

Case No: F01BM462

IN THE COUNTY COURT
AT BIRMINGHAM

33 Bull Street
Birmingham, B4 6DS

Date: 3rd August 2022
Start Time: 1324 Finish Time: 1335

Before:

HER HONOUR JUDGE EMMA KELLY

Between:

**CHIEF CONSTABLE OF THE WEST
MIDLANDS POLICE**

Claimant

- and -

YOBEL WERIE

Defendant

Mr Fox appeared on behalf of the Claimant
Mr Harrington appeared on behalf of the Defendant

APPROVED JUDGMENT

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JUDGE EMMA KELLY:

1. Mr Werie, you appear before the Court in relation to a breach of an injunction granted by His Honour Judge Rawlings on 27th August 2019. The breach has been reduced to writing and you have the benefit of legal representation. You have admitted that on 2nd August 2022, at shortly after 10pm, you were present just outside the Pryzm nightclub on Broad Street, Birmingham in an exclusion zone and at a time prohibited by the terms of the injunction. Your admission is made on the basis that you were in the area at approximately 10.30pm, seen by police officers and arrested at just before 11pm pursuant to the power of arrest attached to the injunction. On arrest you indicated that you had been to the nearby cinema and had been going home. The claimant does not seek to challenge your factual account and accepts that you were not engaged in any anti-social behaviour at that time. In light of your admission of the breach, the Court is satisfied the allegation of breach is proved beyond reasonable doubt and it falls for this Court to sentence you in relation to that breach.
2. This is not the first time you have been before the Court for breaches of this injunction. On 7th September of 2019 you were arrested inside the exclusion zone. District Judge Rich sentenced you to 14 days' imprisonment, suspended on compliance with the terms of the injunction.
3. On 2nd December 2019 you were again within the exclusion zone. On 19 December 2019 District Judge Shorthose activated the earlier suspended sentence and granted a further 21-day term of imprisonment.
4. There was a third breach on 16th April 2021 when you were again within the exclusion zone at a time that you should not have been. Her Honour Judge Ingram passed a term of 20 days' imprisonment, suspended on terms of compliance with the injunction.
5. On 7th November 2021 you were again within the exclusion zone. His Honour Judge Murch passed a term of 14 day' imprisonment, again suspended on terms of compliance with the injunction.
6. There was a fifth breach on 11th December 2021 and a sixth breach on 10th April 2022. In common with the earlier breaches, you were again within the exclusion zone. At a hearing in May 2022, His Honour Judge Murch sentenced you for the fifth and sixth breaches and activated 14 days of the previous suspended sentences and passed a further sentence of 14 days. You therefore received a term of immediate imprisonment of 28 days.
7. Very much like the previous breaches of the injunction, today's matter involves you being inside the exclusion zone but not causing any antisocial behaviour or otherwise engaging in any criminal conduct. It is your mere presence in that location after 10pm that brings you before the Court.
8. I have had the benefit of hearing from counsel for the Claimant and from your solicitor.
9. When the Court determines the appropriate penalty for breaching a civil injunction, it takes into account the need for punishment, the desirability of securing future compliance with court orders and also the aim of rehabilitating a defendant.

10. The Sentencing Council does not produce Definitive Guidelines for use in the civil courts as it does for the criminal courts. Nonetheless, the Definitive Guideline for breach of a criminal behaviour order is relevant when assessing the appropriate penalty. The guideline cannot be used as a complete analogy. The Court has to bear in mind that the maximum sentencing power in the criminal court is five years' imprisonment as opposed to the maximum in the civil court being two years on any single occasion. Further, the civil courts do not have available the vast array of community-based orders that the criminal courts have access to. However, I nonetheless consider the criminal behaviour order guideline by analogy.
11. Counsel for the Claimant submits that this matter fell between culpability categories B and C. Your solicitor submits it falls within category C as being a minor breach or just short of reasonable excuse. I am not so persuaded. The breach was clearly a deliberate one falling into category B. You were fully aware of the terms of the injunction. Indeed, you have been before the Court on multiple occasions for similar breaches. You must have known that being where you were after 10pm put you in breach of the terms of the order. I have considered whether the breach should be deemed persistent; thereby falling into culpability category A by dint of this being your seventh breach. However, I accept what is said by your solicitor, namely that the breaches span nearly three years and it is some 4 months since the last breach in April which itself was several months after the previous breach in December 2021. Therefore, whilst there are multiple breaches, I am persuaded it is appropriate to deal with it as a culpability B matter.
12. As to category of harm, I accept that this falls into category 3. The breach caused little or no harm or distress.
13. In the criminal courts, a culpability B, category 3, offence would have a starting point sentence of a high-level community order with a category range of a low-level community order to 26 weeks' custody.
14. I consider any factors that increase seriousness. The six previous breaches of the injunction aggravate this matter considerably. You have a number of criminal convictions but the last time you were before the criminal courts was in May 2019 for possession of drugs. You received a 44-month custodial sentence for a more serious offence of robbery in 2016. I treat your criminal conviction as aggravating but, in my judgment, the most serious aggravating factor is the history of non-compliance with the injunction order.
15. There is little mitigation. You had no good reason to be in the area at that time although I accept your presence was only a short time after the 10pm deadline by which you had to vacate the nightly exclusion zone. I do however take into account your admission of the breach at the earliest opportunity and you are entitled to maximum credit, namely a one-third discount from what otherwise would have been the appropriate penalty.
16. The appropriate sentence, before consideration of discount for your admission, would have been one of 21 days' imprisonment. Credit for your admission reduces that to 14 days' imprisonment.
17. I then consider whether it is appropriate to suspend the sentence. The Sentencing Council Definitive Guideline on the Imposition of Community and Custodial Sentences specifies factors to be considered in determining whether it is possible to suspend.

Factors indicating it would not be appropriate to suspend include the offender presenting a risk or danger to the public, appropriate punishment only being achieved by immediate custody and a poor history of compliance with court orders. Factors indicating it may be appropriate to suspend include a realistic prospect of rehabilitation, strong personal mitigation and immediate custody having a significant and harmful impact on others.

18. In your case it can be said that you have a poor history of compliance with court orders. However, I bear in mind that it has been some time since you breached this injunction. Your solicitor tells me you are actively engaged on a course that will provide you with a construction industry certificate with a view to you obtaining employment in that field. An immediate term of imprisonment would interrupt that. I am also mindful that you have been in custody since your arrest last night and that the term of the three-year injunction expires imminently at midnight on 21 August 2022. There is no application for the term to be extended. Taking those matters into account, I am persuaded it is appropriate to suspend the custodial sentence. The penalty for the breach will therefore be one of 14 days, suspended for the outstanding term of the injunction, on condition of compliance with the terms of the injunction. I make it absolutely clear that if you come back before the court in respect of another breach, you are at very high risk of the suspended sentence being activated.
19. You have a right of appeal. Any appeal is to the Court of Appeal, to be issued within 21 days of today.
20. The Claimant does not apply for costs. I therefore no order as to costs.
21. You are therefore eligible for immediate release as soon as the custodians have dealt with the necessary paperwork.

This Judgment has been approved by the Judge.