

IN THE COUNTY COURT AT LIVERPOOL

Case No. J70LV229

Courtroom No. 13

35 Vernon Street
Liverpool
L2 2BX

Friday, 28th June 2024

Before:
HER HONOUR JUDGE HOWELLS

B E T W E E N:

PLUS DANE HOUSING

-v-

KIMMINCE & MOLLOY

MR FAIRMAN (Solicitor) appeared on behalf of the Claimant
THE DEFENDANT appeared In Person

JUDGMENT
(Approved)

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HHJ HOWELLS:

1. The matter comes before me today for a sentence for a breach of an injunction order, the injunction being made in January 2023, and the breaches having been found by me on 23 June 2023. These sentencing remarks should be read in conjunction with my sentencing remarks dated 2nd April 2024.
2. Mr Molloy appears before me today unrepresented but seeks a further adjournment of this matter so that he can obtain representation. It is important to put this in the context of the history of this case. Not only was the injunction entered into – by consent, I note – by Mr Molloy in January 2023, but also the breaches were found against him in June 2023. This is a case in which there has been continuing breaches.
3. The defendant, Mr Molloy, has been given a number of warnings in relation to representation. The last time the matter was before me on 29th May 2024 I specifically told him that it would not be a good reason to adjourn if he did not have representation today; his sentencing hearing was adjourned on that because he did not have representation at that stage.
4. Effectively, the position is this: Mr Molloy initially, in the injunction and the breach proceedings did not have any legal representation. Of course, because this is a committal, it is very important that people be given the opportunity to get representation. I was satisfied that Mr Molloy has had ample opportunity.
5. In fact, after the breach was found against him he instructed solicitors, Broudie Jackson Canter, to represent him in the summer of last year . Those solicitors came off the record submitting a letter saying that legal aid had been withdrawn and they were no longer acting, dated 6 September 2023. Mr Molloy therefore sent information to the Court in relation to himself and to his co-defendant, and the sentencing hearing that was listed in September 2023 was adjourned.
6. There was a hearing then listed for sentence in October 2023. The order of 5 September 2023 made it clear that if Mr Molloy did not attend, it is likely that the matter could proceed in his absence and he was advised to obtain legal advice and representation at that stage, and told that such advice would be free as he was entitled to legal aid.
7. On 4 September 2023, Mr Molloy filed an application to set aside judgment in relation to the injunction that I will come to in a moment. The court wrote to Mr Molloy’s solicitors at that stage asking if they were still acting and were told (as set out above) on 6 September that they were not. There was a sentencing hearing listed on 4 October 2023, when Mr Molloy and Ms

Kimmince appeared in person. They were again reminded that they were entitled to legal aid. They applied to adjourn this sentencing exercise, and they were warned that there would have to be a good reason for it to go off again.

8. The matter was then relisted on 7 December 2023. Mr Molloy got new solicitors who went on the record; that was WTB Solicitors. At their request, the hearing of 7 December 2023 was vacated because they said that Ms Kimmince needed a litigation friend, which is a separate matter, but also they wanted time to take instructions. As such, the matter was relisted on 14 February of this year. At that stage, the question of the first defendant's litigation friend was dealt with, and that does not play a part in this application. However, there was need to consider what directions could be made in relation to Mr Molloy. The solicitors acting for Mr Molloy at that stage indicated that they were obtaining medical evidence in relation to Mr Molloy which may have relevance in relation to sentence, and therefore they sought another adjournment so that they could get up-to-date medical evidence.
9. The matter was then listed on 2nd April 2024, when Mr Molloy was present and represented. On that occasion, again, the matter was proceeded with. I proceeded to deal with the question of sentence. When the consideration of all mitigating factors was considered, I gave an indication at that stage through sentencing remarks, (referred to above and contained within the bundle which is before the Court) as to where I consider the severity of these breaches. However, I was persuaded, on the basis that Mr Molloy gave an indication to the Court that he was going to in fact get rid of the dogs which form part of some of the breaches in this case, that it would be appropriate to defer sentence. I indicated that if I were to impose a sentence on that day, I would have imposed a sentence of seven days imprisonment in relation to the non-dog matters, of 28 days imprisonment in relation to the dog-related nuisances and breaches, and that the question of whether that should be suspended or not would be open. (I refer to the sentencing remarks of that date in respect of my assessment of the culpability and harm, and aggravating and mitigating factors).
10. The position is this: the matter was then relisted for 29 May 2024. The application to set aside the original order was rejected by me, and I determined it at the hearing in April. That has not been appealed. On 29 May, there was an application before the Court by the solicitors then instructed by Mr Molloy, WTB Solicitors, for them to be removed from the record because there had been a breakdown in the professional relationship, I put it neutrally, in relation to them and Mr Molloy. There had been a breakdown of trust from Mr Molloy's point of view.

I am not determining the rights or wrongs of that. However, the result was that the solicitors came off the record on that date.

11. Mr Molloy indicated that he had in fact approached other solicitors and therefore wanted to adjourn the matter yet again for further solicitors, his third set of solicitors, to be instructed. On that occasion, as I indicated, I made it absolutely clear to Mr Molloy, who was present in court, that the imperative was on him to get representation. He was advised to attend the next hearing. He was warned that if he did not do so that the Court may issue a warrant without bail and may proceed to sentence in his absence. In addition, he was advised by the Court that if he was not legally represented at the next hearing, the Court was likely to continue to sentence for the admitted breaches. Therefore, as such, it cannot be said that Mr Molloy was unaware that proceeding today in the absence of representation was a course the Court may take.
12. Nevertheless, I have listened carefully to what Mr Molloy has said. He says that on the day of the last hearing, he and Ms Kimmince, although she does have solicitors already acting for her, attended at David Phillips Solicitors and (I am not quite clear on the chronology) they were given an appointment, it seems, on 21 June in order to sign paperwork. It does seem to me a little bit strange that there was such a delay of some three weeks in which to obtain paperwork, but, there we are, that is the information that I have from Mr Molloy.
13. Mr Molloy says to the Court that the appointment was changed. He thought that the appointment was next week, and in fact he believes he had an appointment next week. He told me, before steps were taken, to check with the solicitors, that he definitely had an appointment next week, and he knew about that and therefore sought an adjournment of today's hearing for that purpose. Because I have concerns that the matter has not progressed, I called upon court staff to make enquiries with the solicitors who have previously indicated that they may in future be representing Mr Molloy. Earlier this week, David Phillips (DPP) solicitors have emailed the court indicating that they were without instructions from Mr Molloy, they did not have funding and so would not attend today.
14. In response to enquiries today, Jeremy Coleman of DPP Law emailed the court at nine minutes past one and Mr Molloy has, I have been told, been forwarded that email. That explained that Mr Molloy had an appointment to attend their offices on 21 June at 10am. A Charlotte Bagley[?] spoke to Mr Molloy on the telephone about that. She called Mr Molloy in the morning to change the time of the appointment to 12 o'clock that day due to other professional commitments. Mr Molloy did not attend and, it seems, in fact, until today, DDP

Law had heard nothing more from Mr Molloy until he telephoned them this morning to tell them that he was at court. They indicated that they were without funds and could not attend today.

15. It is clear from Mr Coleman's email that:
 1. The appointment on 21 June was changed to an appointment on the same day, not another day
 2. There was no chasing by Mr Molloy between then and today in relation to any appointment or representation today.
 3. There is in fact no appointment next week as Mr Molloy has asserted to me. Mr Molloy assured the Court that he had an email confirming an appointment next week.. He has been unable to produce that to the Court, indicating that it might have been on an inquiry form that he sent in, rather than an email.
16. I am afraid to say, even taking things at face value of what Mr Molloy has to say, I have no confidence that he would in fact instruct solicitors and proceed with representation. This matter has been before the Court, on the history that I have set out, on numerous occasions. Mr Molloy has been given 12 months in which to obtain legal advice and representation. He is now approaching his third set of solicitors, having fallen out for one reason or another, which I do not criticise him for, but he has fallen out with two other firms of solicitors. He has had ample opportunity to be represented. I am afraid to say there reaches a stage where the Court, even balancing the importance to Mr Molloy of this matter, the seriousness of this matter, the fact that his liberty is at stake, it reaches the stage of saying "enough is enough". The Court cannot repeatedly adjourn matters so that a litigant can choose at will whether they wish to see a solicitor or not.
17. I am afraid I reached the conclusion that Mr Molloy has no real intention of getting a solicitor to represent him. That is clear from not only the email from his intended solicitor, but from the conduct generally. This has been another delaying tactic on Mr Molloy's part. I refuse, therefore, the application to adjourn the sentencing hearing today. I will proceed to deal with the question of sentence.
18. This is the many-times adjourned sentencing hearing in relation to various contempts that have been found against you. You have been found to have breached in many ways two court injunctions that have previously been made, and it falls to me to consider what the appropriate penalty is. I remind myself of the sentencing remarks that I made on 2 April of this year, when you were legally represented. I refer to those remarks and I do not need to repeat them.

Nevertheless, for the sake of clarity, what I do say is this: there have been 25 breaches from 25 September 2022 through to 20 April 2023, which have been proven. They have not been appealed. It is those breaches that I am sentencing you for.

19. However, it is also right to say that there have been continuing breaches. I am satisfied that you accepted that there is continuing breach because you have four dogs still at the property.
20. Your barrister, when you were represented in March, accepted that the matter should be split into two categories: those breaches involving dogs, and those involving music and karaoke. The dogs, as we noted, have been barking for long periods and at anti-social hours. I reminded myself, and I remind myself now, that in terms of sentence, the guidance given by the Court of Appeal in *Lovett v Wigan* [2022] EWCA Civ 1631 is clear. The primary objective is to make you comply. This court is not concerned with punishing you. I want to ensure that that court order is complied with.
21. The Court has five options: immediate committal to prison; suspended committal; fine; no penalty; or an adjourned consideration. I am working backwards. We have had an adjourned consideration already, and we are here in the same situation at almost three months on from 2 April, when there has been no progress, because you still have the dogs and you continue to be in breach of the order. You are flouting it.
22. The maximum term of imprisonment that I can consider, as per *Lovett v Wigan*, is two years. However, I have got considerable powers, particularly as there is on-going breach. I recognise that you have some external pressures from family members, and I note Ms Kimmince, who is not being sentenced today, has been found or declared to lack capacity, and that is why she is not being sentenced. She, I am sure, put some pressure on in terms of keeping the dogs.
23. Going back to the sentencing remarks that I made on 2 April which I adopt now and incorporate into these remarks, it was accepted by your representative on your behalf, and you do not argue against it, that the custody threshold was met in relation to the breaches, both the breaches in relation to the dogs and noise nuisance breaches. However, prison, as I remind myself, is the Court's last resort. I need to consider if there is no alternative but to send someone to prison. A custodial sentence, I note, should never be imposed if there is an alternative. In relation to the dog-related breaches, they have been persistent in nature. They occurred not long after the order was made. That has continued from the summer of 2022, when you were told you should not breed dogs, through to the January 2023, when you were agreed you should ultimately get rid of them, to the various court orders I referred to over the past 12 months. The breaches are deliberate and they are flouting the court order.

24. You have also allowed for those dogs to bark at anti-social hours. This indicates, in my judgment, there has been a persistent failure to comply and it has been deliberate and conscious, and you have made no attempts to comply with this order.
25. Looking at culpability, I agreed at the previous hearing, with your counsel, that the appropriate category in the grid in *Lovett v Wigan* was 2B. Now, it may be that you did not intend to annoy your neighbours, but it has been on-going and there has been no real attempt to comply with the order.
26. In relation to harm, I accept that it is a second category. I refer to the affidavit from the neighbours in relation to the dogs barking and the noise nuisance and the annoyance, and I recognise that they had young children whose sleep had been affected. I reached the conclusion that harm comes into the second category.
27. I therefore consider aggravating and mitigating factors. In relation to aggravation, that has got worse since the last hearing because the persistent nature of the breaches have continued. There is no credit I can give you for accepting the breaches. Today, you have indicated that if you faced a suspended order, you would comply with it. In the face of the court before the last hearing, in April, you indicated that you were inclined to comply with the order. As I said then, that did not fill me with confidence, but I told you there would be serious consequences if you did not comply.
28. In terms of mitigation, as I have said, you have previously mentioned your health issues and those of your son, and I have also recognised that you are the carer of Ms Kimmince, and I take that into consideration. Looking at matters in the round, as I did at the previous hearing, I am satisfied that this is a case in which the custodial threshold has been met. A 28-day sentence of imprisonment in relation to each of the dog-related breaches is appropriate, and it should run concurrently. I am not satisfied that a financial penalty or other lesser order be appropriate of ensure compliance with the court's order.
29. However, I take a step back and consider whether this is a case where a suspended order could be made, suspended on the basis that you had seven days to comply with the order, in terms of getting rid of the dogs, and also that you continued to comply with the other parts of the order in relation to not making a nuisance with the neighbours in relation to noise generally. I had to think very carefully about this because I do not have a great deal of confidence that you will comply. However, I am going to give you one last chance and make a suspended order. If you do not comply, there will be a hearing which means that in seven days' time, if those dogs are not removed, you will be brought back before the Court and you will receive

- an immediate sentence of 28 days. You may receive an additional sentence on top of that, because there would be a continuing breach. Therefore, a sentence of 28 days imprisonment would be the minimum that would be activated, and you could get a further sentence on top.
30. Do not think, “Oh, I will get 28 days and that will be it”. It may well be more because there could be a longer term imposed if there were continuing breaches. I am satisfied, despite not having great confidence, that this is appropriate because you tell me you will comply. You have said in the past that you were inclined to comply. Being inclined to comply is not enough. If you do not comply, this sentence will be activated.
 31. On that basis, in relation to the dog-related offence, I impose for each a sentence of 28 days’ imprisonment, running concurrently, suspended on terms for a period of two years, which I consider to be appropriate. The suspension is on terms of you removing all dogs from the property by 4pm seven days from today, which is 5 July. Whether those dogs are what you consider to be your dogs, Mr Kimmince’s dogs, or your son’s dogs, it matters not. All dogs need to be removed. That was the term of the injunction order to which you consented. If you do not do so you will be in breach of that condition. The further condition is in compliance with the rest of the terms of the injunction. Each of those will run concurrently.
 32. In relation to the additional breaches, in relation to noise nuisance, I am told that there has been some improvement, but there are still on-going issues. You say you were not aware of on-going issues. However, in any event, I previously indicated that seven days for each of those would be appropriate, it being accepted on your behalf that again they had crossed the custody threshold. Again, I will suspend those on the basis that you comply with the terms of the injunction. Obviously, the condition in relation to the removal of the dogs is not relevant in relation to those, because they are general noise rather than anything else.
 33. Now, I need to tell you a few things in relation to this, Mr Molloy. First of all, this is a sentence of imprisonment. It is suspended only on the basis that you comply with the orders. The terms of it include that you must get rid of all dogs at your property and have no more dogs there by next Friday at 4pm. If you do not, you will be in prison for a sentence of 28 days. The reality is, you do not serve 28 days, but you serve a proportion of that.
 34. In addition, as you have indicated yourself, that is not going to do your partner or your son any good at all. What I also need to tell you is that these sentencing remarks will be uploaded to the website of the government so that they are available for people to see. Further, you have the right to appeal. You have to right to appeal within 21 days to the court of appeal. It is a matter for you whether you choose to do that. However, I am telling you that just so you

know. This is the order that I am making. Therefore, unless or until it is successfully appealed, that order needs to be complied with. That deals with the issues in terms of sentencing.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
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