



Neutral Citation Number: [2020] EWCA Civ 892

Case Nos: B2/2020/0831 (1)  
B2/2020/0835 (2)

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM CHELMSFORD COUNTY AND FAMILY COURT**

**Her Honour Judge Murfitt (1)**

**E01CM274**

**His Honour Judge Lewis (2)**

**E00CM832**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13 July 2020

**Before :**

**LORD JUSTICE FLAUX**  
and  
**LORD JUSTICE PETER JACKSON**

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**Between :**

**Sahin Korta-Haupt (1)**  
**Roland Douherty (2)**  
**- and -**  
**Chief Constable of Essex Police**

**Appellants**

**Respondent**

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**Stephen Fidler (of Stephen Fidler & Co Solicitors) for the Appellants**  
**Eve Robinson (instructed by Essex Police Legal Department) for the Respondent**

Hearing date : 9 July 2020  
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**Approved Judgment**

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be at 10:30am on Monday, 13 July 2020.

**Lord Justice Peter Jackson:**

1. Before the court are two appeals from sentences for contempt of court arising from breaches of Gang-Related Injunctions:
  - (i) On 4 June 2020 Sahin Korta-Haupt was sentenced to 140 days detention in a Young Offenders' Institution by Her Honour Judge Murfitt for seven breaches.
  - (ii) On 9 June 2020 Roland Douherty was sentenced to 84 days detention in a Young Offenders' Institution by His Honour Judge Lewis for six breaches.
2. Having heard submissions on 9 July 2020, we dismissed the appeals. These are my reasons for concurring in that decision.

*Sahin Korta-Haupt*

3. He is aged 19. He became subject to a Gang-Related Injunction imposed by Her Honour Judge Shanks on 10 January 2019 and subsequently reviewed on 17 December 2019 by His Honour Judge Lewis. The injunction continues until January 2021.
4. On 28 October 2019 he was committed to detention for a period of 129 days for breaches of the injunction. On 10 December 2019, he applied to purge his contempt before His Honour Judge Lochrane and was released on giving an undertaking to wear a GPS Tracker for a period of 6 months, as directed and fitted by Essex Police.
5. On 4 June 2020, he appeared before Her Honour Judge Murfitt and admitted to having breached his undertaking and to six breaches of the injunction. In summary:
  - (1) On 4 May 2020, by associating with Roland Douherty in a public place (Loughborough Junction);
  - (2) On 5 May 2020, by associating with Roland Douherty in a public place (Hendon);
  - (3) On 9 May 2020, by associating with Talliq Mwallim in a public place;
  - (4) On 16 May 2020, by associating with Talliq Mwallim in a public place;
  - (5) On 20 May 2020, by failing to make his mobile phone available on request for inspection by a police officer;
  - (6) Between 14 April 2020 and 7 May 2020, in breach of his undertaking, by not wearing his tracker; and
  - (7) On 16 May 2020, by associating with Talliq Mwallim in a public place (Spitalfields).
6. The appellant admitted these breaches and gave evidence in mitigation, including the fact that his girlfriend was pregnant.

7. The judge imposed sentences of 28 days detention in relation to each breach and reduced the total of 28 weeks to 20 weeks to reflect the admissions that had been made.
8. In her careful sentencing remarks the judge directed herself as to the principles of sentencing in this context: punishment proportionate to culpability and level of harm; securing future compliance; and rehabilitation. She considered in detail the appellant's account of wearing the tag but forgetting to charge it, but she found it to be deliberate. She noted his explanation for associating with Douherty at this particular time, as described below. She noted that the breach relating to the mobile phone consisted of hiding it from the police and then throwing it out of a window. She recorded the appellant's evidence that his girlfriend was pregnant and that he would not breach the injunction in future.
9. The judge analysed the nature of the breaches. She considered them to be persistent rather than serious. She reminded herself of the heavier impact of a custodial sentence during the Covid-19 pandemic: *R v Manning* [2020] EWCA Crim 592. However, she did not consider that suspension of the sentence was appropriate.
10. The effect of a sentence of 140 days would be that the appellant would be released on licence by around 13 August 2020.

#### *Roland Douherty*

11. He is aged 20. He became subject to a Gang-Related Injunction imposed by His Honour Judge Lochrane on 25 September 2018 and subsequently reviewed on 24 September 2019. It is due to expire in September of this year.
12. He had been the subject of three earlier committal applications:
  - (1) On 15 February 2019, he was sentenced by His Honour Judge Lochrane to a £50 fine for entering a prohibited area on 1 October 2018.
  - (2) On 7 June 2019, he was sentenced by His Honour Judge Boora for four breaches of the injunction by entering prohibited areas on 20 and 22 April 2019. He received four concurrent sentences of 14 days detention, suspended on terms that he comply with the terms of the injunction until its expiry date.
  - (3) On 3 October 2019, he was sentenced by Her Honour Judge Walden-Smith to 19 weeks detention for making a gang-related video. On that occasion the court did not activate the suspended sentence.
13. On 24 October 2019, he applied to purge his contempt and was released on giving an undertaking to wear a GPS Tracker for a period of 6 months, as directed and fitted by Essex Police.
14. On 20 May 2020, the appellant was arrested for breaches of the injunction. He spent one night in custody before being brought before the court the following day, when he was bailed. On 27 May 2020, he appeared before His Honour Judge Lewis and admitted to six breaches of the injunction:
  - (1) On 12 February 2020, by being in possession of cannabis at Stansted Airport;

- (2) Between 12 February and 25 February 2020, by appearing in an Instagram story with Sahin Korta-Haupt, smoking what was, or was clearly intended to represent, a cannabis joint;
  - (3) On 4 May 2020, by associating with Sahin Korta-Haupt in a public place (Loughborough Junction);
  - (4) On 5 May 2020, by associating with Sahin Korta-Haupt in a public place (Hendon);
  - (5) On 20 May 2020, by being in possession of cannabis; and
  - (6) On 20 May 2020, by wearing an article of clothing with an attached hood in a public place (South London), when the weather was not inclement.
15. The judge heard evidence in mitigation from the appellant and his mother. A particular feature was that the appellant's younger brother had been murdered by stabbing in June 2018 in a gang-related incident. It was said by both appellants that they had met up when they did as it was around the time of the late brother's birthday. The appellant also referred to having started a university course in February 2020.
16. The judge reserved judgment on sentence to 8 June 2020, extending the Appellant's bail conditions to attend. On 8 June, the appellant failed to surrender to his bail, arriving at court approximately two hours late. Upon arrival, he was arrested pursuant to a warrant which had been made by HHJ Lewis in light of his non-attendance. He was brought before the judge on 9 June 2020, when these sentences were passed:
  - (1) Breach 1 – No penalty
  - (2) Breach 2 – 60 days
  - (3) Breaches 3 and 4 – 27 days on each count, to run concurrently with each other, but consecutively to the other sentences;
  - (4) Breaches 5 and 6 – 21 days on each count, to run concurrently with each other, but consecutively to the other sentences.

A discount of one-third was given for the admissions leaving a total sentence at 72 days.
17. The judge also activated the suspended sentence passed by His Honour Judge Boora on 7 June 2019. The total sentence was therefore one of 86 days detention, which was reduced by two days for time spent on remand.
18. On 26 February 2020, the appellant had pleaded guilty in the Magistrates Court to possessing cannabis and was sentenced to a fine of £120.00 and an order to pay costs of £105.00. This explains the nil sentence on Count 1.
19. In his careful sentencing remarks the judge noted the appellant's apology for his lateness and stated that he had not taken the breach of bail into account. He directed himself appropriately in relation to the purpose and principle of sentencing. He distinguished the first count, which was not gang-related and for which a separate

sentence had been passed, from the making of a video, which was more serious in the light of the history, and from the association with another gang member far from home. The possession of cannabis and use of a hood (again a repeat breach) were deliberate. The main aggravating factor was the history of disobedience and deliberate flouting of court orders, including during the period of a suspended sentence. In mitigation, account was taken of the evidence of the appellant's mother, his continuing to wear the tag, his efforts to go to university, and his age. Consideration was also given to the heavier impact of a custodial sentence during the pandemic.

20. The effect of a sentence of 84 days would be that the appellant would be released on licence by around 21 July 2020.

*The appeal: Korta-Haupt*

21. On behalf of this appellant, Mr Stephen Fidler submits that:
- (1) He was entitled to a full one-third discount for early admissions (an additional 9 days).
  - (2) The judge was obliged to pass concurrent sentences for breaches 1 and 2 as they were committed with the same person on the same occasion. Her decision to make the sentences consecutive gives rise to a disparity with the sentences passed on the other appellant for the same breaches.
  - (3) Insufficient weight was given to personal mitigation and to the effects of Covid-19 on persons in custody.
  - (4) A part-suspended sentence should have been considered as a means of securing compliance with the injunction after release.
  - (5) A reduction of one day should have been made to reflect time spent on remand after arrest.

*The appeal: Douherty*

22. On behalf of this appellant, Mr Fidler submits that:
- (1) The judge should have given more weight to the effect on the appellant and his family of the death of his brother.
  - (2) Insufficient weight was given to the effect of Covid-19 on persons in custody.
  - (3) Insufficient weight was given to personal mitigation concerning the efforts the appellant had made to improve his life by going to university, or to his having complied with his undertaking to wear a tag.
  - (4) A suspended sentence should have been considered.
23. Ms Eve Robinson made helpful written submissions and firm oral submissions in opposition to the appeals. She points out that the judges were each in a good position to assess the seriousness of the breaches and the weight to be given to mitigation,

having heard the appellants give evidence and having had previous dealings with both of them.

*Decision*

24. The maximum penalty for contempt of court is a custodial sentence of two years.
25. This court will generally only interfere with a sentence of this kind if the judge made an error of principle, took into account immaterial factors or failed to take into account material factors, or reached a decision which was plainly wrong in that it was outside the range of decisions reasonably open to the judge: *Liverpool Victoria Insurance Co Ltd v Zafar* [2019] EWCA Civ 392 at [44].
26. Seen in that light, these appeals are without merit. Both judges approached the sentencing exercise in a meticulous and principled manner. In each case, the appellants' behaviour demonstrated deliberate and persistent disregard for the law and in each case there had been previous breaches. Both had been given chances by the court and neither had taken them. There was no alternative to a custodial sentence and no basis upon which it could have been suspended.
27. Equally, I reject Mr Fidler's suggestion that part-suspended sentences should have been considered. By CPR 81.29(1) the execution of a committal order may be suspended for such period or on such terms or conditions as the court may specify. This does not provide the court with a power to impose an immediate sentence followed by a suspended sentence, either when sentencing or reviewing a sentence on an application to purge. That was made clear by Thorpe LJ in *Harris v Harris* [2001] EWCA Civ 1645; [2002] Fam 253 at [21]:

“In my opinion it is of great importance that the powers of the court and the rights of the contemnor should be as clear and as certain as is consistent with the need to design orders that do justice and reflect the infinite variety of fact and circumstance displayed by individual cases. Whilst arguably the power to create, sometime after the imposition of the original custodial sentence, a sentence partly immediate and partly suspended would be a useful refinement, in my opinion the gain would be outweighed by the introduction of complications which would certainly complicate a contemnor's judgement as to whether or not to apply to purge and which would arguably risk an increase of litigation in this already over-burdened field.”

But even if the power existed, there was no argument for it being used in the present cases. Both appellants had breached the injunctions before, both had served periods in custody for that and both had been released early while promising future compliance. In the case of the second appellant, he had already been given a suspended sentence and breached it.

28. Nor do I accept the submission that the first appellant was entitled to receive concurrent sentences for breaches 1 and 2 in the same manner as the second appellant. These breaches were committed at separate public places in the course of a road trip occurring on more than one day. It was a matter for the judge as to whether she

sentenced for two breaches (which they were from the point of view of the public) or treated them as one continuous breach (which they were from the point of view of the appellants). One judge chose one approach, the other chose another; neither was wrong. Nor was there any disparity. The difference in the sentences can be said to reflect the difference in the breaches; in particular, the breach of the first appellant's undertaking to wear a tag.

29. As to mitigation, substantial and adequate discount was given for the admissions. When sentencing for contempt of court, there is no hard and fast rule as to the extent of the reduction, and the fact that in the case of the first appellant it fell marginally short of a full one-third is not wrong in principle, even assuming he can be said to have admitted the breaches at the first opportunity. In fact, his admissions were very far from complete, as seen by his untruthfulness in evidence about the phone and the tag. Had the judge given a lesser reduction for the admissions that were made, she could not have been criticised.
30. Next, both judges gave consideration to the impact of Covid-19 on any custodial sentence. The significance of the pandemic, as was made clear in *Manning*, is that the impact of a sentence is likely to be heavier because of conditions in detention, lack of visits and anxiety. There is no entitlement to a 'Covid discount' – it all depends on the circumstances. In this case, there were no individual features of either appellant's situation that suggested a reduction was called for. The emergency had not prevented them from travelling the country during lockdown and the additional burden of the pandemic on them and their families during a relatively short period of detention was not significant.
31. The personal mitigation offered was considered and rightly found to be of little weight in each case. There was nothing to prevent the appellants meeting in private. The sad death of the second appellant's brother strongly underscores the harm that gang activities can bring and can no longer provide an excuse for breaches of the injunctions.
32. Whether the sentences were assembled consecutively or concurrently, the real question was whether they were in totality proper sentences for these contempts by these contemnors. In my view they undoubtedly were.
33. Finally, the first appellant is not entitled to a reduction of a day for time spent on remand. Contempt proceedings differ from criminal proceedings in this respect: *R (James) v Governor of Birmingham Prison* [2015] EWCA Civ 58 at [30]. The judge might have reduced the sentence by a day but she was not obliged to do so.
34. I would dismiss the appeals.

**Flaux LJ**

35. I agree.
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