

IN THE COUNTY COURT AT LEEDS

Case No. H00LS132

Courtroom No. 14

The Courthouse
1 Oxford Row
Leeds
LS1 3BG

Thursday, 6th October 2022

Before:
HIS HONOUR JUDGE GOSNELL

B E T W E E N:

LEEDS CITY COUNCIL

and

JARRETT

MS P MURRAY (Solicitor) appeared on behalf of the Claimant
MR MORROW (Solicitor) appeared on behalf of the Defendant

JUDGMENT
(Approved)

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HHJ GOSNELL:

1. The defendant falls to be sentenced in relation to two breaches of an antisocial behaviour order. He has appeared before me several times before and so, he knows what the order says. It is an order of District Judge Geddes which was made, I think, in January 2022, most recently. It prevents the defendant doing a number of things: certainly, being in a particular area of the centre of Leeds, near Briggate, and also from going to the hospital unless he has a genuine emergency. The defendant has admitted, today, breaching the injunction on two occasions: first, on 19 September 2022, and, secondly, on 28 September 2022.
2. On 19 September 2022, the defendant went to the hospital with some injury; some genuine injury, I accept. Having got to the hospital he then started to raise a commotion with the medical staff. That, then, involved the security guards and again, there were difficulties with the security guards, and so the police were called and they arrested the defendant and brought him to court. He has previously been told by me only to go to hospital when he has a genuine condition. It may well be he had a genuine injury but he behaved in such a way that the medical professionals needed to call the police. On 28 September 2022, the defendant was found in Briggate, outside McDonald's. He was arguing with security staff and he threatened to put in a window. He did not actually do so but the fact that he was causing a commotion meant that the police were called. The defendant was in an area he was banned from being in as a consequence of the injunction, and as a result, he was arrested. I decided to remand the defendant in custody on 28 September, and he has been in custody now for eight days. This is his eighth day in custody. I accept that.
3. In terms of the penalty, I have decided that because of the fact that the defendant has breached this injunction on several occasions previously, this is a situation where a custodial penalty must be imposed because it is so serious that only a custodial penalty can be justified. I then need to look at the seriousness of the two breaches, and in my view, using the guidelines from the Civil Justice Council, the culpability is level B and the harm is Category 2. Accordingly, the reason I say that is that it is not the most serious, with violence or threats of violence nor is it a situation where it was an inadvertent breach. In both cases, the defendant knew where he was. The reason that I say that the harm is at Category 2 is that this is not a situation where it is mere presence in an unauthorised location, nor is it a situation where there is injury or a threat of serious injury. The starting point is one month's custody and the category range is from adjourned consideration to three months custody.
4. I take into account is the aggravating factors and the mitigating factors. The two main aggravating factors are that the defendant committed the first breach only two weeks having been released from the previous sentence that I imposed. The other aggravating factor is that the second breach was committed while the defendant was on bail. Another relevant aggravating factor is that he has been sentenced to immediate custody by me on three previous occasions: on 24 August 2021, when I sentenced him to 10 weeks; on 5 May 2022, when I sentenced him to 47 days and on 23 August 2022, when I sentenced him to 14 days. I have to take into account is the issue of totality as well as considering the aggravating factors, and I also have to take into account the mitigating factors which have been very ably put forward by Mr Morrow today. The most compelling one is the fact that the defendant has pleaded, in relation to the allegation on 28 September at the first opportunity. Accordingly, he normally would be entitled to a third discount for that plea. In relation to the hospital allegation on 19 September, he denied that. We have had to adjourn that breach for trial, so he would not be entitled to as much consideration.

However, overall, if I look at the two together, I think a discount of 25% for a guilty plea would be fair.

5. Looking at the other mitigation, that is based upon the fact that the defendant suffers from alcoholism. I think, unfortunately for him, it is not just the alcohol, it is the fact that alcohol has an effect on his behaviour, it makes him aggressive and difficult. Accordingly, he has the double problem of being addicted to alcohol and then the fact that makes him behave in such a way that he gets arrested. The other aspect is that he has significant health issues, partly caused by his alcoholism and partly caused by his lifestyle, which I accept.
6. Therefore, taking into account the aggravating and the mitigating factors, and the concept of totality, I have reached the conclusion that the appropriate sentence for both offences would be, notionally, a period of eight weeks. What I would intend to do is to sentence the defendant notionally to a concurrent sentence of eight weeks in relation to both breaches. However, when I take the 25% off, that reduces it to six weeks which is a period of 42 days. The defendant has spent eight days in custody, so he is entitled to double credit for that for reasons that Mr Morrow will explain to him in due course; that is 16 days off. Therefore, that leaves a 26-day sentence. Accordingly, I sentence the defendant to immediate custody for a period of 26 days from today's date on both breaches concurrently. He will serve one-half of that sentence in custody and after that period, he will be released. Effectively it means that the defendant is going to serve another 13 days after today. That is the best I can do for him, and I hope that he will get some help when he gets out.
7. That was rather convoluted explanation but these days I have got to go through all the calculations. I have given every possible discount that the defendant is entitled to. However, the end result is that it is immediate custody for 26 days because I have taken off the time in custody to get to that figure. He does not get credit for that because of the way that the Sentencing Act operates.
8. Therefore, the order I will make is: the defendant is sentenced to 26 days' immediate custody for the breaches dated 19 September and 28 September concurrently. The hearing on 26 October 2022 is vacated and no order for costs, save for a public funding assessment of the defendant's costs.

End of Judgment.

Transcript of a recording by Ubiquis
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This transcript has been approved by the judge.