

IN THE COUNTY COURT AT CARLISLE

Earl Street
Carlisle

Before DISTRICT JUDGE STONE

IN THE MATTER OF

CHIEF CONSTABLE OF CUMBRIA CONSTABULARY (Claimant)

-v-

HARVEY SADIK (Defendant)

MR BONNER appeared on behalf of the Claimant
MR SMITH appeared on behalf of the Defendant

JUDGMENT
11th SEPTEMBER 2024
(APPROVED)

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1. I am firstly going to deal with the sentencing for the admitted breach of the injunction. Following on from that, I will hear from the parties further in relation to any potential terms of a new or extended injunction, following on from the submissions that I heard earlier. But in consider it sensible to deal with the sentencing position first of all.
2. Mr Sadik was arrested on 6 September, as a result of what is, in effect, the seventh breach of an injunction order made in the youth court under the Anti-social Behaviour, Crime and Policing Act on 15 September 2023. The breach that brings him before the court was admitted on the first occasion, and concerns an assault upon his mother at 2 o'clock in the morning in her property, when he threw bags of crisps towards her, raised his voice and argued, and slapped her around the face. That of course is a breach of terms of the injunction, not to use insulting language towards or threaten violence towards any person, not to engage in conduct that causes or is likely to cause harm, harassment, alarm or distress, cause any person to fear the infliction of harm, apply any or harm any person by the direct application of force against them. All of those four terms were terms of the injunction, and the breach is a breach of each of those four terms.
3. To his credit, Mr Sadik admitted the breach immediately, but, as I have said, this is the seventh occasion in the 12 months - or nearly 12 months - since the injunction was put in place. The injunction was made without opposition from Mr Sadik - ie, it was not an opposed application - in September 2023. The first two of the breaches of the injunction were breaches that were imposed at the time that Mr Sadik was a youth, the order being made in the youth court, prior to him being 18. No further action was taken concerning those breaches.
4. There were then four further breaches after Mr Sadiq turned 18 which have all been considered in the County Court. In the first of those, sentence was adjourned for a period of time to consider continued compliance with the terms of the injunction. The remainder of the breaches have all been considered and dealt with by me in a judgment following, again, admitted breaches. That judgment was transcribed in the usual way, was given on 18 March 2024 and is available to the Court and all parties today.
5. It is necessary to consider the breaches that have occurred previously, and although I gave a judgment on that earlier occasion, I will still go through the breaches that were before the court for sentencing on that occasion very briefly, so they are formally set out in this judgment as well.
6. On 15 December, Mr Sadik was in a public place under the influence of alcohol and drugs, in breach of the last of the terms of the injunction which prevented him being under the influence of drink or drugs.
7. On 15 January 2024, he was in an area that he was prevented from going to by the first part of the injunction, and he was within a zone he was not permitted to be in at 8.15 on that date.
8. The third breach was on 6 February, when he was present at Penrith bus station. He followed and shouted the name of Kyle Davidson. Kyle Davidson is a victim of an assault by Mr Sadik which was the subject of court proceedings, and ultimately for which a conviction was put in place, and a sentence imposed by the Crown Court on 31 May 2024.
9. Mr Smith, who appears on behalf of Mr Sadik, and has provided mitigation and submissions on his behalf, following legal advice, set out that it is the position that the original injunction imposed by the youth court was largely put in place over delays in

charging decision relating to that assault, and through having protection of the order through agreement with him - as I say, not opposed - being put in place to prevent actions, both of concern to Mr Kyle Davidson, but clearly also of concern in a wider community area, given the exclusion zone, and the prevention of threats, intimidation, et cetera, as I have read out, to the wider community, not only Mr Davidson.

10. The final breach that was before me on 18 March was on 14 February, where he attended the George Hotel in an area that he was excluded. It was, on balance, he knew that Mr Davidson would be there again, and took the opportunity to stare at him while he was working there, causing him alarm and distress.

11. And in relation to those breaches that were before the court on 18th March 2024, no penalty was imposed in relation to the first two breaches; in relation to the second two, a decision or determination, as set out in the judgment delivered on that occasion, indicated that the custody threshold was crossed, and ultimately a total sentence for breaches of those two second elements was imposed for a total of 26 days, and that sentence was suspended until the end of the injunction on 15 September 2024.

12. As already indicated, the last of those six previous breaches occurred in February of this year, and therefore there were no allegations of breach and no steps to bring Mr Sadik back before the court until the events that occurred on 20 August, which he has admitted.

13. Mr Smith, in mitigation, informs me that Mr Sadik was firstly arrested under the criminal jurisdiction for the assault against his mother, and that ultimately no further action was taken, and following on from that there was the arrest that led to him being produced before the court on 6 September, when he admitted the breach that is under consideration today.

14. He sets out in mitigation that the background circumstances of the injunction being put in place by agreement, specifically relating to delays in the charging and bringing the criminal proceedings over the assault and use of weapons, or having weapons such as a knuckle-duster, that was ultimately dealt with on 31 May this year, it was a delay in considering those that led to the request and the agreement - or not opposition - to the injunction being granted in the youth court at the time that Mr Sadik was 17.

15. He expresses some concern, as an advocate on behalf of Mr Sadik, over the fact that that was the background. There was an assault where there was a criminal arrest, no action taken to pursue that within the criminal jurisdiction, and it is submitted that, in those circumstances, that it is relevant that I take that into account when considering what sentence and how to deal with the admitted breach currently before the Court. And, of course, that there was no breaches between February of 2024 and August of 2024.

16. In addition, submissions were made as to compliance with the orders that were imposed by the Crown Court. A suspended custodial sentence was imposed, along with obligations to carry out 150 hours of unpaid work, and orders that required alcohol monitoring and assistance and support by way of a SCRAM, or similar bracelet in relation to the offences that were under consideration at the time that the injunction was imposed.

17. I received a report and heard from Mr Smith in relation to the progress and events that have occurred since that sentencing by way of an email from Mr Sadik's probation officer, and I also heard from Ms Nicholls, the probation officer, by way of mitigation, directly, having been requested to do so.

18. She set out that there was an initial failure to comply with the attendance for unpaid work, and indicated that that was due to chaotic lifestyles and difficulties with getting up to attend for that work. That led to her raising and dealing with that, and referring the matter

back to the Crown Court as a result of a breach, and that the Crown Court took the decision that the order could continue, and that there would be no activation of the suspended sentence.

19. Since that time, issues over attendance have improved, there has been compliance with and engagement with the probation service. She expresses concerns that a lot of the issues that arise may be subject to questions of use or abuse of alcohol, or the impact of alcohol. That may not be fully recognised as she thought the position was, but she expressed that there was good compliance with the alcohol elements of the order that was imposed. She would have concerns over vulnerabilities, and would consider Mr Sadik to be vulnerable, by virtue of his background, age and circumstances, and she expressed to the court an indication of the potential impact, or how any custodial sentence would impact upon the continued involvement with the probation service under the criminal sentence that was imposed.

20. It is still necessary to consider this separately; the civil jurisdiction and the criminal jurisdictions are different. It is right to take into account all of the circumstances, and there is clear and substantial guidance to this court, when sentencing and dealing with sentences for breaches of injunctions, as to how to approach those. It is clear that no other criminal sanction or penalty is being or will be imposed in respect of the breach of the injunction that I am considering today.

21. The law that I have to apply when considering the penalty and sentence for breach of an Anti-Social Behaviour Injunction is well set out in the now well-known Court of Appeal authority that is reported under the name of *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631.

22. That judgment of the Court of Appeal sets out the importance of and the reason for sentencing for breach of orders that were imposed under the 2014 Act. Those are to:

- “(i) Ensure future compliance with the order;
- (ii) punishment; and
- (iii) rehabilitation.”

And the powers that the court has are for:

- “(i) An immediate order for committal to prison;
- (ii) a suspended order”

- which was of course imposed on 18 March in relation to the breaches at that time -

- “(iii) adjourning the consideration of a penalty;
- (iv) a fine; or
- (v) no order”

And in order to consider the starting point and the range of sentences are appropriate, it is necessary, in accordance with paragraphs 46 onward in that judgment, to consider both harm and culpability of the individual breach that is before the court.

23. There are three levels of culpability: high culpability, very serious breach, or persistent serious breaches, a deliberate breach falling within that category and the next

category, or lower culpability, which is minor breach or breaches. This of course is a breach that occurred as the seventh, in circumstances where there was actual violence, albeit it did not cause any mark, harm or injury. There was a slap, in circumstances where there would be distress caused, and it was in full knowledge of the terms of the injunction, and warnings given at a number of previous hearings.

24. It is a breach and it is a serious breach, but it is one that falls between category A and C, and therefore falls within category B in relation to the culpability, by reason of the fact that the injunction was present, warnings given and number of breaches of the order that had taken place, a number of those including causing alarm and distress to people. This of course would do the same to Mr Sadik's mother, such that she felt it necessary to call the police.

25. The level of harm is then also necessary to consider, by weighing up all of the factors of the case, to consider the harm that was caused or was at risk of being caused. Again, the categories are similar: where the breach causes very serious harm or distress, the category between that and the next category, which causes little or no harm or distress. This, again, clearly falls in the middle category too, where there would be distress, but, in the circumstances, it cannot be described as very serious harm or distress, given the nature of the allegation and the circumstances that are before the court.

26. Therefore, when one then looks at the authority and the starting point for penalties of a breach that falls within category 2 for harm and category B for culpability, is a starting point of a one-month custodial sentence, with a range of sentencing being from adjourned consideration to a custodial penalty and sentence of three months. When considering the actual sentence, one first of all of course needs to take into account that, very much to Mr Sadik's credit, he pleaded guilty on the very first occasion that the matter came to court. He admitted the breach at that time. That in itself will reduce the sentence that would otherwise be imposed by a third.

27. I have also set out the mitigation put in place by Mr Smith. I do not consider that there is any contempt, or failure to recognise or take into account the criminal sentence, the criminal sanctions and the criminal proceedings when I am considering a sentence for a breach that occurred after those criminal proceedings, during the period when he was subject to those criminal matters, and even though that criminal sentence and even though there is no action being taken, it is still admitted that there was, for the seventh occasion, a breach of this injunction, as I have set out. However, Mr Sadik is young. It is something where there was a gap. It may be said to be of a different category to previous breaches, but, nonetheless, it is serious, to the extent that I have set out.

28. When I take into account what I have heard in mitigation and have summarised, the fact that this is the seventh offence, which of itself is aggravating, the fact that it has occurred during the time not only that he was subject to the injunction, but also subject to the suspended criminal custodial sentence and ongoing involvement with the probation service, and, notwithstanding all of that, got himself into a position where he assaulted his mother. That is clearly something that is not the first breach, and is such that the custodial threshold is crossed, in all of the circumstances.

29. I consider that without pleading guilty, and taking into account the background and number of offences, seriousness, and all of the mitigation and all of the circumstances of the case, that the starting point for the sentence in this particular case would be one of 70 days' custody. From that, there would need to be the third reduction for the guilty plea, admission on the first basis, and, rounding down, or dealing with that, that would lead to a sentence of 46 days' custody.

30. It is also necessary to take into account that when sentencing for breach of injunctions, there is no automatic taking into account of time spent in custody. Mr Sadik has

spent from Friday, when he was arrested, in custody, until today; that is six days. That would amount to 12 days of a custodial sentence served. That being the case, those 12 days need to be taken into account and deducted from the sentence that is imposed by me today, making a custodial sentence for the breach that is admitted of 34 days.

31. I then need to go on and consider whether it is appropriate, in the circumstances, for that sentence to be suspended. I have considered that carefully. I consider that there is already probation involvement, there appears to be engagement and some progress recently in relation to that. However, he is now without a home, he has assaulted his mother, and he is in breach in the manner that I have set out, and he is already subject to a suspended sentence imposed by myself on 18 March.

32. Given all of those circumstances, I do not consider, notwithstanding the submissions and the matters set out by Mr Smith in mitigation and views expressed over the interaction between this jurisdiction and the criminal jurisdiction, there is no ground or basis for suspending the sentence that is before the court today, and therefore there will be an immediate custodial sentence for 30 days.

33. The next matter that I have to consider is whether it is necessary, appropriate for me to enact or activate the suspended sentence that I imposed on 18 March of this year. Mr Sadik was warned on that occasion, very clearly about the consequences of further breaches. He has further breached, and is being sentenced for that breach; there is no reason not to activate, in all of the circumstances, that sentence that was imposed. The sentence that was imposed in total was 26 days in custody, suspended.

34. I do need to step back and consider the totality of the sentences that are being imposed by both the activation, the circumstances, the mitigation and the proportionate sentence for all of the matters, including the activation. The way that I do that is to consider that, although I am activating the suspended sentence, given all of the mitigation that I have heard, the engagement with probation that I very much encourage Mr Sadik to continue with when he is released from this period of the custodial sentence, and there will be time for the work that he is engaging with to continue on a positive basis thereafter, and hopefully with the knowledge and consequence of breaching court orders, and what that can mean as well. So there is both punishment and rehabilitation, and taking into account the rehabilitation that is in place already in relation to the circumstances, and, of course, the importance of stressing compliance with court orders. All three of those elements that are set out in *Lovett* that I referred to earlier.

35. When I consider the proportionality and overall sentence imposed, I consider that it is appropriate for both parts of the sentence, the suspended sentence and the sentence for the breach before the court, to be served concurrently, therefore making a total sentence of 34 days to be imposed today. I will deal with the necessary warrant and order of committal on the basis of that, and I am now going to deal with that, and speak directly and finalise that before I consider how to deal with the application to extend the injunction.

36. Mr Sadik, I ask you to stand, please. Mr Sadik, I did not ask you to stand while I went through those reasons. You have heard what I have said about the reasons why I am imposing a custodial sentence today. I am sentencing you to a period in custody of 34 days in respect of the breach of the injunction that brings you before me today. I am also activating the previous suspended order that I made on 18 March, so that you will serve 26 days for the previous breach that I found on 18 March and suspended, but that is now activated, so you will be serving those 26 days in custody. However, I am going to direct an order that you serve both of those together, which will mean that you will serve a total of 34 days in custody, subject, of course, to being able and entitled to release in accordance with the schemes that are in place, that the governor will inform you about, which was 50 per cent,

but may be earlier now, in the current circumstances. But that is after the sentence. As I say, 34 days you will serve.

37. You are entitled to appeal this decision to a Circuit Judge of this Court. Any appeal will need to be made and lodged within 21 days of today.

This transcript has been approved by the Judge