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2016 IL App (3d) 140157-U

Order filed January 14, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2016

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0157
)	Circuit No. 14-CC-8
MARK WILLIAMS,)	Honorable
Defendant-Appellant.)	Domenica Osterberger, Judge, Presiding.

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice Wright concurred in part and dissented in part.

ORDER

¶ 1 *Held:* Due to fitness concerns, which are apparent from the record, the trial court erred in holding defendant in contempt and sentencing him to four days in jail.

¶ 2 Defendant, Mark Williams, appeals from the trial court's finding of direct criminal contempt. We reverse and remand.

¶ 3 **FACTS**

¶ 4 We initially note that the record on appeal only contains the report of proceeding and common law record relevant to defendant's contempt conviction.

¶ 5 On February 7, 2014, defendant appeared before the court for a pretrial hearing on several traffic offenses. At the hearing, defendant was represented by public defender Nicole Philp. At the beginning of the hearing, defendant motioned the court to appoint a different assistant public defender to his case. The court denied defendant's motion, and defendant interrupted the court as it attempted to explain that defendant was not entitled to the appointment of a different public defender as a matter of right. Defendant said he did not understand and that counsel told him that she was "not competent to handle [his] needs." The court attempted to further explain defendant's rights, but defendant continued to interrupt. At one point, defendant objected to representing himself, explaining that he had not gone to law school. The court overruled the objection and tried to tell defendant that he could continue with his current public defender. Defendant interrupted the court's statement, and the court eventually warned defendant that if he continued to interrupt, it would hold defendant in contempt of court. The court then explained to defendant that he could represent himself, hire a private attorney, or proceed with his current public defender. Defendant said that the court was "forcing something upon [him] that [he] don't want." The court asked defendant to make a decision, and defendant demanded that the court appoint another attorney. The court denied defendant's request and eventually continued the case. Before the end of the hearing, the court warned defendant a second time that if he continued to argue, it would hold him in contempt.

¶ 6 On February 10, 2014, the case was called for a further hearing. At the beginning of the hearing the court asked defendant if he had a chance to consider whether he would represent himself, stay with his current public defender, or hire a private attorney. Defendant responded "I

demand my rights at all the time. I do not wish to waive any of my rights at any time."

Defendant also demanded to have counsel, but reasserted that he did not want Philp to represent him. The court said that it would not assign a new public defender to the case and asked defendant how he wanted to proceed. Defendant said he could not afford an attorney and demanded "to have [his] rights at all times." Defendant then said "I demand to have a counsel, but I do not want this lady to represent me." The court explained that defendant could represent himself or hire a private attorney, and defendant responded "I'm being forced to represent myself?" The court explained that defendant had the option to represent himself, but he needed to make a decision. Defendant responded that his decision was made, he demanded "to have [his] rights at all times" and he was "not waiving any of [his] rights." After a further colloquy, where the court re-explained defendant's right to counsel and asked defendant to elect how he wanted to proceed, defendant asserted that he answered the court's question. The court held defendant in direct criminal contempt of court explaining that defendant refused to address the question of whether he wanted to represent himself, hire a lawyer, or continue with Philp. The court also noted that defendant continued to interrupt the court.

¶ 7 Before the court entered a sentence on its contempt finding, defendant made a statement. In the statement, defendant said "[a]ll I ask is that I don't want to have [Philp], as my attorney." The court sentenced defendant to four days in jail.

¶ 8 At the conclusion of the contempt proceeding, the court said "I am concerned about your ability to communicate with the Court and with counsel," and the court wondered whether defendant had a "fitness issue." However, the court said it did not have any basis for finding a *bona fide* doubt "today." The court then asked defense counsel if she was "requesting on behalf of the defense to have the defendant examined for purposes of assisting the Court in finding

whether there is a *bona fide* doubt as to fitness?" Defense counsel responded "[y]es, Judge[.]" and the court ordered a fitness examination to determine "whether or not there is a *bona fide* doubt as to fitness." Defendant objected to the court's order. The fitness evaluation was not made part of this record. After the hearing, defendant filed a notice of appeal.

¶ 9

ANALYSIS

¶ 10

Defendant argues that the evidence was insufficient to support the trial court's contempt finding. After reviewing the record, we find that the prevailing fitness concerns do not permit a contempt finding and sentence at this point in the proceeding. We therefore reverse and remand the cause for further proceedings pending the outcome of defendant's fitness evaluation.

¶ 11

Criminal contempt of court is defined as conduct calculated to embarrass, hinder or obstruct a court in its administration of justice or to derogate from its authority or dignity, thereby bringing the administration of law into disrepute. *People v. Simac*, 161 Ill. 2d 297, 305 (1994). To sustain a contempt charge, the contemnor must intend or at least know that the nature of his act is forbidden. *People v. Sheahan*, 150 Ill. App. 3d 572, 574 (1986). Generally, a contemnor's intent can be inferred from the contemptuous conduct, particularly in the case of direct criminal contempt, where the contemptuous conduct is committed in the physical presence of the court. *Id.* As a result, summary proceedings do not violate a contemnor's right to procedural due process. *Id.* at 574-75. However, where the record establishes a "substantial issue" as to defendant's mental capacity to commit contempt, "it cannot be said that all of the elements are within the court's knowledge." *People v. Willson*, 302 Ill. App. 3d 1004, 1006 (1999). Where fitness concerns are present, contempt may not be summarily punished and the court must afford defendant his due process rights, including a hearing and a right to present a defense. *Id.*

¶ 12 In this case, the record establishes that defendant repeatedly indicated that he did not understand his right to counsel. In spite of the court's explanations that defendant did not have the right to a different public defender, defendant continually interrupted and reasserted his perceived right to the appointment of a new public defender. Even after the court threatened defendant with contempt and ordered a continuance to allow defendant to consider his decision, defendant refused to answer the court's question and reasserted that he had the right to new counsel. Defendant's interactions with the court indicated that defendant was incapable of communicating with the court or working with Philp to prepare his defense. The court recognized these fitness concerns when it suggested that Philp should request a fitness evaluation. Although the court stated that it was not finding a *bona fide* doubt as to defendant's fitness, the record establishes that the court had notice that defendant might be mentally ill. See *People v. Brown*, 236 Ill. 2d 175, 186-87 (2010) (factors indicating a *bona fide* doubt of fitness include defendant's irrational behavior and demeanor at trial, but also noting that no fixed or immutable sign invariably indicates the need for inquiry on a defendant's fitness). As a result of these fitness concerns, the court erred when it determined that defendant was capable of forming the requisite intent to commit direct criminal contempt. See *Willson*, 302 Ill. App. 3d at 1006. Instead, the court should have stayed the proceedings until defendant was found fit to stand trial at which point defendant could put on a defense that he lacked the mental capacity to commit the alleged contemptuous conduct. Ultimately, defendant's unfitness does not preclude a finding of direct criminal contempt, but delays the proceedings until such time as defendant is found fit. *Willson*, 302 Ill. App. 3d at 1006.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Will County is reversed and remanded for further proceedings pending the outcome of defendant's fitness evaluation.

¶ 15 Reversed and remanded.

¶ 16 JUSTICE WRIGHT, concurring in part and dissenting in part.

¶ 17 I take judicial notice of the circuit clerk's records showing defendant came before the court in 2013 on two traffic offenses. These tickets were prosecuted by counsel for the Village of Frankfort in Will County case Nos.13-TR-97992 and 13-TR-97993. When appearing before the court on February 7, 2014, defendant repeated that he could not afford an attorney. Defendant politely reminded the judge that he did not want the currently assigned assistant public defender to represent him on the Village tickets. Defendant previously informed the court that he objected to this defense attorney on the grounds that the assistant public defender personally told defendant she was not competent to represent him on those charges. Defendant advised the judge that he had not gone to law school and could not represent himself.

¶ 18 The judge told defendant he was not entitled to a public defender of his choice. The court unsuccessfully attempted to have defendant state on the record that he would represent himself. This defendant did not repeat the exact words the court was hoping to hear.

¶ 19 Subsequently, the court told defendant she would find him in contempt of court for refusing to answer her questions and interrupting her. She directed defendant to wait in the jury box until she could sign a court order and announce a sentence for direct criminal contempt. Defendant complied and waited in the jury box.

¶ 20 The court called defendant back before the court and gave him a chance to make a statement before sentencing him for direct criminal contempt. During the exchange that followed, defendant stated, "Then can I ask the Court to vacate its order for contempt and I will

state that I do not want Ms. Philip to represent me? I can't afford a counselor of my own so, therefore, I will be forced to represent myself. Can I represent myself?" The court ignored this statement and imposed a four-day jail sentence.

¶ 21 Just before defendant was taken into custody to begin serving the four-day jail sentence, the defendant repeated that his "offer still stands" and he would agree to represent himself. The court ignored this statement as well. The court explained that the judge would see defendant in court the following week, after defendant finished serving his contempt sentence, because the court had concerns about defendant's fitness to stand trial. When defendant returned to court on February 10, 2014, the court ordered a fitness examination.

¶ 22 Based on this record, I conclude the trial court erred by finding this offender guilty of direct criminal contempt because defendant's conduct does not support that finding as argued by the defense on appeal. I also note the judge compounded the error with a blatant abuse of discretion concerning the proper punishment. Incarceration is the harshest option available to the court for direct criminal contempt. Here, the court sentenced defendant to jail and then observed, moments later, that she had concerns about his mental fitness.

¶ 23 On June 19, 2014, the court received the fitness evaluation which was ordered on February 10, 2014. The minute entry on the Village of Frankfort tickets does not indicate the evaluator's conclusions. However, I note the parties did not participate in a fitness hearing for nearly a year. Finally, on March 20, 2015, the court conducted a hearing and determined defendant to be fit to stand trial. A jury trial took place in October 2015 and defendant was found guilty in case No. 13-TR-97993 on that date. Defendant has not challenged that conviction in this appeal and the Village of Frankfort dismissed the traffic violation in case No. 13-TR-97992.

¶ 24 Based on this procedural history, I respectfully dissent because it appears it is no longer necessary to remand with directions for the trial court to determine defendant's fitness with respect to case No. 14-CC-8. On this basis, I specially concur in the result to vacate defendant's conviction for direct criminal contempt in this case, but respectfully dissent on the issue of remand.