

IN THE COUNTY COURT AT BRISTOL

No. C01BS903

Bristol Magistrates' Court
Marlborough Street
Bristol

Thursday, 23rd February 2017

Before:

HIS HONOUR JUDGE AMBROSE

Between:

BRISTOL CITY COUNCIL

Applicant

and

MATTHEW JOHNSON

Respondent

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J U D G M E N T

(As Approved)

JUDGE AMBROSE:

1. I am going to give judgment in this case and I direct at the outset that a transcript of my remarks be obtained by the court.
2. This is an application by the Council, namely Bristol City Council, to commit the respondent, Matthew Johnson, to prison for breach of an anti-social behaviour injunction made on 30 September 2016.
3. Mr Johnson has not attended court today, despite having notice of today's hearing. I have received the certificate of service, confirming that Mr Johnson was personally served by Richard Hawkrige on 27 January 2017. Mr Johnson has made no contact either with the Council or with the court to explain his absence today, which is just the latest in a long sequence of absences which I shall describe in greater detail in a moment. He is on notice that if he does not attend today he will be sentenced for his admitted breaches of the injunction. He has, nevertheless, chosen not to attend and he has not offered any explanation for his absence. In my judgment, considering the over-riding objective in the light of all the circumstances of the case, it is just to proceed in his absence today.
4. He was made the subject of an injunction, as I have already said, on 30 September 2016 and that injunction provided for an exclusion zone into which he must not go and a prohibition on begging in the City of Bristol. The relevant areas were marked on maps attached to the injunction. The injunction was to last for a year.
5. The specific location within the exclusion zone that has caused all the trouble is the Trenchard Street Car Park, which is a multi-storey car park just behind the Colston Hall in the centre of town. It is a car park that is used by members of the public for a number of purposes, which include attending evening performances at nearby venues such as the Colston Hall or the Hippodrome, parking in order to go into town to go shopping and parking in order to go to work. A significant number of people use the car park on a daily basis for the purposes of their work and that group includes women travelling alone and arriving early in the morning or leaving late at night. The car park is also used by those who are attending hospital appointments at the Bristol Royal Infirmary or the Oncology Centre, both of which are a short distance away. Those attending these hospitals are often undergoing treatment, adding to their frailty and vulnerability.
6. It is a busy multi-storey car park but, like many car parks of its type, it is a rather unwelcoming place. It has draughty stairwells, concrete floors and at night it is a slightly forbidding place for members of the public to go. Within the car park there are machines at which members of the public have to pay for their parking. That means that they have to take out their purses or wallets in order to pay and when they do so, if they encounter someone begging beside the machine who is very obviously in the grip of a serious drug problem, they find it intimidating and frightening.

7. It is not suggested that Mr Johnson has attacked or tried to attack any member of the public in the car park, but his presence by the paying machines has proved intimidating and frightening for users of the car park and has led to complaints from the users of the car park about his presence and also that of his partner, who was due to appear before the court in separate proceedings today.
8. Although the problems are most frequent in the Trenchard Street Car Park, they extend to other parts of the centre of town where Mr Johnson's begging activities have caused similar problems for members of the public. This led the Council to try and engage with him to try and assist him both with his housing situation and his drug use. Those attempts came to nothing and he was, certainly in the early stages, abusive to those who tried to help him. In the end, the Council sought an injunction and an injunction was made on 30 September 2016.
9. Between 14 October 2016 and 10 November 2016 Mr Johnson breached the injunction on no fewer than 17 occasions. Those occasions are set out in a schedule prepared by the Council.
10. The Council applied for a warrant for his arrest which was granted on 16 November 2016. Mr Johnson was arrested on 8 December 2016 and appeared before His Honour Judge Lambert on 9 December 2016. On that day he pleaded guilty to all 17 breaches. He told the judge that he was engaging with drug services and, whilst he was at court, an appointment was made for him to attend at the Compass Centre on 13 December 2016. The judge adjourned until 16 December 2016 to await the outcome of that appointment.
11. On 16 December 2016 Mr Johnson did not attend at 10 a.m. as required. That had been foreseen by the Council, who had the day before applied for a warrant for his arrest. He was duly arrested at 13.40 hours on 16 December 2016 and brought before Judge Lambert later that same day. At that hearing Mr Johnson admitted a further breach of the injunction, namely begging in the Trenchard Street Car Park on 10 December 2016. He also told the judge that he had attend at the Compass Centre on Wednesday, 14 December 2016 and that he had been given a prescription for an opiate substitute and he had taken the first steps along the road to being compliant with the regime that accompanied that prescription. Judge Lambert adjourned the case to 3 January 2017 to test his resolve.
12. He was late to court on 3 January 2017 and by the time he arrived, the court had already adjourned to 6 January 2017. On 6 January 2017 he failed to attend and the case was adjourned to 20 January 2017, with a direction that if he failed to attend that hearing he would be sentenced in his absence. In fact, he was not served with notice of that hearing and so the case was further adjourned to today's date, 23 February 2017 with a similar direction that if he fails to attend today he will be sentenced in his absence. As I have already indicated, he was served with notice of today's hearing on 27 January 2017.

13. The breaches have been admitted and so there is no bar to the court proceeding to deal with them in his absence. I have considered whether it would be just to proceed in his absence and, in my judgment, it would be. He has had every opportunity to be here and, for whatever reason, has chosen not to be here.
14. Turning to that sentencing exercise, I must consider what sanction I should impose for the breaches. There are guidelines that are relevant to this. I bear in mind the Sentencing Council's guideline for breach of an anti-social behaviour order. Though not precisely analogous to a breach of an anti-social behaviour injunction, the guidelines provide broad assistance to me and I also bear in mind the case of *Amicus Horizon Limited v Thorley [2012] EWCA Civ 817*.
15. The Council who bring these proceedings invite me to put Mr Johnson into the second category in the guidelines, defined as "lesser degree of harassment, alarm or distress, where such harm was intended, or where it would have been likely if the offender had not been apprehended". A starting point of 6 weeks custody is appropriate in this category, with a range of between a community order and 26 weeks custody. I agree that this case properly falls into that second category within the guidelines.
16. There are a number of aggravating features. The breaches began shortly after the injunction was made, there have been numerous breaches representing a pattern of repeated breach of the order and there has been an adverse impact on members of the public in the way I have described.
17. So far as mitigation is concerned, Mr Johnson is not here and representations have not been made on his part. However, Mr Denford, who represents the Council, has very fairly made a number of observations that amount to matters I should properly take into account in Mr Johnson's favour.
18. The first of these is that he has admitted the breaches and did so at an early stage, indeed at the earliest possible stage. On one view, because the breaches were captured on CCTV footage, it could be said that he had little choice but to admit them. Nevertheless, many people do try to insist that something is not what it is and where someone makes an immediate and full admission the court should give them appropriate credit for doing so.
19. Next, and perhaps most important in relation to this sentencing exercise, is that the fact that the Council is not aware of any further breaches since 10 December 2016. That is now more than 10 weeks ago and it is a very encouraging sign taking in, as it does, the period of most of December, January and February. These are times of the year when, if Mr Johnson were going to beg anywhere, he would be more likely to do so from the shelter of the car park than out on the streets, where he would be exposed to the elements. On the information presented to me today, he has not done so and that is, as I say, an encouraging sign.

20. I am also told that his wife has recently been hospitalised. In the past, she has been begging alongside Mr Johnson in the car park. She too is the subject of an injunction and she too is alleged to have breached that injunction in the autumn of 2016. She was due to attend today for those breach proceedings to be heard, but she has recently been hospitalised and so has been unable to attend today. When considering whether an immediate sentence of imprisonment is appropriate for Mr Johnson today, I take account of the fact that it is likely that she will need his assistance on her discharge from hospital. However, absent further information, there is a limit to the weight that I can give this aspect of the mitigation.
21. Lastly, I make this observation. I must guard against letting his non-appearance today cloud my judgment as to what the appropriate sanction is for the underlying breaches.
22. I turn then to sanction. Given the number of breaches, this case is so serious that only a custodial sentence can be justified. The appropriate overall sentence, taking account of the mitigation, would have been nine weeks after a contested hearing, but with full credit for early admissions that would reduce to six weeks.
23. The real question for me is whether I should suspend that sentence and, in my judgment, I should. The lack of further breach since 10 December 2016 is, as I have already said, a very encouraging sign. In my judgment, the best method of securing future compliance with this injunction is to maintain the status quo whilst having a prison sentence hanging over Mr Johnson should he lapse back into breach of the injunction. I bear in mind that some time has already passed since the breaches and that even a few weeks can be a long time in the life of somebody who is addressing a serious drug problem. In my judgment, a period of four months suspension is appropriate.
24. The sentence for each breach will therefore be six weeks' imprisonment suspended for four months on condition that Mr Johnson abide by the terms of the injunction made on 30 September 2016. That sentence will be passed concurrently on each breach. There is no application for costs.
