

Mountjoy V Mountjoy (1997)

AC9000183

25/07/1997

Barristers

Nicholas Fairbank

Court

Court of Appeal

Summary

Appropriate sentence for breach of injunction not to harass estranged spouse.

Facts

Appeal from a decision of Nash J in the Canterbury County Court on 18 July 1997. The appellant sought to reverse the decision in respect of a sentence of 6 months' imprisonment passed on him upon breach of an injunction in respect of his wife, the respondent. It had become clear that the marriage between the parties had broken down and this breakdown was punctuated with violence and threats of violence from the appellant to the respondent and her three children. The court of first instance ordered an injunction against the appellant, forbidding him from harassing the respondent and her two children from a previous relationship and from entering the former matrimonial home. The breach in question occurred on 14 July 1997. It was alleged that the appellant had forced the respondent, who was travelling in her car with her children, to stop at a junction, intending to discuss arrangements for contact with his child of the marriage, a 22-month old baby. The appellant removed the keys to the car through the driver's window. The respondent resisted and a struggle ensued, in which the respondent's arm was pulled through the window and bruised. The respondent further alleged, inter alia, that the appellant had threatened to kill her, but this was not admitted by the appellant. Nash J rejected the appellant's plea that he had not understood the effect of the injunction. He further commented that the court will not tolerate such a breach of an order, and stressed the seriousness of doing so. He then concluded that there must therefore be a sentence of imprisonment, and said that it would be wholly inappropriate to suspend the sentence. He took account of the appellant's apology to the court, and suggested that this prevented the sentence from being any longer. Even so, he felt that the minimum sentence he could give was 6 months' imprisonment, and urged that the case be exemplary of the importance of the breach of such an injunction.

Held

The judge was correct in rejecting the plea that it was unfair to expect the appellant to understand the force of the injunction without legal advice; it was written in plain language, and needed no further clarification. (2) Further, the judge was correct in treating the offence as a breach of the order, and not as the events which constituted it. (3) The judge may have been in error in deciding that imprisonment

could be the only remedy. (4) The main criticism of the judge's reasoning however was that he had failed to regard the mitigating factors besides the apology that was given to the court. Valid mitigating factors of which the judge should have taken account included that that this was the first breach, that it was not premeditated, that it was an over-emotive response to the difficulties of the breakdown and the contact arrangements for the child, that the offence was not serious enough on its own to justify such a sentence, and that the appellant had decided not to contest the majority of the allegations. Further, proper attention was not paid to the question of whether the sentence should be suspended. (5) The 6 month sentence was disproportionate to the offence. The judge had been inconsistent as to what should be taken into account in setting a sentence, and appeared to be confused between punishment for the breach of the injunction and punishment for the events which comprised the breach. Walden LJ therefore decided that the sentence should be shortened to fourteen days, and given that the appellant had already served seven days, he would be released forthwith. He hoped that a lesson would be learned by the appellant, and stressed that the appellant must respect the order of the court not to harass in any way the respondent and her children.

Permission

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