

IN THE COUNTY COURT SITTING IN MILTON KEYNES

AND IN THE MATTER OF AN APPLICATION FOR COMMITTAL

BETWEEN:

VALE OF AYLESBURT HOUSING TRUST

Claimant

- and -

KEN CONNETT

Defendant

Ms Annabel Heath counsel, appeared for the claimant.

Ms Burt solicitor, appeared for the defendant.

SENTENCING REMARKS
OF DISTRICT JUDGE LYNCH
(Approved 12th April 2021)

1. Ken Connett you are subject to an anti-social behaviour injunction, made under Part I of the Anti-social Behaviour Crime and Policing Act 2014 by District Judge Sweeney on 31st January 2019, on an application by Vale of Aylesbury Housing Trust.
2. The injunction order informed you that the court would reconsider the application and whether the order should continue at a further hearing on 15th February 2019.
3. You were served with a copy of that injunction, the application, statements of evidence, the power of arrest and notice of the return hearing.

4. On 15th February 2019 the application returned to court. You did not attend. On reading the application and supporting witness statement evidence, District Judge Case was satisfied that you had engaged in anti-social behaviour. The court made a final injunction against you in identical terms.
5. The duration of the injunction order was unlimited in time and subsists until further order of the court. A power of arrest was attached to that order.
6. You were personally served with a copy of that order.
7. On 20th December 2020 you were arrested by Police Officer Powell on suspicion of breaching the injunction. Paragraph 5 of that injunction contained an exclusion order stating that you are forbidden, whether by yourself or by instructing or encouraging or permitting any other person from entering an area which was identified on the plan marked "A". That plan was attached to the injunction. You were found hiding under a mattress in a bedroom at 22 Goldswain End, which if proved on the criminal standard of proof would be a breach of paragraph 5 of the injunction.
8. You were brought before HHJ Hughes on 21st December 2020 and were remanded on bail until 5th January 2021. On the same date the Claimant made an application that you be committed to prison pursuant to Rule 81 Civil Procedure Rules 1998.
9. When you appeared before District Judge Case on 5th January 2021 you admitted through your solicitor that you were in breach of paragraph 5 of the injunction by being present in Goldswain End, Aylesbury, HP198JP on Sunday 20th December 2020 although you denied causing any disturbance on that date. You have offered a full apology to the court for your behaviour.
10. The evidence in relation to that breach consists of the statements of PC Price, PC Richards, Zahab Hussain and an anonymous witness. You have admitted the breach of the injunction which I find proved on the criminal standard of proof.

11. The penalties available to me are an unconditional discharge, a fine of such amount as is appropriate and which you are able to pay, or committal to prison for a fixed term of up to 2 years under Section 14 Contempt of Court Act 1981.
12. If I determine that the breach crosses the custody threshold so that only a sentence of imprisonment will do: **[s230(2) Sentencing Act 2020]** then I will sentence you to the shortest term commensurate with the seriousness of the contempt: **[s231 Sentencing Act 2020]** I will then consider whether to suspend this, for up to two years.
13. There are three main objectives in sentencing (a) to punish for the breach of a court order; (b) Securing future compliance with it (c) Rehabilitation of the defendant
14. There are no specific sentencing guidelines in respect of contempt of court. I have determined that I should consider the parts of the Sentencing Council guidelines for breach of a criminal behaviour order, which also apply to breach of an anti-social behaviour order. I have found it useful to consider the guidance when considering culpability and harm. The category ranges cannot, however, simply be adopted. The criminal offence has a maximum sentence of five years, whereas the maximum for contempt is two years. The guidelines also provide for community orders, which cannot be made in these committal proceedings.
15. In applying the guidelines, I must first assess the level of seriousness of the case. There are three levels dealt with in the guidance and they are described as (i) serious, (ii) where there is a lesser degree of harm and (iii) those where there is no harm.
16. I consider this case to fall within the upper end of the middle bracket and, i.e. those described as a lesser degree of harm cases. That suggests a starting point for sentences of six weeks immediate custody.
17. I have to consider whether there are aggravating or mitigating factors that apply to you. There are a number of aggravating features in relation to your case.

18. On 29th May 2019, only 3 months after the final injunction had been made, you breached it by going to Goldswain End, Aylesbury. You were committed to prison for 28 days by HHJ Hughes suspended for one year on compliance with the terms of the injunction.
19. On 27th August 2020 the police were called to Goldswain End in the early hours of the morning where in breach of the injunction, you were shouting and causing a nuisance at or outside a property. You knew that you should not have been there. You were found in a service cupboard on the landing. You were arrested and produced to the court on 28th August. You admitted the breach and HHJ Perusko was satisfied that as you had not breached the previous order for over 12 months, and you might lose your job and your home if you were sentenced to a term of imprisonment he imposed upon you a prison sentence of 2 months, suspended for 2 years.

20. In sentencing you, His Honour Judge Perusko made the following remarks:

“I would be justified in sending you to prison today. There is no doubt about that. I am going to give you a sentence of two months’ imprisonment. I am going to suspend it for two years. You keep your nose clean for two years, and longer. The next time you come back for breach, it will be a long stretch, probably six months or so. I am giving you a chance, not because it is a Friday afternoon, but because you have kept your nose clean for a year. Keep your nose clean for much longer this time. All right?”

21. You were also ordered to pay the claimant’s costs of £1,218.40 by instalments of £100pcm from 1st October 2020.
22. I find that the two incidents of breach show some history of disregard for court orders and I note in particular that you breached the injunction on 27th August only three months after you were sentenced for the previous breach.
23. The victims of your actions are those whom the anti-social behaviour injunction was intended to protect: namely those who reside at Goldswain End, Aylesbury or lawfully visit it.

24. The mitigating factors advanced by your solicitor Ms Brunt on your behalf are that you promptly accepted your wrongdoing when you appeared before District Judge Case and you have done so again today and you have offered a full apology. I specifically note that :

- a) You have not breached the injunction since 20th December 2020
- b) You remain employed as a window fitter and fabricator; You are described by your employer as an integral part of the Company and you are working on a project at the moment that may open up many opportunities.
- c) You are living in rented accommodation in a house of multiple occupation and paying your rent and you may lose your employment and your home if you go to prison

25. I remind myself that where a person is convicted of an offence which is punishable with a custodial sentence the threshold for custody imposed by **s 230(2) of the Sentencing Act 2020** mandates that the court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence. As I have previously stated community orders cannot be made in these committal proceedings.

26. I am satisfied that the contempt which you have admitted and which I find proved on the criminal standard of proof is so serious that it breaches the custody threshold. A fine alone cannot be justified for this breach. The appropriate starting point is 6 weeks imprisonment.

27. Whilst I accept that imprisonment will cause you hardship, the breach that you have admitted is serious, and flagrant, and it is the third breach of this injunction, whether you intended to cause a disturbance or not. An immediate custodial sentence is merited. I sentence you to 6 weeks for the single breach. That is the shortest period of time I consider appropriate for the contempt of court.

28. You admitted this breach on the first occasion before the court made available to you and you are entitled to a reduction in sentence pursuant to **s 73 Sentencing Act 2020**. I discount your sentence by a third, leaving a sentence of 1 month.
29. I have decided to also activate the suspended sentence. Your repeated breaches of court orders are serious, and it seems right that you now serve the 2-month sentence that was imposed on you by His Honour Judge Perusko on 28th August 2020.
30. I have considered whether I should suspend this sentence. I have listened very closely to what has been said on your behalf by Ms Burt.
31. I bear in mind that we are in the midst of a national public health pandemic-Covid19. The Court of Appeal has said that the current conditions in prisons represent a factor which can properly be taken into account in deciding whether to suspend a sentence. I take full account of the likely impact of a custodial sentence upon you and, where appropriate, upon others as well. Courts should keep in mind that the impact of a custodial sentence is likely to be heavier during the current public health emergency than it would otherwise be. It is widely reported that those in custody are confined to their cells for much longer periods than would otherwise be the case. They are unable to receive visits. Both they and their families are likely to be anxious about the risk of the transmission of Covid-19, per the Lord Chief Justice, **R v Manning [2020] EWCA Crim 592**. These are important considerations which I have at the forefront of my mind.
32. I have decided not to suspend your sentence. I do not consider this would be appropriate given your history of poor compliance with court orders. I am not at all satisfied that suspending the sentence will secure your compliance with the Injunction in the future, as per **Hale v Tanner [2000] 1 WLR 2377**.
33. In terms of the pandemic, restrictions are now gradually being lifted, although I fully accept that the impact of a sentence now would be heavier than usual. That said, the last breach has occurred during lockdown, and so you would have known that you were putting yourself in a position where you could be detained.

I also note that during lockdown, you had no difficulty being around Goldswain End, Aylesbury, suggesting to me that your own personal safety was not your paramount concern.

34. In conclusion, I consider only an immediate custodial sentence is appropriate. I sentence you to 1 month in prison plus the 2 months activated sentence. I then need to consider whether my sentence should run concurrently or consecutively with the activated sentence. I consider they are sufficiently similar that it would offend the totality principle to impose a consecutive sentence so they will run concurrently making 2 months in total. I consider this to be a just and proportionate sentence given the overall offending behaviour of which you will serve up to half in custody before being released on licence.

35. The injunction and the power of arrest that attaches to it, will continue without time limit and will subsist until a Court decides in the future that they should come to an end. I have absolutely no doubt that if on your release you breach this injunction again you will go to prison for a long time. Please take him down.

END

Dated 12th April 2020
