

AND IN THE MATTER OF AN APPLICATION FOR COMMITTAL

B E T W E E N

THE CHIEF CONSTABLE OF ESSEX POLICE

Applicant

and

ROLAND DOUHERTY

Respondent

**JUDGMENT OF HIS HONOUR JUDGE LEWIS
DATED 9 JUNE 2020**

The applicant was represented by Eve Robinson of Counsel, instructed by the Force Solicitor. The respondent was represented by Stephen Fidler, Solicitor-Advocate.

1. Roland Douherty, on 25 September 2018, His Honour Judge Lochrane made what is commonly known as a ‘gang injunction’ against you and four others.
2. The purpose of gang injunctions is to prevent gang-related violence and drug dealing. Gangs affect not only those caught up in the violence and drug dealing directly, but the wider communities in which they operate.
3. A court can only make a gang injunction if it is satisfied that the evidence establishes that a respondent has engaged in, encouraged or assisted gang-related violence or gang-related drug dealing. The court must also be satisfied that the injunction is necessary to prevent a respondent from being involved in such activity.
4. Gang injunctions are a draconian remedy, imposing restrictions on the lifestyle and activities of those subject to them. It is for this reason that gang injunctions can only be made to last for a maximum of two years, and there is a statutory requirement that the terms and operation of the injunction are reviewed after one year. The gang injunction against you expires on 24 September this year.
5. You are subject to twenty-one prohibitions and two positive requirements. In respect of the matters before me today, I note that the injunction provides that you must not:
 - a. “Associate with any of the following people in a public place or a place to which the public have access:... (b) Sahin Korta-Haupt 19/07/00... save for any court appearances together, appointments with outside agencies at the same time, or whilst attending any school/college (but even then must not

associate together off the premises) or when detailed in custody or with prior authorisation of the police (which will be provided in writing)” (paragraph 1);

- b. “Feature in or make any video or audio material that is uploaded onto the internet by him or another, that is threatening, abusive, insulting, incites violence, promotes criminal activity, shows weapons or makes references to gang affiliations or tensions, ie C17” (paragraph 6);
 - c. “Be in possession of any controlled drugs or paraphernalia used to possess, sell or manufacture controlled drugs including but not limited to cannabis grinders, deal bags.” (paragraph 10); and
 - d. “Wear any article of clothing with an attached hood (whether detachable or not) in a public place or a place to which the public have access unless in inclement weather eg raining” (paragraph 13).
6. Essex Police have now brought six separate applications for you to be committed to prison for alleged breaches of the injunction. The applications were issued in October 2018, April 2019, September 2019, February 2020 and two in May 2020. The three most recent applications are the ones before me today.
 7. I have read all the documents in the bundles for the three applications before me, including the evidence relied upon by the police and your statement.
 8. At a hearing on 27 May 2020, you admitted six counts and I confirmed that I was satisfied beyond reasonable doubt that it had been established that you were in contempt of court in respect of all six breaches. I heard submissions on sentence, but there was insufficient time that day to reflect and give my decision.
 9. On 8 June 2020 you failed to surrender to the court for judgment, contrary to your bail conditions. You were subsequently arrested pursuant to a warrant. I understand that you were in fact arrested outside court and so I have decided not to take this default into account when determining sentence. I note that you have apologised for your lateness.
 10. In respect of the three earlier committal applications:
 - a. On 15 February 2019, you were sentenced by His Honour Judge Lochrane to a £50 fine for breaching paragraph 3 of the injunction by entering a prohibited area on 1 October 2018.
 - b. On 7 June 2019, you were sentenced by His Honour Judge Boora for four breaches of the injunction by entering prohibited areas on 20 and 22 April 2019. You were given four concurrent sentences of 14 days detention, suspended on terms that you comply with the terms of the injunction until its expiry date. That sentence remains suspended today.
 - c. On 3 October 2019, you were sentenced by Her Honour Judge Walden-Smith to 19 weeks detention for breaching paragraph 6 of the injunction by featuring

in or making a video “Bro Code”. The court on that occasion exercised its discretion not to activate the suspended sentence.

11. On 24 October 2019, you purged your contempt in respect of the sentence handed down by Her Honour Judge Walden-Smith. You had reached a deal with Essex Police that you would be released but wear a GPS tracker for 6 months and you gave undertakings to the court to that effect.
12. On 19 February 2020, Essex Police issued the first of the three applications before me today. I only need to concern myself with one of the alleged breaches, which you have admitted, namely that on 12 February 2020 you breached condition 10 of the injunction by being in possession of cannabis at Stansted airport (“Count 1”). You were due to fly to Milan with your girlfriend for Valentine’s day. On 26 February, the Magistrates Court fined you £120 for possession of a controlled drug and ordered you to pay £105 costs.
13. This application to commit was listed for 19 March 2020. At your request, His Honour Judge Parnell agreed to vacate the hearing so it could be listed at a time when your solicitor could attend. The court had planned to relist the case quite quickly. You no longer live in the South East, and because of your concerns about using public transport during the pandemic, you requested that arrangements be made for you and your lawyer to attend the committal hearing by link from your local court, some distance away. Your lawyer agreed proposals with the applicant for the fair management of the hearing, which the court was able to accommodate.
14. A further application to commit was issued on 6 May 2020. Again, I only need to concern myself with one of the alleged breaches, which you have admitted, namely that between 12 February and 25 February 2020, contrary to paragraph 6, you appeared in an Instagram story with Sahin KORTA-HAUPT smoking what was, or was clearly intended to represent, a cannabis joint.
15. The third application commit before me today was issued on 21 May 2020. On that day, you were arrested and brought before District Judge Foss who remanded you on bail. You have admitted all four of the counts covered by the application, namely that on
 - a. 4 May 2020, contrary to paragraph 1(b) you associated with Sahin KORTA-HAUPT in a public place or place to which the public have access, namely the Jet Garage at Loughborough Junction, South London (“Count 3”)
 - b. 5 May 2020, contrary to paragraph 1(b) you associated with Sahin KORTA-HAUPT in a public place or place to which the public have access, namely Papa Johns, Hendon (“Count 4”).
 - c. 20 May 2020, contrary to paragraph 10 you were in possession of cannabis (“Count 5”) and contrary to paragraph 13 you were wearing an article of clothing with an attached hood (whether detachable or not) in a public place or a place to which the public have access, namely Cowley Road, South London, when the weather was not inclement (“Count 6”).

16. There are no sentencing guidelines in respect of contempt of court. It is accepted that I should consider parts of the Sentencing Council guidelines for breach of a criminal behaviour order, which also apply to breach of an anti-social behaviour order. Certainly, the guidelines are useful when considering culpability and harm. The category ranges cannot, however, simply be adopted. The criminal offence has a maximum sentence of five years, whereas the maximum for contempt is two years. The guidelines also provide for community orders, which cannot be made in these committal proceedings.
17. There are three objectives in sentencing a defendant in contempt proceedings: (i) to punish for the breach of a court order; (ii) to secure future compliance; and (iii) rehabilitation: *Solihull v Willoughby* [2013] EWCA Civ 699. I must also weigh the aggravating and mitigating factors of these breaches.
18. Count 1 appears to have nothing to do with gang related activity. You were going on holiday with your girlfriend. Whilst it was a breach of the injunction, it was of a minor nature, your first proven breach relating to drugs, and was unlikely to cause any risk of harm to others. You have been fined for the criminality. I accept I am able to sentence you in respect of the committal, but I do not consider it necessary for a further penalty to be imposed.
19. Count 2 is more serious. You were in the videos with one of the other known members of your gang. You would have been fully aware of the problems appearing in videos given the sentence imposed on you by Her Honour Judge Walden-Smith, although nobody is suggesting that the content of your most recent video was comparable to the one in that case. You explained to me that you did not know that what you were doing breached the injunction, but I do not accept this. It seems to me that this further breach must have been deliberate. Gang related videos can cause real harm. You confirmed that you have thousands of followers online. I am satisfied that your production of a further video so soon after the last one demonstrates a continuing risk of serious anti-social behaviour of the type that the gang injunction is intended to protect against (category 1). I consider you to fall within mid-range of culpability.
20. Counts 3 and 4 are also serious, breaching the restrictions on non-association. You would have been well aware that you were prohibited from meeting Mr Korta-Haupt in a public place yet did so on two occasions. Not only that, you met him a considerable distance from your home. You have explained that you had felt isolated from being in lockdown, that Mr Korta-Haupt is like family to you and that you travelled together back to your home. This might all be true, but it does not explain why you were seen with him in South London, many miles away from where either of you live, particularly if he was coming to see you and your family anyway. The association of gang members in public is a particular problem with gangs, causing harm to communities. I consider both counts to be mid-way in terms of culpability, and in terms of harm.
21. Count 5 relates to the possession of cannabis. You were in the street with others, again many miles from where you live, when there was no reason for you to be there, particularly during lockdown. You have however explained that this would have been the day before your brother's birthday. Nevertheless, I am satisfied that this must

have been a deliberate breach, and your possession of drugs in a street setting demonstrates a continuing risk of anti-social, gang-related drug activity.

22. Count 6 relates to the wearing of an article of clothing with a hood, again many miles away from where you live. You had been arrested a few months before in respect of a hooded top, so you would have known that these are prohibited in public. It was a deliberate breach. I consider it to fall in the mid-range of harm, given that you were in a street setting with others, wearing a hooded top that you know is often associated with your gang's activity. It seems to me that this demonstrates a risk of continuing anti-social behaviour.
23. Looking at aggravating factors, the main one appears to be what can only be described as a history of disobedience and deliberate flouting of court orders. There have been three previous sets of breach proceedings, in respect of two of which you received sentences of imprisonment, one of which was suspended. All six counts before me today were committed whilst you were subject to that suspended sentence. Counts 3 to 6 were committed in the knowledge that committal proceedings had already been brought in respect of other breaches. It is difficult to believe that you meant what you said when you purged your contempt before His Honour Judge Lochrane last year, although I accept there appears to have been a period of compliance after that.
24. In mitigation, I heard oral evidence from you and your mother, who explained how she is going to help you break away from gang activity and turn things around. I could see how upset and worried she is about what has been happening in your life.
25. I acknowledge that you have continued wearing your tag voluntarily for the past month and, significantly, have kept it charged. You have not hidden your whereabouts from the police.
26. I acknowledge that you are only twenty. Whilst you have a lot of life experience, you are still young and perhaps unaware of all the consequences of some of the things that you are doing, and what you are caught up with. I accept that the murder of your younger brother would have greatly affected your well-being. You have accepted that you need to get help with this, although the account that you have given of the steps taken is disputed by the police. I am prepared, however, to accept that this is something that you want to do, even if you have not done as much as you could have done to progress it so far. Any sentence of imprisonment could have a significant effect on you for some years, preventing you from being able to set yourself up for adulthood. For example, you told me that you started at university in February and have been top of your class, presumably through remote study during lockdown.
27. Whilst I accept that imprisonment will cause you hardship, the breaches that you have admitted are for the most part serious, and flagrant. I am satisfied that the custody threshold is crossed, and an immediate custodial sentence is merited. For the court to simply impose a fine at this point would make a mockery of the gang injunction and do nothing to fulfil one of the objectives of sentencing in this type of case, which is to ensure compliance with court orders.

28. Taking into account all of the circumstances, including your mitigation, the least possible sentences I could have imposed had there been a contested trial would be:
- a. In respect of count 2, 60 days.
 - b. In respect of counts 3 and 4, 27 days each, to run concurrently with each other, but consecutively to the other sentences imposed.
 - c. In respect of counts 5 and 6, 21 days, again to run concurrently with each other, but consecutively to the other sentences imposed.
29. You admitted these counts on the first occasion before the court made available to you, and so I discount your sentences by a third, leaving a sentence of 72 days or just over ten weeks in total.
30. I have decided to also activate the suspended sentence. I acknowledge that it relates to breaches arising out of travel to prohibited areas, of which there has been no repetition. You have not, however, complied with the other parts of your order. Your repeated breaches are serious, and it seems right that you now serve the sentence that was imposed on you by His Honour Judge Boora.
31. I need to consider whether to suspend these sentences. Your solicitor has suggested that I make what he said was a “long, suspended order”. He has drawn my attention to the fact that we are in the midst of a pandemic. The Court of Appeal has said that the current conditions in prisons represent a factor which can properly be taken into account in deciding whether to suspend a sentence. In accordance with established principles, it is said that any court will take into account the likely impact of a custodial sentence upon an offender and, where appropriate, upon others as well. Courts should keep in mind that the impact of a custodial sentence is likely to be heavier during the current emergency than it would otherwise be. Those in custody are, for example, confined to their cells for much longer periods than would otherwise be the case. They are unable to receive visits. Both they and their families are likely to be anxious about the risk of the transmission of Covid-19, per the Lord Chief Justice, *R v Manning* [2020] EWCA Crim 592.
32. I will not be suspending the sentence. I do not consider this would be appropriate given your history of poor compliance with court orders and what appears to be the escalating incidents of breach. All six of the breaches before me today occurred when you were already subject to a suspended order. In terms of the pandemic, restrictions are now gradually being lifted, although I accept that the impact of a sentence now would be heavier than usual. That said, four of the breaches occurred during lockdown, and so you would have known that you were putting yourself in a position where you could be detained. During lockdown, you had no difficulty being out and about in Brixton, Hendon and Loughborough Junction, suggesting that your own personal safety was not your paramount concern.
33. I sentence you to 72 days in detention plus the 14 day activated sentence, making 86 days in total. From this I deduct 2 days for time served, making 84 days from today. I consider this to be a just and proportionate sentence given the overall offending behaviour. It will be spent in detention in a Young Offender Institution, of which you will serve up to half in custody before being released on licence.