

IN THE BIRMINGHAM COUNTY COURT

Priory Courts
33 Bull Street
Birmingham
B4 6DS

Date: Tuesday 9th August 2022

Before:

HIS HONOUR JUDGE MURCH

Between:

CHIEF CONSTABLE OF WEST MIDLANDS POLICE

Claimant

- and -

YOBEL WERIE

Defendant

MISS ARUCI for the Claimant

MR HARRINGTON for the Defendant

JUDGMENT

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JUDGE MURCH:

1. This matter comes before me today to consider the sentence which I should impose following the defendant's admitted breach of an injunction made by this court in August 2019. I also have to consider whether to activate a suspended sentence passed in this court by her Honour Judge Kelly as recently as 3 August 2022. I am afraid it is necessary to set out in some detail the history of this matter and I shall now do so before considering each of the breaches.

2. On 22 August 2019, an order was made in this court by his Honour Judge Rawlings in the following terms:

"The court ordered Mr Yobel Werie, whether by himself or by instructing, encouraging or allowing any other person, shall not:

(a) Enter the area edged red on the map attached to this order and marked 'Exclusion Map' between the hours of 22.00 and 07.00. If Yobel Werie wishes to enter the area edged red on the map marked as 'Exclusion Map' between the hours of 22.00 and 07.00, he must request permission in writing from the Duty Inspector for Birmingham Central Neighbourhood Policing Unit and give no less than 48 hours' notice;

(b) Possess white powder in a zip lock bag in a public place. 'Public place' includes any highway and any premises or place to which at the material time the public have or are permitted to have access whether on payment or otherwise.

This injunction shall last until midnight on 21 August 2022.

The respondent may apply to vary or set aside the injunction and must give 72 hours' notice to the claimant if he wishes to set aside or vary this injunction".

3. In the usual way, the order had a penal notice attached to it. This remains the interim injunction in this case. There has not, as far as I can see, been an injunction application for a final injunction to be made. Nonetheless, at no

stage has an application been made to set aside the interim injunction which on its face continues until 21 August 2022, being just some two weeks away. There is no dispute that the defendant was served with a copy of the injunction order shortly after it was made and is, therefore, aware of its terms.

4. The following history sets out the court's concern as to what has happened since that order was made. On 7 September 2019, Mr Werie was found in the exclusion zone. On 25 October 2019, he admitted that breach before a hearing conducted by District Judge Rich. The District Judge imposed a 14 day suspended sentence, suspended until 31 August on condition that he comply with the terms of the order. On 2 December 2019, the defendant was again found in the exclusion zone. He admitted that and, at a hearing before District Judge Shorthose on 19 December 2019, a sentence of 35 days' imprisonment was imposed. That represented the activation of Judge Rich's order and a further 21 days in respect of the more recent breach.
5. On 16 April 2021, about 17 months later, the defendant again was found in the exclusion zone. On 16 May 2021, her Honour Judge Ingram imposed a 20 day suspended sentence in respect of that admitted breach. That suspended term ran until 21 August 2022. Some seven months later, on 7 November 2021, the defendant was again found to be in the exclusion zone.
6. The matter came before me at a hearing on 8 November 2021. I was persuaded, given the defendant's circumstances and in particular the fact he was starting a new job, not to activate her Honour Judge Ingram's sentence. I added though a further 14 days of the period of suspension as a result of the more recent exclusion zone breach.

7. On 11 December 2021, the defendant was again found to be in the exclusion zone. At a hearing on 21 February 2022, a committal application having been made in the meantime, the defendant admitted being in the exclusion zone. The matter came before me and I adjourned the matter until 5 May 2022 to give the defendant a chance to show that he could comply with the terms of the order. I accepted the submission made on his behalf on that occasion that that was the right thing to do. That trust perhaps was misplaced because, on 10 April 2022, the defendant for the sixth time was found in the exclusion zone.
8. It followed, therefore, that at a hearing on 5 May 2022, I activated all 14 days of my earlier order and I imposed 14 days in respect of Judge Ingram's order. That sentence has now been served. The matter then came before her Honour Judge Kelly on 3 August 2022. Her Honour was told that, on 2 August, the day before, the defendant had been found in the exclusion zone. The reason for that, her Honour was told, was that he had been to the cinema with some friends and, embarrassed at being subject to an anti-social behaviour, had not told them. Clearly, he hoped not to be found. He was found, but her Honour was persuaded to impose a period of 14 days suspended for the duration of the term of the injunction. It is to be noted that the reason for being in the zone was not connected with work or anything like that. It was a social occasion that brought the defendant into the zone.
9. On 9 August, earlier today, the defendant was again found in the exclusion zone. I remind myself, this is now the eighth time he has been found to be in the exclusion zone. The unchallenged evidence is that he was seen by a police

officer and was seen to run away without hesitation. The police caught him and arrested him at 3.40 this morning, giving him the usual caution and he was brought before me this morning. I have been invited to proceed with the matter in the absence of a committal application because the defendant has been brought before me within the 24 hour period.

10. I am told that the reason the defendant was in the exclusion zone this time was because of disruption at home. He lives with his mother, a single mother, with five other siblings. His father, I am told, unexpectedly returned home in a drunken state. As a result of an argument, Mr Werie left the home and met up with a friend. At first, he met his friend outside the exclusion zone. I am told that he and his friend went drinking. He and his friend then went into the exclusion zone and, perhaps given that he was under the influence of drink, Mr Werie paid no regard to the existence of the order and did not seek the permission of the police to be in the exclusion zone. He admits being in the exclusion zone and this clearly was a social occasion rather than being there for any work or other reason which might provide some measure of excuse for being in breach of the order.

11. I need to consider two things then today: do I activate the sentence imposed by her Honour Judge Kelly and what sentence, if any, do I impose in respect of this morning's breach? I am afraid I have concluded that I must activate the full 14 days' suspended sentence imposed by her Honour Judge Kelly. My reason for doing so is that, within just five days of that suspended sentence being imposed, Mr Werie has again breached the order. I accept that he may have been intoxicated at the time. I do not see though that that offers an

excuse. Court orders are there for a reason. Although the court has regard to the Sentencing Council guidelines when deciding whether to activate a suspended sentence, it also has regard to the principle that court orders are there to be obeyed and that is a feature which focuses the mind when determining what sentence to impose. I consider it appropriate to fully activate the sentence imposed by her Honour Judge Kelly.

12. Turning then to the most recent breach - which is, of course, a separate matter - I have regard to the breach of the Criminal Behaviour Order Guidelines reminding myself that they deal with the criminal courts' powers which, of course, are a five year maximum rather than the two year maximum that I am able to impose. I do not accept, I am afraid, the submission made on Mr Werie's behalf that this was a culpability B breach. I am afraid, given this is now the eighth occasion when the matter has come before the courts, this is nothing other than a culpability A very serious or persistent breach.
13. Turning to the circumstances of the harm which has been caused, I accept that there is no other breach of the order before me today. I am not told that Mr Werie was found to be in possession of white powder. I, therefore, accept that this is category 3 harm because no harm has been done to any third party other than, of course, the time taken by the police to effect the arrest this morning. I am afraid I am satisfied that the custody threshold is passed in relation to today's breach.
14. The starting point, in my view, is a sentence of three weeks' imprisonment. That meets the deliberate breach and the low level harm, albeit the time of the police has been taken up yet again in this matter. I make a full reduction of

the one-third given that there has been an acceptance of the breach this morning, but I see no reason for making any further reduction. I do not regard the difficulties at home as an excuse, I am afraid, for going into the exclusion zone.

15. I have a measure of sympathy for any defendant who faces family difficulties, but there are other ways of dealing with it and going into the exclusion zone was not one of them. I ask myself what is the totality principle in this case and what meets the full justice of the case? I need to make clear, I am afraid, that this order is here to be obeyed. I am satisfied that the two sentences should run consecutively so that on this occasion the total term of imprisonment is 28 days: the 14 days' full activation in respect of her Honour Judge Kelly's order and 14 days imposed by me in relation to today, making allowance as I say for the one-third guilty plea this morning.

16. The sentence of the court, therefore, is 28 days in total, those two suspended sentences to run consecutively. Mr Werie is represented today, but I remind him through Mr Harrington that he has an absolute right of appeal in respect of today's decision. He has 21 days from the making of the decision today. Any appeal is to be brought to the Court of Appeal.
