

IN THE COUNTY COURT AT KINGSTON UPON THAMES

St James Road Kingston-upon-Thames
Kingston upon Thames
KT1 2AD

Date: 04/03/2020

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Before:

DISTRICT JUDGE ARMSTRONG

Between:

CLARION HOUSING ASSOCIATION LIMITED

Claimant

- and -

MICHAEL RILEY

Defendant

MR GRANT appeared for the **Claimant**

THE DEFENDANT was not present and was not represented

PROCEEDINGS

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(11.27 am)

THE DISTRICT JUDGE: Sorry to have kept you waiting. I wanted to make sure I had been through all the papers and read everything. Do be seated if you prefer to sit. Now, it seems to me that we are dealing with three charges in respect of breach of the Anti-Social Behaviour Order. So, for the purposes of the tape this is *Clarion Housing Association Limited v Michael Riley*, claim number F01KT804. The Anti-Social Behaviour Order was made against -- it is Mr Michael Riley, isn't it?

MR GRANT: Yes, it is.

THE DISTRICT JUDGE: It was made on 2 January 2020, the terms of which specifically excluded him from attending at the relevant property ...

MR GRANT: Sir?

THE DISTRICT JUDGE: Yes.

MR GRANT: I do not mean to interrupt --

THE DISTRICT JUDGE: Not at all.

MR GRANT: But you did mention an issue that we are dealing with three breaches. I have counted somewhere in the region of six or seven.

THE DISTRICT JUDGE: Four, I am aware, have been brought as charges. There may be allegations of more, but I am not aware, and I have been through the file, of there being any more charges put to Mr Riley.

MR GRANT: Right.

THE DISTRICT JUDGE: It would be inappropriate to deal, especially in his absence, with charges that have not at least been put to him.

MR GRANT: So, my question to you, sir, was -- because there has been a lot of miscommunication between the court, the police and my client. We had reason to believe, the police told us, that Mr Riley was arrested on Friday, the 28th I believe, and brought to court over the weekend, but we have had no information --

THE DISTRICT JUDGE: I am not aware of anything on the 28th. I have got the file here, I can double-check now. I made a note of it, so what I have been through and obtained: Application issued 17 September 2019. Interim orders made 24 September 2019 against David Riley and Michael Riley. 2 January 2020 is the hearing of the application. The order against David Riley is discharged, and the final order is made against Michael Riley.

MR GRANT: Yes.

THE DISTRICT JUDGE: 7 February we have a breach. Michael Riley is arrested, brought to court. He admits the breach. He was given a warning and no action taken.

MR GRANT: Yes.

THE DISTRICT JUDGE: There is a further breach on 15 February, which led to an arrest, and him being brought to court on 17 February, at which time he denied that breach. There was no evidence from the police in the file at that time, just the charge sheet. It was adjourned to today, being 4 March, for that to be dealt with, but he was then arrested again on 20 February, and brought to the court on 21 February when he admitted a breach and a charge arising from attendance and arrest on 20 February. At that time the breach of 15 February was put to him again, and he admitted it.

MR GRANT: Yes, that is right.

THE DISTRICT JUDGE: So, he admitted two on that occasion. He was then arrested on 23 February, and brought to court on 24 February, and that breach was denied. Let me just check: 23 February. **(Pause)**. So, 24 February was last Monday.

MR GRANT: Yes.

THE DISTRICT JUDGE: I am not aware that he was arrested again on the 28th.

MR GRANT: So, as far as we were told by the police, he was arrested on the 28th, after something that happened at the property. Now, we have a witness in attendance --

THE DISTRICT JUDGE: Well, hang on, that means that on the 28th he would have had to have been brought to the court either on the 28th or --

MR GRANT: Out of hours, possibly?

THE DISTRICT JUDGE: -- on the 2 March.

MR GRANT: Not in an out of hours service?

THE DISTRICT JUDGE: Possibly. If he was brought to an out of hours service, he would have had to have been taken to presumably Central London or a London court. But if he was, none of that has been brought to me today.

MR GRANT: No, and I do not have any information, I wondered if you actually did. So, just to be clear, sir, for today's purposes, you are only dealing with sentencing, or the question of sentencing, in relation to the actual charges?

THE DISTRICT JUDGE: Slightly more than that. I am dealing with sentencing for breaches on 15 February and 20 February; and I am prepared to hear -- the matter that was put to him on 24 February. Now, again on that occasion -- no criticism intended of Clarion Housing, but -- there was no one present from Clarion Housing, and the police, when they attended,

had not prepared a charge. So, I formulated a charge based on the documentation that was before me, and that charge was:

"Breach of an Anti-Social Behaviour Order on 23 February 2020, such order having been made on 2 January 2020, the specifics being that on 23 February 2020 at Betchworth in the County of Surrey, without reasonable excuse, Michael Riley did an act, namely attended Atkinson House, Old Reigate Road, Surrey, which he was prohibited from doing by virtue of an Anti-Social Behaviour Order made under section 1 of the Crime and Disorder Act 1998 on 2 January 2020."

Now, it is worth noting that I formulated that charge based on what the police officer's statement said, which was specifically that they had arrested him at that property --

MR GRANT: Yes.

THE DISTRICT JUDGE: -- on that date. I was somewhat surprised when it was denied, but there you go, it was.

MR GRANT: Yes.

THE DISTRICT JUDGE: However, it is worth noting that there is annexed to the police documents a statement from a Robbie Carter, who made an allegation of a breach on 21 February, but that charge was not formulated, and has not been put to him. So, again, it would not be appropriate to deal with any allegation of a breach on 21 February, because I dealt with it based on the police statement which they have arrested him on 23 February. I suspect it may have been a case that he attended, was there on the 21st, and the police did not get around to arresting him, and he stayed over the weekend, but I cannot know for sure.

MR GRANT: Okay, well, in the absence of any information to confirm otherwise, I cannot advise the court on that basis either.

THE DISTRICT JUDGE: No, so what I propose is if there was an incident on the 28th, I am unable to deal with it, because I am unaware of it, and I do not know what happened with it on that date. All I am able to deal with is sentencing from 15 February, 20 February, and we can look -- because we cannot simply rubberstamp it; for the purposes of the tape we have to look at the police statement; I cannot imagine it will take us long -- in respect of the charge of the breach on 23 February, when he was arrested at the premises.

MR GRANT: Yes, sir. What I would ask though is in relation to -- and I appreciate there are no actual Sentencing Guidelines for matters of this kind. The closest are the Anti-Social Behaviour Guidelines, which the court does refer to. In those Sentencing Guidelines, it does

mention that some of the aggravating factors that the court can take into account are further breaches, or allegations of breaches --

THE DISTRICT JUDGE: I am going to --

MR GRANT: -- shortly after.

THE DISTRICT JUDGE: Well, shall we deal with the sentencing when we get there?

MR GRANT: Absolutely, yes.

THE DISTRICT JUDGE: It perhaps would be appropriate to at least for the purposes of the tape deal with the incident on 23 February.

MR GRANT: Sure.

THE DISTRICT JUDGE: That charge has been read out. It is also important to note that when Mr Riley was at court on 24 February I heard the matter, and I specifically recorded in the order that he had been advised of his right to obtain legal representation, advised of his right to silence, and also advised and warned that should he fail to attend the adjourned hearing of this matter, which was today, it could be dealt with in his absence. So, I am proposing that we do deal with it in his absence. **(Pause)**.

On that basis, I think it is important that we look at the evidence, and we have the witness statement, as I have said, of Robbie Carter. I do not propose to repeat it all, but it does say that he was aware that:

"Michael Riley was at the location this morning with two police officers. [He then takes David Riley's dog for a walk, and returns to the property]. At approximately 3.30 pm this afternoon, I returned back from walking David Riley's dog, and I saw Michael Riley inside the property, at the entrance to the door, and was walking inside the property. There was a security man fixing the locks on the communal door at the time of the incident, and I said to Michael, 'What the hell are you doing back here? Get out'. Michael Riley replied, 'Thank you for looking after the dog. I just want to come in to say thank you really. I'm going to go and see my dad tonight'. He then left [and was not seen since]."

Then, we have the statement of Special Constable Sam Ockham(?), who says:

"On Sunday, 23 February 2020, I was on duty in full uniform with Special Constable 6696 Gregory when we were called to Flat 11, Atkinson House, Old Reigate Road, Betchworth to reports from a neighbour that Michael Riley had been at the property, and was excluded from doing so by an injunction. On arrival at the address myself and Special Constable Gregory entered the address after knocking on the door several times. I found the door open, and a male asleep on the chair. We woke the male. He smelt of intoxicating liquor.

His words were slurred, his eyes glazed. I believe he was heavily under the influence of alcohol. He confirmed his name was Michael, and his father lived at the address. At 2158, I informed Michael, after confirming checks with the Police National Computer the court issued an injunction that does exist not to attend the address, and informed Michael that the injunction exists for him not to be at the address, 'Which you must know as you were arrested two days ago for the same offence, and therefore we are arresting you for breach of an injunction'. He was cautioned and taken to the police station."

MR GRANT: Sir, there is something I do need to advise the court on.

THE DISTRICT JUDGE: Please.

MR GRANT: In the interests of openness, if this is purely meant to be dealing with the allegation of the breach on the 23rd, then the statement of Robbie Carter does not support that.

THE DISTRICT JUDGE: It does not, but the statement of the police officer does.

MR GRANT: Yes, exactly. Exactly, yes.

THE DISTRICT JUDGE: So, I have read it because it represents what is in the police file.

MR GRANT: Right.

(For judgment on charge see separate transcript)

THE DISTRICT JUDGE: Now, with that out of the way, you may wish to address me on sentencing.

MR GRANT: Yes. Sir, do you have a copy of the Sentencing Guidelines?

THE DISTRICT JUDGE: Not in front of me. I do in chambers, but after I hear from you, I am going to retire to my chambers before giving sentence, just to give it some proper thought.

MR GRANT: Sure. The relevant page within the Sentencing Guidelines that I will refer you to first, sir, is in relation to the necessary brackets. So, it is actually at section 9. If you could just make a note, sir.

THE DISTRICT JUDGE: Yes.

MR GRANT: It is section 9 on page 9.

THE DISTRICT JUDGE: Page 9, section 9.

MR GRANT: Yes, it is headed, "Breach of an Anti-Social Behaviour Order", and the column on the left-hand side is, "Nature of failure and harm".

THE DISTRICT JUDGE: Yes.

MR GRANT: The middle column is, "Starting point", and the right column is, "Sentencing range". For the nature of failure and harm, the ...

THE DISTRICT JUDGE: Failure of harm, you mean nature of harm?

MR GRANT: The nature of failure and harm, your Honour.

THE DISTRICT JUDGE: Yes.

MR GRANT: It starts off on the lowest bracket. It says, "No harassment, alarm or distress was actually caused by the breach, and none was intended by the offender". The starting point as a sentence is a community order. In brackets it does say "low". For the sentencing range, it says, "Fine, band B, community order", in brackets "medium".

The row above that, following the same column progression, under, "Nature of failure and harm", it gets a bit more serious when it goes to, "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". The middle column for the starting point is six weeks' custody. The right-hand column of sentencing range says, "Community order", in brackets "medium", "To twenty-six weeks' custody".

Obviously, the higher bracket, which is serious, which I would not have imagined that this does fall into the serious bracket, because serious says, "Serious harassment, alarm or distress has been caused, or where such harm was intended". In that instance the starting point is twenty-six weeks' custody, and the sentencing range is custody threshold up to two years' custody. So, I would not have imagined, I do not think it is being put forward to the court, that it is falling into that bracket, but it just gives the court just a general range really.

I would have thought had Mr Riley breached the injunction just once, then the lower bracket in terms of a community order. He has breached it twice. He initially lied to the court when brought to court on the 16th, and then when he was brought back to the court on the 21st, and it was read out to him, he admitted both breaches thereafter.

THE DISTRICT JUDGE: I think it is a bit harsh to say he lied. He denied the charge, and made no further comment, and at that time there was no supporting evidence produced by the police. When that statement from the officer was produced, it was admitted. But I understand the point you are trying to make.

MR GRANT: He had an opportunity not to respond though.

THE DISTRICT JUDGE: He did.

MR GRANT: Now, underneath those columns it does talk about the aggravating factors and mitigating factors, and on the aggravating factors, it states: (1) "The offender has a history of disobedience to court orders". (2) "The breach was committed immediately or shortly after the order was made". (3) "The breach was committed subsequent to earlier breach

proceedings arising from the same order". Now, the fourth one does not really apply, it says, "Targeting of a person the order was made to protect, or a witness in the original proceedings".

THE DISTRICT JUDGE: Sorry, I could not --

MR GRANT: But the first three absolutely do apply to this case.

THE DISTRICT JUDGE: I did not catch the third one, I was making a note of the second --

MR GRANT: My apologies, sir. It says, "Targeting of a person -- "

THE DISTRICT JUDGE: No, that is the fourth. The third one -- sorry, the fourth one you said which I think --

MR GRANT: Which does not apply, yes.

THE DISTRICT JUDGE: I got the one, the history of breaches, persistent breaches effectively; breach committed shortly after the order is made.

MR GRANT: Yes.

THE DISTRICT JUDGE: There is one other you said that was relevant --

MR GRANT: "Breach was committed subsequent to earlier breach proceedings -- "

THE DISTRICT JUDGE: Yes.

MR GRANT: " -- arising from the same order", which is what we see here, because the same **(inaudible)** the final injunction from 2 January.

THE DISTRICT JUDGE: Yes.

MR GRANT: But, as I said sir, the fourth one, which is, "Targeting of a person the order was made to protect, or a witness in the original proceedings", it does not apply here.

For mitigating factors, (1) "Breach occurred after a long period of compliance". Well, we know that is not true. (2) "The prohibition breached was not fully understood, especially where an interim order was made without notice", but that is not the case here either.

(Pause). My apologies, sir, just having a read of something on another page, which I have only just come across actually.

THE DISTRICT JUDGE: That is okay.

MR GRANT: **(Pause, read)**. Yes, I am actually reading here page 11 of these Guidelines. It says, section 7(vi): "In all other cases -- ". So, first of all, it says:

"First time offender pleading guilty: The court must make a referral order unless it imposes an absolute discharge, a custodial sentence or a hospital order."

Under (vi) it says:

"Even where the custody threshold is crossed, the court should normally impose a community sentence in preference to a DTO".

I am not sure what DTO stands for actually. You might know, sir?

THE DISTRICT JUDGE: Not off the top of my head, but I can find out.

MR GRANT: "As custody should be used only as a measure of last resort", and it says in (vii):

"And where the court considers a custodial sentence to be unavoidable the starting point for sentencing should be four months' detention, with a range of up to twelve months."

Now, I would say that that does conflict with what was said on page 9, because on page 9 when I read out the starting point for sentencing for lesser degree offences, the starting point is six weeks' custody, so that is well below the four-month point. So, it is clear that the court does have discretion to order much less of a custodial sentence.

THE DISTRICT JUDGE: Yes.

MR GRANT: I would say in this case, sir, Mr Riley is showing a repeated pattern of breaching this order, and is showing flagrant disregard of the impositions made upon him of the risk of being arrested if he breaches; the risk of being taken to court; breach of an injunction: None of this is having any effect on him. It seems that he is repeatedly committing these breaches, sometimes on the day, or sometimes a couple of days after, he has been taken to court. I really do not know why, on 7 February, Mr Riley was released with no further order.

THE DISTRICT JUDGE: I can answer that, because I dealt with it.

MR GRANT: Can I ask the reason therefore, sir.

THE DISTRICT JUDGE: Yes, 7 February was the first breach. Essentially, it is a case ... you need to be aware I am familiar with this matter, and Mr Riley is an alcoholic, and to the best of my knowledge he is also homeless. The property where he is going and staying is his father's property. When he was brought in and arrested on 7 February, as we have identified, there was no harm, there was no distress. He was simply reported as being present at the site.

The reason the original injunction or Anti-Social Behaviour Order was made was based on the fact that he had historically been abusive, I think, to neighbours, but also abusive and threatening to a member of staff of Clarion Housing who was on site.

MR GRANT: Right.

THE DISTRICT JUDGE: So, the concern really arose not simply out of his being on the premises, but that when he had been on the premises he had come into drink, and that had led to unacceptable behaviour, and in particular intimidation of a member of staff.

MR GRANT: Right.

THE DISTRICT JUDGE: So, when he is brought in on 7 February there had been no such behaviour, and I deemed it entirely appropriate to take no further action against him, other than to warn him that future breaches would not be dealt with so lightly. He was reminded that the reason he was not to go to the site, the premises, was precisely because of the history, which is that he had drink, and that would get him into conflict. So, the order was there to prevent that conflict arising.

MR GRANT: Thank you, sir.

THE DISTRICT JUDGE: It may assist you to know that save with this potential one on the 28th, I believe I have dealt with this matter certainly from 2 January onwards, I have dealt with all of the arrests.

MR GRANT: Right, okay. So, he has been arrested on numerous occasions. He has been let off with no further action on 7 February. He was arrested on 16 or 15 February, I believe, and brought to court on the -- no, sorry --

THE DISTRICT JUDGE: Arrested on the 15th, and brought to court on the 17th.

MR GRANT: On the 17th. Arrested again on the 20th, and brought to court on the 21st. He was arrested again on the 23rd, brought to court on the 24th. He has admitted to two breaches, on the 15th and the 20th, having denied the 15th originally on the 17th, but subsequently admitted it. Then, brought to court on the 24th, having been arrested at the property, denied being in breach, but has subsequently been found to have been in breach by yourself, sir.

That is three breaches not far apart from each other, and I appreciate that the court is only dealing with sentencing in relation to the actual arrests and charges, but the court must take into account, at the very least, any allegations made since that hearing, to weigh in the balance. In court today is Robbie Carter, who is prepared to give evidence, if need be, relating to what he has witnessed on the 28th. Now, he has written an affidavit, and signed it and, if you wish, sir, I do believe Mr Carter is willing to give evidence.

THE DISTRICT JUDGE: I do not think that would be appropriate because, as I say, if it is right that Michael Riley was arrested on the 28th, and has been brought to court other than this one, and released -- well, I do not know if he was released, he may have been remanded in

custody. I cannot possibly know what the situation is. But it would not be right that I hear evidence from Mr Carter today if his evidence relates to that breach, which may yet be coming back to this court, or indeed another court, and would be reflected when the court deals with it on that occasion.

MR GRANT: Okay, sir, thank you. Well, in relation to sentencing, sir, I would say a low custodial sentence would be appropriate in this instance, because the reasons for custodial sentencing in any event, as you must be fully aware, sir, the court has in mind whether it passes such an order by way of punitive measures, preventative measures, or rehabilitative measures.

As I just reiterate, sir, you have allowed him to leave court with no sentence essentially on the 7th, which of course is the court's prerogative. But having breached on three separate occasions, and it has been both admitted on two occasions, and been found to have been in breach on the 23rd, I would have thought that no further letting the defendant off would result in no further breaches. I am sorry if that phrase has not been well formulated but --

THE DISTRICT JUDGE: I understand the point you are trying to make.

MR GRANT: Yes, exactly. I would ask the court just to consider the subsequent breaches having such an aggravating factor that it moves the bracket from, "No harassment, alarm or distress was actually caused by the breach, and none was intended", to the lesser degree, where it says, "A 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". I appreciate there is not a lot of evidence before the court to suggest that that is actually the case, but it is in relation to the Sentencing Guidelines. Unless I can be of any further assistance?

THE DISTRICT JUDGE: No, that is helpful, thank you. A transcript will have to be requested, I anticipate, of an order today, if I impose imprisonment or suspended imprisonment, so I am going to take a few moments to consider matters carefully. I will let the usher know as soon as I am ready to come back. Thank you.

(11.55 am)

(A short adjournment)

(12.31 pm)

THE DISTRICT JUDGE: Again, thank you for your patience, do be seated.

(For judgment on sentencing see separate transcript)

THE DISTRICT JUDGE: Mr Grant, I anticipate you also need to address me in respect of costs.

MR GRANT: Yes, sir. I do believe that a costs schedule has been sent to the court.

THE DISTRICT JUDGE: It has, yes, I have it here.

MR GRANT: Yes, well, a copy of the costs schedule was sent to Mr Riley. There have been no comments in response. Mr Riley has not turned up to make any comments in response also. Costs naturally flow from the event, and I would ask for all of those costs, which from our perspective, sir, are more than reasonable considering the amount of work that has gone into this, and the number of breaches. I would ask that all of those costs are to be borne and liable to be paid by Mr Riley.

(For judgment on costs see separate transcript)

MR GRANT: I am grateful, thank you sir. So, could I ask just for you to reiterate the terms of the sentence. So, I have it written down that there is a twelve-week --

THE DISTRICT JUDGE: Yes.

MR GRANT: -- sentence, but it is suspended --

THE DISTRICT JUDGE: For twelve months, which will take us to 4 March 2021. It is suspended effectively upon him not committing further breaches of the order of 2 January 2020.

MR GRANT: Yes.

THE DISTRICT JUDGE: Not being found to have been in breach of 2 January 2020.

MR GRANT: So, sir, on a practical basis, if he is found to be in breach of the injunction above and beyond the ones that we have seen here, the 15th, the 20th, and the 23rd, does that then --

THE DISTRICT JUDGE: I do not believe it would. Those would have to be dealt with separately, but the sentence can only bite effectively surely from --

MR GRANT: Today.

THE DISTRICT JUDGE: -- offences after today. I can specify that in the order if it is going to make it clear.

MR GRANT: Yes.

THE DISTRICT JUDGE: I will say ... **(pause, writes order)**. Is there anything further I can assist with today?

MR GRANT: No, sir, thank you very much.

THE DISTRICT JUDGE: Thank you very much. Thank you for your time and your assistance today. For the purposes of the tape, I am also ordering that a transcript of today's hearing, the judgment and the sentence be obtained at public expense. Thank you.

(12.38 pm)

Marten Walsh Cherer hereby certifies that the above is an accurate and complete record of the proceedings or part thereof.

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