

R. v DEAN BONES AND OTHERS

required an exercise of judgement or evaluation. That did not require proof beyond a reasonable doubt. In *A v Acton Youth Court* (unreported, April 26, 2005) it had been said that the actual and potential consequences of an order made it particularly important that procedural fairness should be scrupulously observed. In *(Shane Tony)* [2004] 2 Cr. App. R. (S.) 63 (p.343) the Court had stated that the terms of the order must be precise and capable of being understood by the offender, the findings of fact giving rise to the making of the order must be recorded, the order must be explained to the offender, the exact terms of the order must be pronounced in open court and a written order must accurately reflect the order as pronounced. Because an order must be precise and capable of being understood, a court should ask itself before making an order “are the terms of this order clear so that the offender will know precisely what it is that he is prohibited from doing?” The Home Office had published guidance on the use of anti-social behaviour orders.

H6 An order under s. 1C took effect on the day on which it was made, but a court might provide that requirements be suspended until the offender was released from custody. The Court had observed that where custodial sentences in excess of a few months were passed and offenders were liable to be released on licence, the circumstances in which there would be a demonstrable necessity to make a suspended anti-social behaviour order to take effect on release would be limited, although there would be cases in which geographical restraints could properly supplement licence conditions. In *Vittles* [2005] 1 Cr. App. R. (S.) 8 (p.3!) a suspended order had been upheld.

An order had effect for the period specified, not less than two years, or until further order. In *lonergan v Lewes Crown Court* [2005] EWHC 457 (Admin), it was said that just because an order must run for a minimum of two years, it did not follow that each prohibition must endure for the life of the order.

H8 The essential requirement of the section was that an order could be made only if it was necessary to protect persons in any place in England and Wales from further anti-social acts by the offender. The test for making an order prohibiting the offender from doing something was necessity. Each separate order prohibiting a person from doing a specified thing must be necessary to protect persons from further anti-social acts by him. Any order should be tailor-made for the individual offender, not designed on a word processor for use in every case. The court must ask itself when considering any specific order prohibiting the offender from doing something, “is this order necessary to protect persons in any place in England and Wales from further anti-social acts by him?” The purpose of an order was not to punish an offender. This followed from the requirement that the order must be necessary to protect persons from further anti-social acts by him. The Court had been told that the imposition of an order was sometimes sought by the defendant’s advocate at the sentencing stage, in the hope that the court might make an order as an alternative to a custodial sentence. A court must not allow itself to be diverted in this way—it might be better to decide the appropriate sentence and then move on to consider whether an order should be made or not after the sentence had been passed, albeit at the same hearing.

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