TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1463 (QB)

Ref. QB-2022-001236

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Sitting at
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Before HER HONOUR JUDGE EMMA KELLY

IN THE MATTER OF

NORTH WARWICKSHIRE BOROUGH COUNCIL **(Claimant)**

-v-

JOE HOWLETT **(Defendant)**

MR SHEPHARD appeared on behalf of the Claimant
The Defendant appeared in person.

Hearing date: 17th May 2022

APPROVED JUDGMENT

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HER HONOUR JUDGE EMMA KELLY:

1. Mr Howlett, you appear before the court today in respect of two admitted breaches of an interim injunction that was granted by the Honourable Mr Justice Sweeting J on 14 April 2022, as amended on 5 May 2022.

2. You have not been represented during today's hearing. You spoke to counsel, Mr Jones, in the cells before the hearing commenced but you have informed the court that you do not want representation and wish to conduct your own advocacy today. Mr Jones has also confirmed that position to the court.

3. You face two matters of contempt; the first on 27 April 2022 and the second on 12 May 2022. The claimant has provided you with written particulars of the breaches and you have admitted those. In light of your admissions, the court is satisfied the breaches have been proved the criminal standard, namely beyond reasonable doubt.

4. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. You were not named as a defendant. The injunction was also granted against "persons unknown who are organising, participating in or encouraging others to participate in protests against the production and/or use of fossil fuels in the locality of the site known as Kingsbury Oil Terminal, Tamworth B78 2HA." A power of arrest was attached to that order.

5. The injunction placed certain restrictions on what protest activity could take place in and around the oil terminal. By paragraph 1(a) of the injunction:

> "The Defendants SHALL NOT (whether by themselves or by instructing, encouraging or allowing any other person):
>
> (a) organise or participate in (whether by themselves or with any other person), or encourage, invite or arrange for any other person to participate in any protest against the production or use of fossil fuels, at Kingsbury Oil Terminal (the "Terminal"), taking place within the areas the boundaries of which are edged in red on the Map attached to this Order at Schedule 1, or within 5 metres of those boundaries (edged in red) (the "buffer zone").
>
> For the avoidance of doubt, this prohibition does not prevent the Defendants from using any public highway within the buffer zone for the purpose of travelling to or from a protest held, or to be held, outside the buffer zone."

6. Paragraph 1(b) of the order further prohibited "in connection with any such protest anywhere in the locality of the Terminal" a number of defined acts including at subsection (i) "entering or attempting to enter the terminal" and at subsection (iv) "climbing onto or otherwise damaging or interfering with any vehicle or any objects on land (including buildings, structures, caravans, trees and rocks)"

7. The order was served on 14 April 2022 by alternative methods permitted by Sweeting J, including by placing signage in prominent locations around the site and on the claimant's website and social media accounts.

8. The injunction was varied by Sweeting J on 5 May when he removed the 5-metre "buffer zone," but the other material terms remained the same.

9. On 27 April 2022, at just after 4 pm, you were one of a group of 10 individuals who gathered on the grass verge outside the main entrance to the oil terminal to protest against the use and/or production of fossil fuels. It was a purely peaceful protest and caused no inconvenience to people using the oil terminal. It was however inside the "buffer zone" referred to in the original paragraph 1(a) of the interim injunction and therefore amounted to a breach of the injunction. You were arrested by the police and produced before the court on 28 April, when Sweeting J bailed you on condition to comply with the terms of the injunction. You were due to attend court on 12 May but failed to attend.

10. At around 8pm on 12 May you, along with two others, entered within the curtilage of the oil terminal and sat on the grass verge. When police asked you to move, you refused. You were there, with banners, for about 10 minutes before you and the others walked further into the site. You climbed a tree and refused to come down when asked by the police. After some 10 minutes you climbed down the tree of your own volition and were arrested. Those actions in entering the oil terminal site amount to a breach of paragraph 1(b)(i) and 1(b)(iv) of the interim injunction, as varied on 5 May 2022.

11. The objectives of penalties for contempt of court were considered in *Willoughby v Solihull Metropolitan Borough Council* [2013] EWCA Civ 699 where Pitchford LJ held as follows:

> "The first objective is punishment for breach of an order of the court; the second is to secure future compliance with court orders, if possible; and the third is rehabilitation, which is a natural companion to the second objective."

12. The Sentencing Council produce Definitive Guidelines to the criminal courts. Those guidelines are not aimed at the civil courts. However, the Court of Appeal in *Amicus Horizon Ltd v Thorley* [2012] They are not a complete analogy. The maximum sentence for breach of

a antisocial behaviour order in the criminal courts is five years as against a two year maximum in the civil courts on a contempt of court. I am also mindful that civil courts do not have available the wide variety of community orders used by the criminal courts. I also take note that the interim injunction is not an antisocial behaviour injunction in its true sense under the Anti-social Behaviour, Crime and Policing Act 2014. There are, however, parallels between the conduct prohibited by the interim injunction and antisocial behaviour in its general sense.

13. Turning to the Definitive Guideline for Breach of a Criminal Behaviour Order (also applicable to breach of an anti-social behaviour order), each breach was deliberate and falls within culpability category B. The breach on 12 May is more serious than that of 27 April. You trespassed within the curtilage of the oil terminal itself albeit with no obvious health and safety concerns being raised by your conduct when inside the site. The claimant contends, and I agree, both breaches fall within category 3 harm, causing little or no harm or distress.

14. . The Definitive Guideline gives rise to a starting point in the criminal courts of a high level community order with a range from low level community order to 26 weeks in custody.

15. I have to consider whether there are any aggravating factors. The breach on 27 April was committed only 13 days after the order was made. The breach on 12 May is aggravated by its timing - only a couple of weeks after the first breach – and committed whilst on bail and having failed to attend the hearing the same day.

16. I have heard what you say in mitigation and acknowledge that you feel very strongly about the use of fossil fuels and consider you were right to take the action you did. In circumstances where there is a High Court injunction in place, your belief that your actions were justified is not a defence, as indeed you must accept by your admissions of breach. Indeed, it is little mitigation. I do however take note that your actions did not cause any real harm or distress and little inconvenience to the operation of the oil terminal.

17. Under the Definitive Guideline for Reduction of Sentence for Guilty Plea you are entitled to credit for your admissions. Your admission today in relation to 12 May was made at the earliest opportunity after you had had the opportunity of seeking legal advice. You are, therefore, entitled to a one-third credit in relation to that matter.

[DEFENDANT INDICATES HE WISHES TO SPEAK. STATES THAT ON HIS LAST HEARING ON 12 MAY, THE COURT VENUE WAS CHANGED AND HE WASN'T TOLD.]

JUDGE KELLY:

18. The venue for the hearing on 12 May 2022 was changed from Birmingham Magistrates' Court to Birmingham Crown Court following a fire at the Magistrates' Court on 10 May. In circumstances where you contend you were not informed of the change in venue on 12 May, and notwithstanding that there were court officials standing outside the doors to the Magistrates' court redirecting individuals over to this court building, I will proceed on the basis that you are entitled to maximum credit for the breach on 27 April. It will make no material difference to the outcome of today's hearing, and therefore it is not appropriate to investigate that further. You would thus be entitled to the maximum one-third discount in relation to both matters of contempt.

19. But for your period on remand in custody, the appropriate penalty would have been a fine. This court has the power to impose unlimited fines. On the information before the court, I would have proceeded on the basis that you are of very limited means with little disposable income. If you had not spent the time in custody, the appropriate penalty for the breach on 27 April 2022 would have been a starting point fine of £600 reduced to £400 to reflect your admission at the earliest opportunity. The breach on 12 May is more serious because it was inside the site, in breach of the condition of bail, and on the day you were supposed to be in court. The appropriate penalty would have been a fine with a higher starting point of £1,200, reduced to £800 to reflect your admission at the earliest opportunity.

20. You have, however, spent a total of six days in custody: a day when you were arrested on 27 April and the produced on 28th; and five days following your remand in custody on 12 May. You have therefore served the equivalent of a 12-day sentence. The time you have spent on remand is more draconian than the financial penalty that the breaches in themselves warrant. In those circumstances it would be unjust to make you pay a fine as well as having spent the time in custody. Accordingly, I am not going to make any order on each of the breaches. The order will record that you have spent time in custody equivalent to a 12-day sentence and what the financial penalty would have been but for that.

21. The claimant is not making an application for costs and has prepared a schedule in that regard. I thus make no order as to the costs on the contempt proceedings.

22. If you go with the custodians back down to the cells, they then will be able to process the paperwork and release you.
