

Case No: F01BM461

IN THE COUNTY COURT
AT BIRMINGHAM

Birmingham Civil Justice Centre
33 Bull Street
Birmingham, B4 6DS

Date: 10th August 2022

Start Time: 1117 Finish Time: 1134

Before:

HIS HONOUR JUDGE MURCH

Between:

**THE CHIEF CONSTABLE OF THE WEST MIDLANDS
POLICE**

Claimant

- and -

A JAMA

Defendant

Mr Aruci appeared on behalf of the **Claimant**

Mr Harrington appeared on behalf of the **Defendant**

JUDGMENT

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JUDGE MURCH:

1. The matter is listed before me today to consider what penalty I should impose for two breaches of an injunction granted by HH Judge Boora sitting in this court. I shall set out the history of the matter so that my decision can better be understood.
2. On 26th September 2019, His Honour Judge Tindall made an injunction. It restrained the Defendant from entering the area on the map attached to it and marked “the exclusion map” between the hours of 10 p.m. and 7 a.m. There was a proviso that if the Defendant wished to enter the area during those periods, he was to request permission in writing from the duty inspector of Birmingham Central Neighbourhood Policing Unit, giving no less than 48 hours' notice. A second term of the injunction was that the Defendant was not to be found in possession of white powder in any zip lock bag in a public place. A power of arrest was attached to that order. That order was made on an interim basis but was confirmed at a final hearing by His Honour Judge Boora on 20th January 2020. His Honour made the injunction in the same terms, continuing it until midnight on 19 January 2023. I am satisfied that the injunction was served on Mr Jama. There is a certificate of service showing that happened on 28th January 2020.
3. On 24th February 2020, the matter came before Her Honour Judge Truman when Mr Jama was found to have been present in the exclusion zone. This does not appear to have been in dispute on that occasion. Her Honour recorded that a custodial sentence was being considered but that, the defendant through his

solicitor having stated that he had started work in the previous week, it was appropriate to adjourn the matter so that proof of that could be provided before the question of sentence was determined.

4. The matter came back before Her Honour on 11 March 2020 where it was formally recorded that there had been two breaches, namely on 12 January 2020 and 6th February 2020. On each occasion, the Defendant had been found in the exclusion zone. Her Honour imposed a sentence of 28 days' custody which was suspended on condition that there be compliance with the terms of the order made by His Honour Judge Boora for the remainder of the term of the injunction.
5. On 3 December 2021, the Defendant was due to be brought before District Judge Rich as a result of having been found in the exclusion zone again. For reasons not immediately clear, the defendant was not brought before the District Judge from police custody. District Judge Rich, therefore, released him immediately, it being noted that the Claimant was going to bring a contempt application in respect of the most recent alleged breach.
6. That application was made on 6 December 2021 when it was alleged that on 3rd December 2021, the Defendant had been seen in the exclusion zone at 4.45 a.m. on Hurst Street. It was recorded that he ran away from the police when seen but was caught, and, on being caught, he said:

I haven't done anything wrong. I get dropped off by coach from work.

7. The matter came before Recorder Charman on 23 December 2021 when Mr Jama admitted having breached the injunction on 3 December 2021. The

matter was adjourned for the purposes of sentence and also to enable the Defendant to make an application to vary the order, his position being that he was dropped off in the exclusion zone for the purposes of getting to and from work as a warehouse operative.

8. The matter came before me on 9 February 2022. I varied the order so that the Defendant was not to be in the exclusion zone between the hours of 11 p.m. and 6 a.m. That was to allow him to be dropped off in the area, it being impressed upon him that if he was found in the area within the new reduced exclusion period, he would be in breach of the order.
9. I adjourned the matter for sentence. I was persuaded that it was unjust to activate the suspended sentence imposed by Her Honour Judge Truman given the length of time since the previous breach and also the reason for the Defendant being said to have been in the area. Nonetheless, I made it clear that there would have to be a sentence for the breach on 3 December 2021 and I adjourned the matter until 5 July 2022 to give the Defendant chance to show that he could comply with the terms of the order.
10. The matter was listed on 5 July 2022. For reasons that remain unclear to me still, the Defendant did not attend. I, therefore, gave him a further chance and adjourned the matter until 9 August 2022. In the meantime, the Defendant was brought before Her Honour Judge Truman again on 8 August when he admitted having been found in Broad Street at 4.45 that morning. Given his failure to attend on 5 July, her Honour remanded the Defendant in custody to be brought to court on 9 August 2022.

11. On 9th August, which was yesterday, the Defendant was not brought to court. I record that is no fault of his. There appeared to be a breakdown in communication between HM Prison Birmingham, and the Crown Court where it was believed he was to be taken. Arrangements were made then for the matter to be relisted this morning and Mr Jama has been brought to court this morning. I have to decide, therefore, which sentence to impose in respect of the 3 December 2021 breach and the more recent breach admitted before Her Honour Judge Truman. In each case, the admission has been made at the earliest opportunity and, of course, I will have to give credit for that. I have to consider, though, the fact that the sentencing process is designed to ensure there is compliance with court orders, having regard also to the Sentencing Council Guidelines set out for the purposes of imposing sentencing for criminal behaviour orders, making adjustment for the fact that this is a civil matter where the penalties which can be imposed by the Court are different.

[Interruption]

12. Mr Jama, I have given chance to your barrister to address me. I have now got to proceed with the sentencing exercise unless there is anything in particular you want to say to Mr Harrington you want me to know.

MR HARRINGTON: Can I just...?

JUDGE MURCH: Yes, it is only fair you do.

MR HARRINGTON: He says... I know he was on police bail. I do not know what the conditions are. They are probably on the PNC print we have got. He says he was not allowed to come into Birmingham because of the police bail conditions. He also says his phone was broken at the time.

JUDGE MURCH: I see.

13. I have just been told, and I accept on the face of what I have just been told, that Mr Jama did not come to court on 5 July 2022 because he was on police bail, I am told, on an unrelated matter which he said prevented him from coming to court and he told me that also his phone was not working so, therefore, was not able to make contact. I do not think that really affects the sentencing exercise I have to impose but I shall record what I have just been told.
14. As I say, the purpose of the sentencing exercise is to ensure that there is compliance with court orders having regard to the Sentencing Council Guideline for Breach of Criminal Behaviour Orders.
15. The following points have been made on behalf of the Defendant. The point is made that on each of the occasions when the Defendant has been found to have been in breach, he was not further in breach of the additional term, namely, not to be in possession of white powder in any unmarked wrap or unmarked container. That, so far as it goes, is a fair submission, that being one of the reasons for the making of the order in the first place, but, nonetheless, it has to be accepted that there has been a breach on each occasion.
16. It is impressed upon me that on 3 December 2021 the Defendant was in the area because he had been dropped off, having been to work earlier that day. That, of course, is a matter to which I shall have regard. The more recent breach, though, is a less happy state of affairs. I have been told that he had, in fact, been out with friends in the evening and was making his way home when he was found in the exclusion area.

17. I am told that the Defendant is employed. He had undertaken a traffic management induction process with the hope it was said that he could secure better work than warehouse work. That was not to be. He missed out on opportunities during the Commonwealth Games. He is now intending to return to warehouse work, and he tells me that there was to be an induction course this week so he could work for Boots again in Burton upon Trent, the intention being he be picked up on Perry Barr, which is not within the scope of the exclusion zone under the terms of the injunction.
18. I am told that he receives Universal Credit. He lives with his mother. There are four siblings. One of his sisters has autism, and he helps take her to and from school.
19. Also, on his behalf, it is impressed upon me that Mr Jama has had two nights in prison which is described as the worst experience of his life and one he does not intend to repeat, and he says it will inform his future behaviour, the effect of what he has experienced over the last 48 hours.
20. I am asked on behalf of the Defendant to consider suspending the terms of any term of imprisonment if I consider the threshold to have been crossed. I shall now set out the reasons for the sentences I am going to impose.
21. In respect of the first breach, namely 3 December 2021, I have regard to the reason that the Defendant was in the exclusion zone, namely having been dropped off after work. Nonetheless, I regard it as a deliberate breach because at that stage the Defendant knew the terms of his injunction and had not sought to vary it. I say that because he had already been sentenced to a suspended term of imprisonment. I regard this as a culpability B breach, albeit I accept that it is

category 3 in terms of harm because there was no other behaviour other than being in the exclusion zone.

22. I have regard to the Guidelines. I conclude, however, that the custody threshold is passed for that breach because this is not the first breach, and it occurred in circumstances where the Defendant knew what the order required of him. The starting point is one of three weeks, but I make a reduction of one third given the guilty plea which was made at the earliest opportunity.
23. The second breach is slightly different, though, because the reason for being found in the area was wholly a social one. It was not for the purposes of work. Although I acknowledge the candour of the Defendant, it does not really assist him because this was a clear breach. I regard this as a category A breach and the penalty I impose must reflect that accordingly. The sentence I impose for the second breach is one of 35 days, but, again, I make a reduction for the early admission and reduce that to 23 days' custody.
24. I have to consider whether it is appropriate to suspend the two orders which I have made. I had already indicated at an early stage I did not regard it as appropriate to activate the suspended sentence which HH Judge Truman had imposed because of the delay between that breach and the breach, which was before me, but in circumstances where the Defendant has already been in breach of a suspended sentence, I think different considerations must apply today. My attention has been drawn to the Guidelines for Suspended Sentences. I ask myself: does the Defendant pose a risk to the public? On the face of it, no. He has not been found dealing or in possession of a white powder, which is one of the reasons for the Court imposing the injunction in the first place. Is immediate

custody the only way of dealing with this? I have to have regard to the history of the matter. I have regard to what I have been told about the effect that the most recent visit in prison has had upon the Defendant. I have to ask myself is there evidence of compliance with earlier orders? It has to be accepted there is not because the Defendant has clearly breached on more than one occasion now.

25. Is there scope for rehabilitation? I am told the Defendant has found work and that his prospects are reasonably good. An immediate term of imprisonment, I am told, would affect his family, and that must have a consideration in the scope for rehabilitation. I am also told that a couple of nights in prison have been a way of focussing the Defendant's mind. I have regard to all of that. I also have regard, though, to the history of the matter and the reason for the sentencing process, namely insuring there is compliance with court orders. I conclude there are no grounds for suspending the terms of imprisonment which I have imposed this morning.
26. I have regard, though, to the totality principle. I ask myself what the appropriate total term would be having imposed 14 days for the first breach and 23 days, in effect, for the second breach? Standing back and applying the totality principle, I impose a total of 28 days' imprisonment. I have regard to the fact that there will be release at one half of that sentence, but for the reasons I have set out, I do not see it is appropriate to suspend for a second time in circumstances where the trust the Court put in the Defendant has clearly not been returned.
27. The Defendant will know through his barrister, but I remind him now in open court, that he has an absolute right of appeal. Any appeal must be brought to

the Court of Appeal in respect of the order I have made and must be made within 21 days of today's sentence being imposed.

28. Is there anything I did not deal with there or requires clarification from either of you?

MS ARUCI: Can I just get the number of days?

JUDGE MURCH: It is 28 days. Having regard to the totality principle, it is 28 days in total. Of course, he will be released at the halfway point in the usual way.

MS ARUCI: But with regard just to the first breach, your Honour?

JUDGE MURCH: For both breaches the sentence the 28 days. It was 14 days for the first, 23 days for the second, but having regard to the totality principle, I am imposing a total of 28 days.

MS ARUCI: I am obliged, your Honour.

JUDGE MURCH: Mr Harrington, is there anything that requires clarification?

MR HARRINGTON: No, thank you.

JUDGE MURCH: Thank you. Any costs application?

MS ARUCI: No, your Honour.

JUDGE MURCH: There will be no order as to costs in those circumstances. Thank you all very much. Thank you.

Post script – After the hearing had been concluded, Mr Harrington invited the court to consider the effect of the defendant having been in custody for two days prior to today's hearing. In the light of the decision in *R (James) v Governor of Birmingham Prison* [2015] 1 WLR 4210, CA he submitted that credit of two days should be given. The claimant did not seek to make further submissions. Credit was given for the two days

which had been sought. The defendant was sentenced to an immediate term of 26 days imprisonment.