first being a prohibition that Mr Cowan must not enter areas of Bristol marked on a plan attached to the injunction and the second that he is prohibited from loitering or approaching people for the purposes of begging anywhere in the City of Bristol, the boundaries of which were shown on a further map attached to the injunction.
4. That injunction was sought because of repeated anti-social behaviour on the part of Mr Cowan in the form of begging and being drunk in public places in the centre of Bristol. The injunction was made and very quickly breached and not just breached once, but breached repeatedly.
5. The case came back before the court on 28 October 2015, where those breaches were put and admitted and Mr Recorder Monty QC, having found that Mr Cowan was in breach of the injunction, sentenced him for the breach to 14 days imprisonment, suspended for 6 months on condition that Mr Cowan accepts the next reasonable supported offer of accommodation that is made to him by the claimant and he engages with the support offered at that supported accommodation.
6. On 19 November 2015 Mr Cowan was offered and he accepted accommodation at a Salvation Army hostel known as Logos House in Bristol. However, he has subsequently failed to engage with the support offered at that accommodation. He has failed to reside at that accommodation and the accommodation has been withdrawn from him.
7. His failure to engage amounted to a breach of the conditions of the suspended sentence. That failure was put to him today and he admitted it.
8. In addition to that breach of the condition of the suspended sentence Mr Cowan has breached the terms of injunction. No fewer than 15 breaches have been put to him today and he has admitted each of them. He is in breach of the injunction in each case because of his presence in a particular part of Bristol from which he is prohibited by the injunction. In some instances he is in further breach by begging in those locations. In many of

the instances he was drunk. Being drunk is in and of itself not a breach of the injunction, but it is an aggravating feature of the breach.

9. For the purposes of this judgment I shall briefly set out the admitted breaches. I shall deal with them in date order and, as I say, there are 15 in total.
10. On 19 January 2016 Mr Cowan was in Champion Square, which is within the prohibited area. He was drinking in the street. It was a designated no drinking zone.
11. On 23 January 2016 he was sitting on the floor in front of the ATM machine to side of Sainsbury's in Queens Road in Clifton with a paper cup in front of him and he was begging.
12. On 26 January 2016 he was intoxicated and asleep in Champion Square.
13. On 27 January 2016 he was in Castle Park, which is within the prohibited area, and he was drunk and arguing with another person. He was stumbling and shouting and had an open container of alcohol in his hand.
14. On 28 January 2016 he was, again, in Champion Square sitting on a bench drunk and drinking from an open container of alcohol.
15. On 30 January 2016 he was sitting on the floor near the air vents of the Future Inn (The Future Inn and Champion Square are adjacent) with an open container of alcohol in his possession.
16. On 3 February 2016 he was sitting on the floor close to Tescos in Broadmead, which is in the prohibited area and broadly within the same area as Champion Square and the Future Inn, and he had a cup in front of him and was begging.
17. On 6 February 2016 he was in Union Street, again close to the locations I have already mentioned and within the prohibited area, sitting outside KFC begging. He admitted as much to the police officer who spoke to him.
18. On 7 February 2016 he was again sitting on the floor near the air vents of the Future Inn drinking from an open container of alcohol and talking in a raised voice to another person and slurring his words.
19. On 14 February 2016 he was sitting at the main entrance of the Future Inn drinking from an open container of alcohol.
20. On 18 February 2016 he was sitting on the floor wrapped in a sleeping bag and begging in Wine Street, again in the centre of Bristol within the prohibited area.
21. On 20 February 2016 he was in Union Street and was begging.

22. On 16 March 2016 he was in Queens Avenue in Clifton sitting on the pavement outside the Barclays Bank ATM and he was begging.
23. On 17 March 2016 he was in Union Street in front of KFC and begging.
24. Later that same day, 17 March 2016, he was seen again in Queens Avenue sitting on the pavement outside the Barclays ATM machine begging.
25. These breaches were put to Mr Cowan today and he admitted each and every one of them.
26. So the position is that there is an injunction in place. It was made on 5 June 2015. It was breached and those breaches were reflected in a suspended sentence imposed on 28 October 2015. Since then there has been breach of the condition of the suspended sentence and there have been 15 further breaches of the original injunction, all of which have been admitted by Mr Cowan today.
27. I must therefore proceed to deal with those breaches. This is essentially a sentencing exercise. I start by observing that I have considered the case of *Amicus Horizon Limited v Thorley* and I have considered the Sentencing Guidelines Council guidelines for breach of an anti-social behaviour order, which are of course guidelines prepared for criminal cases but which have obvious utility in considering sentence in this case.
28. The guidelines would indicate that where no harassment, alarm or distress was actually caused by the breach, and none was intended by the offender, the starting point would be a community order and the range of sentences would be from a fine up to a community order. Of course, as with all guidelines, what might start out in one part of the guidelines can rise to another part of the guidelines depending upon the aggravating and mitigating factors.
29. The following matters serve to increase the seriousness of the case.
30. First, there is a history of disobedience with court orders. The original injunction was made because Mr Cowan would not engage with the offers of help that were being given to him, either would not or could not. Once the injunction was made it was repeatedly breached. That resulted in a further hearing and a suspended term of imprisonment was imposed. There have now been further breaches as well as breach of the condition of the suspended term
31. Next, I am sentencing not sentencing for a single breach, but for 15 breaches.
32. Next, on almost every one of these 15 occasions, Mr Cowan was extremely drunk in a public place and was frequently arguing and shouting with other people.
33. So although it begins in the lowest category on an individual breach basis, when one looks at the overall picture and what amounts a wholesale

disregard for the order it rises up into the next category where there is a starting point of 6 weeks custody with a range of community order to 26 weeks custody.

34. I must next consider the mitigation.
35. First and foremost, Mr Cowan has admitted his breaches and he is entitled to a one third reduction in sentence as a result. Next, there has been some engagement with his key worker and I have the affidavit of Mr Hawkrige dated 22 March 2016 which sets that out. Next, there is the fact that the begging itself has not been in any way aggressive.
36. Mr Cowan himself tells me very candidly today that he is an alcoholic. He tells me also that he has been a heroin addict, although he has been clean of heroin for the past four months, thanks in large part to a methadone prescription. He has a partner who is referred to in Mr Hawkrige's affidavit, who has the same problems as Mr Cowan. She sleeps rough. Part of Mr Cowan's motivation for leaving his accommodation and sleeping rough was to be with her and to provide with some protection.
37. When asked whether he would engage with supported accommodation in future, his answer was that it would depend upon the nature of that accommodation. He would be unwilling to go somewhere where there were heroin addicts, for fear that they would cause him to relapse.
38. I take all of that into account when considering what the appropriate sentence should be.
39. These are difficult cases. Mr Cowan is somebody who clearly has difficulties that he has struggled to bring under control and I take into account the difficulties that someone who is alcohol dependent and has been in the past heroin dependent has in terms of maintaining a regular lifestyle. It is to his credit that he does not appear to have lapsed into criminality.
40. Nevertheless, an injunction is a court order and it is a court order that must be complied with and when someone fails to comply with it they place themselves in contempt of court. If there was an doubt about the seriousness with which the court views breaches of an injunction those doubts were dispelled on 28 October of last year when Mr Cowan was told that for his breaches he would go to prison but that that prison sentence would be suspended for six months. So he knew that compliance was essential if he was to avoid going to prison and regrettably what has followed has been essentially a wholesale disregard for the injunction.
41. Even taking account of the mitigation, in my judgment, the overall picture is so serious that only an immediate custodial sentence can be justified. That sentence should be no longer than is absolutely necessary to reflect the seriousness of the overall picture.

42. Taking account of the aggravating and mitigating factors the overall sentence for the breaches would have been 6 weeks after a contested hearing. It reduces to 4 weeks for his guilty plea. I pass that sentence of 4 weeks imprisonment on each of the breaches, the sentences to run concurrent to one another.
43. The next question is what to do about the suspended sentence of 2 weeks. He is in breach of the suspended sentence because he disengaged from the supported accommodation that had been provided to him. Supported accommodation is a vital component in keeping someone with Mr Cowan's problems out of trouble and off the streets. He was offered accommodation, he accepted it and there was no good reason for disengaging from it. He should have maintained that accommodation. He failed to do so and the court must consider whether to activate in whole or in part the suspended sentence of 14 days. In my judgment, it would not be unjust in all the circumstances to activate it and there is no good reason for reducing its term. I have considered whether there is overlap with the breaches, such that the activated sentence should run concurrently to the sentence for the breaches. In my judgment it should not. The activated term of 2 weeks will run consecutively to the sentence for the breaches.
44. The total sentence is therefore 6 weeks imprisonment. Mr Cowan will serve half that term before being released, so he will serve 3 weeks.
45. The night that he has already spent in custody will count towards the sentence.
46. There is a further aspect to this case, which is the application to extend the period of the injunction and to add a term that Mr Cowan should not be in possession of an opened or unsealed container of alcohol in any publicly accessible place, save for licensed premises in the City of Bristol. This was canvassed in the course of the hearing.
47. I am satisfied on the balance of probabilities that Mr Cowan has engaged in anti-social behaviour and I consider it just and convenient to extend the injunction that is currently in force by a further six months, which will mean that the injunction will extend until 5 December 2016.
48. It will be amended by the addition of a further term. The term will be numbered 2(a) on the injunction and will be worded as follows:
- 2(a) *Being in possession of an opened or unsealed container of alcohol in any publicly accessible place, save for licensed premises in the City of Bristol.*
49. Those are the orders that I make. I am going to ask that Mr Densford draw up the Order and I am going to direct that there be a transcript of my judgment because it will need to go onto the relevant website in due course.
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