

[2020] EWHC 2510 (Fam)

Case No: PR15C00258

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
Sitting in Open Court at PRESTON

Sessions House
Lancaster Road
Preston
PR1 2PD

Date: Thursday, 3rd September 2020

HIS HONOUR JUDGE DUGGAN (sitting as a Deputy Judge of High Court level)

LANCASHIRE CC v KHAN; contempt sentence for
non-return of children from Afghanistan

HIS HONOUR JUDGE DUGGAN sitting as a Deputy Judge of High Court level:

1. Mr Khan, in June of this year you admitted the breach of a court order and sentence was adjourned. The order was that you cause or permit your children to return to England and Wales. By your admission last time, you indicate that you have not complied with this order.
2. I turn to the background. You came to the UK in 2000 seeking asylum from Afghanistan. You were successful and you were followed by the mother of the children and the older children. The whole family achieved British citizenship and the younger children were born here. However in July 2015 the whole family disappeared from England and returned to Afghanistan.
3. In the months leading up to July 2015 the Lancashire Social Services were investigating the family. You assaulted your older children. You had mental health difficulties. You had traditional cultural values which led to conflict within your family. Worryingly, this conflict included your attitude to the ability of the children to arrange marriages. There was domestic violence, there was poor school attendance and weak supervision of the younger children. These were the concerns of the local authority at the time you disappeared back to Afghanistan. The concerns were increased because you fled to the very place you had left because it was unsafe for you.
4. The result was that the English courts made an order that you must cause or permit the return of the children to England. The purpose was to allow the local authority to complete their investigations of the welfare of the children and to allow the local

authority to check that these British children were safe. That order for you to return the children to England is not in question. It remains in force. The relevant service of the order on you for my purposes, occurred in December 2019. This occurred when you were found at Heathrow Airport, suspected of having brought drugs into the country.

5. Before me in June 2020 you admitted that you had not complied with the terms of the order. I adjourned sentence to give you the opportunity to mitigate your breach. I wanted to ensure that in this difficult period flights were available to bring your children back home from Afghanistan. This is now clearly the case. I also wanted to give you the opportunity to arrange for the children to come to England. Unfortunately, this has not happened.
6. You say that you have done all you can and that there is resistance from the children and from their mother. There is uncontested evidence that the local authority has been able to speak to the family in Afghanistan. It is clear that the mother's attitude has hardened rather than moving towards a return to England. Originally, she said that she would bring the children home if she had to. Now she speaks in even less accommodating terms.
7. For me, the key is to be found in the interviews which you have had with Social Services. You have complained about your treatment and, in a telling phrase, you said: "Until I am freed, they won't come." It is clear that you have been communicating your attitude to the family and the effect has been to discourage, rather than to encourage, travel to England.
8. You fall for sentence for breach of a court order. I recognise that your offence does not involve violence. I recognise that this is the first occasion on which you have appeared before a court for sentence of this kind. However, any breach of a court order is a serious matter. This is particularly so when the order is designed to protect the welfare of children. The seriousness is also enhanced by the continuing nature of the breach.
9. I must consider whether prison is justified. I must consider, if prison is inevitable, what should be the length of the sentence. I must consider whether any sentence can be suspended.
10. One purpose of sentencing is to mark disapproval of what you have done. I have already explained that this breach is serious, so disapproval requires a significant sentence. The purpose is to show you, and others, that the orders of the court are there to be complied with.
11. The second purpose of sentencing is to secure future compliance with the court order. With every day that passes there is a continuing breach of this court order. I must fix a sentence which encourages compliance with the order. The sentence must be at a level to deter and to show the consequences if breach was to continue.
12. The maximum sentence is two years imprisonment. I must fix a sentence which is reasonably proportionate to that maximum level. You have admitted your breach, although you had little choice in the circumstances. The children are not back, you have not done all that you could and the breach continues. Overall, it is clear to me that the only appropriate sentence is one of imprisonment. Your admission, set

against the seriousness of the offence, brings me down below the maximum sentence to the level of 18 months.

13. I am asked to suspend that sentence. I am asked to be lenient, but I see no justification on that ground. I am asked to conclude that a suspended sentence would in some way assist compliance with the order. You tell me that you have done all you can to comply with this order. It is illogical for you, at the same time to ask me to suspend the sentence so that you can do more. The period in which sentence was adjourned was comparable in many ways to a suspended sentence and that did not produce compliance. To achieve compliance, it seems to me we need a new element to deter continuing breach. That new element is time in custody, not time at liberty.
14. If there is more that you can do to arrange for the return of the children to England and Wales, as I believe to be the case, you are advised to take those steps to avoid further breach. Indeed, successfully arranging the return of the children to the UK might, perhaps, justify an application to purge your contempt, which would secure your earlier release.
15. The sentence of the court is 18 months imprisonment.

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