

Case No: F01KT804

IN THE KINGSTON-UPON-THAMES COUNTY COURT

Kingston-upon-Thames County Court and Family Court
Hearing Centre
St James Road
Kingston-upon-Thames
KT1 2AD

Date: Thursday, 29 October 2020

Before:

DISTRICT JUDGE ARMSTRONG

Between:

CLARION HOUSING ASSOCIATION

Claimant

- and -

(1) DAVID RILEY
(2) MICHAEL RILEY

Defendants

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MS PEARCE (counsel) for the **Claimant**
THE FIRST DEFENDANT did not attend and was not represented
MR NORMAN (counsel) for the **Second Defendant**

Approved Judgment

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

THE DISTRICT JUDGE:

1. As far as proceeding today are concerned, it strikes me that all reasonable steps have been taken to serve the defendant Mr Michael Riley and make him aware of today's proceedings. He is aware of these contempt proceedings as he was arrested and produced before the court. He was produced on 3 October when he was specifically made aware by the court and signed to acknowledge he was aware that he was to be bailed to appear before this court on 7 October 2020.
2. He is therefore well aware of these proceedings and was well aware of the hearing date on 7 October 2020. He had legal representation. He had solicitors on record as acting for him and they, in turn, have instructed counsel to provide legal representation for him. Nonetheless, he has chosen not to engage in these proceedings. He chose not to attend on 7 October. He has chosen, it seems, to continue not to engage with either his lawyers, his representatives, or the court.
3. I cannot see then that there is any reason why he is not present here today other than his own wilful, voluntary choice not to be involved in these proceedings. I cannot see that there is any realistic prospect that if we adjourn this hearing to another date that he will attend on that occasion. He has demonstrated a wilful decision not to engage and not to attend. That would only cause further delay. It would cause further expense not only in terms of court time and in terms of the claimant's legal team but also on public funding whilst he continues to be represented.
4. The overriding objective would not be met by allowing or adjourning this matter further. His non-attendance has not impacted on his ability to have legal representation and he is represented today. I am therefore satisfied that there is not any significant disadvantage to him not being present here today. Whereas, on the alternative, it is very much in the public interest that this matter does proceed with sentencing today and I will therefore proceed with the sentencing hearing today in respect of the outstanding matters.

(For proceedings after judgment see separate transcript)

5. Sentencing today relates to breaches of an antisocial behaviour injunction order which was first made on an interim basis on 24 September 2019 and then made a final order on 2 January 2020. The order, amongst other things, excluded the defendant from attending Atkinson House on previous occasions. When attending the property, the defendant had caused other residents and employees of the claimant company to feel intimidated and the subject of harassment particularly through the defendant's disorderly behaviour whilst drunk.
6. The order was served upon the defendant, together with the power of arrest shortly after the hearing. There have been various breaches of the injunction because of Mr Michael Riley attending Atkinson House on numerous occasions. Before this court today and notwithstanding numerous other allegations and indeed arrests, there are proven breaches arising from 15, 20, and 23 February 2020, 7 March 2020, and 2 October 2020 but it should also be noted that there was an earlier breach on 7

February 2020 which was admitted by the defendant and, on that occasion, the court took no action. The defendant was instead given a warning and a reminder not to attend the premises. Despite this, he again attended soon after as we know on 15, 20, and 23 February despite receiving warnings from the court on each occasion. This resulted in a suspended sentence of twelve weeks imprisonment being imposed on 4 March 2020. This has again been ignored by the defendant who admitted a further breach on 7 March 2020 and then again there was a further breach on 2 October 2020 being proven before this court on 7 October 2020.

7. I have taken into account and given credit for the fact the defendant has admitted a number of these breaches. I have also taken account of the fact the defendant has attended this premises, at least on the face of it, for the reason of visiting his father. I have myself made note of the fact that there has not been any particularly antisocial behaviour recorded in the occurrence of a number of the breaches. However, I cannot overlook that the defendant has wilfully and repeatedly breached this order despite numerous warnings from the court and previous assurances that he himself has given the court that he will not breach it again.
8. I note that there are statements before me today from Ms Preedy and Ms Phillips and I acknowledge that those two statements are not directly relevant to the breaches I am required to impose sentence for. They are, however, not to be overlooked insofar as they are, in effect, victim impact statements as they reflect the impact of the defendant's repeated behaviour in breach of the terms of this order upon the residents and employees of the claimant company present at Atkinson House.
9. I must take account that this is wilful and continual disobedience of a court order and I am convinced that if anything less than a custodial sentence is imposed with immediate effect then the defendant will continue to wilfully disobey the order.
10. I have given consideration to the sentencing guidelines and consider that the persistent nature of these breaches without reasonable excuse or justification put this in at B of culpability. The impact on others present at Atkinson House is mild but persistent and puts it in my mind in category 3. I am satisfied that the custody threshold has been met and that no sentence other than one of an immediate custodial sentence is appropriate.
11. For these reasons, I impose the sentence of twelve weeks imprisonment for the breach arising from 2 October 2020, twelve weeks imprisonment for the breach arising on 7 March 2020, and activation of a suspended sentence imposed on 4 March from breaches that arose on 15, 20, 23 February 2020. The sentences are to run concurrently but no credit is to be given for time spent on remand. This decision, as I say, has been made in open court and will be published accordingly and a warrant will be issued for the apprehension and committal of the defendant Michael Riley to imprisonment.

(For proceedings after judgment see separate transcript)
