NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 120804-U

NO. 4-12-0804

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 28, 2014
Carla Bender
4th District Appellate
Court, IL

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | Champaign County |
| PAUL D. SHAW, | ) | No. 11CF1166 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | Thomas J. Difanis, |
| | ) | Richard P. Klaus, |
| | ) | Judges Presiding. |

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Appleton and Justice Pope concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court erred by not allowing defendant to make a statement in allocution before summarily imposing sanctions pursuant to its finding of contempt.

¶ 2 In September 2011, defendant, Paul D. Shaw, pleaded guilty to theft of property having a value exceeding $500. Pursuant to a plea agreement, the trial court sentenced defendant to a 30-month probation term conditioned on defendant serving 180 days in custody. In April 2012, the State filed a petition to revoke defendant's probation.

¶ 3 During the April 25, 2012, arraignment proceedings on the State's petition to revoke probation, the trial court held defendant in direct criminal contempt of court. As a contempt sanction, the court ordered defendant to serve 30 days in custody of the Champaign County jail. Defendant appeals, arguing the court erred by (1) finding him in contempt, and (2)

imposing punishment on the contempt finding without first allowing him to make a "statement in mitigation," often referred to as a statement in allocution. We reverse.

¶ 4 I. BACKGROUND

¶ 5 In July 2011, the State charged defendant with theft of property having a value exceeding $500, a Class 3 felony (count I) (720 ILCS 5/16-1(a)(1), (b)(4) (West 2010)), and theft with a prior robbery conviction, a Class 4 felony (count II) (720 ILCS 5/16-1(a)(1), (b)(2) (West 2010)). In September 2011, defendant agreed to plead guilty to count I. In exchange for his plea, the State agreed to recommend a sentence of 30 months' probation conditioned on defendant serving a 180-day term in the Champaign County jail and to dismiss count II. After admonishing defendant pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997) and accepting the State's factual basis, the trial court entered a judgment reflecting the parties' agreement. As a condition of his probation, defendant could not violate any criminal statute of any jurisdiction.

¶ 6 On April 25, 2012, the State filed a petition to revoke defendant's probation. The petition alleged defendant violated the terms of his probation by committing two criminal violations—two counts of disorderly conduct, a Class C misdemeanor (720 ILCS 5/26-1(a)(1), (b) (West 2012)).

¶ 7 That same day, defendant was arraigned on the State's petition to revoke. During the proceedings, at which defendant appeared via closed-circuit television, the following exchange took place:

> "THE COURT: Paul Shaw, 11 CF 1166. Mr. Shaw, the State's filed a petition to revoke your probation in this case. You were previously convicted of the offense of theft over 500 dollars,

a class three felony, for which you would be eligible for an extended term, resentencing of two to ten years in the Department of Corrections, if the State would prove by a preponderance of the evidence, meaning more likely true than not true that you violated the terms of your probation. It's alleged that on April 24th you committed two separate disorderly conduct offenses.

* * *

Mr. Shaw, do you want time to hire your own attorney, or do you want me to consider appointing the Public Defender's Office to represent you?

[DEFENDANT]: Is it possible I can get an OR [(release on own recognizance)]?

THE COURT: That's not what I'm asking you about. I don't know yet what your bond is going to be, because I haven't heard anything about this case, and I haven't heard—

[DEFENDANT]: Oh.

THE COURT: I'm asking you about an attorney, sir. Do you want time to hire your own attorney, or do you want me to consider appointing the—

[DEFENDANT]: (Inaudible) I'll get an attorney, a public defender.

THE COURT: Sir, based upon your affidavit, I will appoint the Public Defender's Office to represent you."

¶ 8 The trial court and the State then discussed a date on which to hear the State's petition to revoke defendant's probation. After the discussion, the following exchange occurred:

"THE COURT: Your case is set to May 23d at 9:30. May 23d at 9:30 a.m. in Courtroom B.

[DEFENDANT]: Is it possible I can get this over with today and do a plea.

THE COURT: Well, I'll tell you what. I'm going to set your case to May 23d at 9:30 a.m. in Courtroom B. Mr. Rosenbaum, who's the Public Defender for the county, is sitting here. His people will be in contact—

[DEFENDANT]: You need to do something, man. I can't go to May 23d, man, that's too long, man.

THE COURT: Mr. Shaw, if you interrupt me one more time, May 23d's [*sic*] is going to be the least of your problems. I'm going to hold you in direct criminal contempt, I'm going to sentence you to six months in jail for which you're not eligible for good time, and you will get out in October, without a trial, and without counsel. So you, now, will be quiet while I listen to the rest of this. Ms. Weber.

* * *

MS. WEBER [(prosecutor)]: As to bond, Your Honor, he has one pending [ordinance violation] case for possession of public alcohol. That's next set for May 1st in Courtroom L. As to

prior[s], he has a 2011—well, the 2011 theft over that he's on probation for now, a 2010 aggravated assault, a 2005 manufacture or delivery of a controlled substance out of Cook County—

[DEFENDANT]: Hey, you going to (unintelligible) me, man.

MS. WEBER: —a 2003 robbery out of Cook County.

[DEFENDANT]: Straight up.

MS. WEBER: A 2000 armed robbery.

THE COURT: Mr. Shaw. You are in direct criminal contempt of court. You are sentenced to do a term of 30 days in the county jail. You open your mouth again it will be 60 days. Keep going, Ms. Weber.

MS. WEBER: Yes, Your Honor, and a 1999 juvenile adjudication for robbery, for which he was sentenced to the Department of Juvenile Justice."

¶ 9 Later that day, the trial court entered a written order memorializing its contempt finding. The order of adjudication stated, in pertinent part, as follows:

"3. The Defendant appeared in Arraignment Court through closed-circuit video. The Defendant refused to stop talking and *repeatedly interrupted* the court. The Court warned the Defendant that he could be found in contempt of Court. The Court admonished the Defendant to not interrupt again. The Defendant

*again loudly interrupted the proceeding*. The Court then found the Defendant to be in direct criminal contempt.

THE COURT FINDS THAT:

4. The conduct of the Contemnor, which occurred in the presence of this Court while the Court was in open session, impeded and interrupted this Court's proceedings, lessened the dignity of the Court and tended to bring the administration of justice into disrepute.

IT IS THEREFORE ORDERED AND ADJUDGED that Paul D. Shaw, is, by reason of his willful and contemptuous conduct, hereby adjudicated to be in the direct criminal contempt of Court.

JUDGMENT ENTERED ON THE FINDINGS.

It is further ORDERED and ADJUDGED that as a sanction for such contempt, Paul D. Shaw is sentenced to a period of 30 days in the Champaign County Jail commencing this date."

(Emphases added.)

¶ 10 In May 2012, defendant filed a motion to reconsider the sentence imposed pursuant to the finding of contempt. Specifically, defendant sought clarification on the issue of day-for-day credit for good conduct because the order was silent on the issue and the trial court had previously stated defendant would not be eligible for credit. Defendant also argued his sentence should be reconsidered because the court did not allow defendant an opportunity to offer a statement in allocution before it imposed sanctions, in violation of Sixth Judicial Circuit

Rule 8.1(b)(2). Further, defendant asserted, had he been afforded the opportunity to make a statement in allocution, he would have apologized for interrupting the proceedings.

¶ 11 A May 8, 2012, docket entry indicates the trial court considered defendant's motion to reconsider the sentence imposed pursuant to the contempt finding. The entry clarifies defendant was entitled to day-for-day good-conduct credit. The entry further states that the portion of the motion seeking a reconsideration of the sentence was denied.

¶ 12 On May 23, 2012, the parties appeared on the State's petition to revoke. Defendant admitted the violations contained in the petition. The trial court thereafter revoked defendant's probation and continued the matter for resentencing on the 2011 theft conviction. In June 2012, the trial court resentenced defendant to a seven-year prison term, with 151 days' credit (including credit for the 30-day jail sanction imposed after the contempt finding). Defendant filed a motion to reconsider sentence, which was denied following an August 2012 hearing.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant argues (1) the evidence does not support a finding of direct criminal contempt; and (2) even if the evidence does support the finding of direct criminal contempt, the trial court abused its discretion when it violated Sixth Judicial Circuit Rule 8.1 and imposed sanctions for contempt without first allowing defendant to offer a statement in allocution. The State responds the appeal should be dismissed as moot, or in the alternative, defendant's conduct justified the court's finding of direct criminal contempt. The State further argues, if the appeal is not dismissed, defendant forfeited his claim that the court violated Sixth Judicial Circuit Rule 8.1 and, alternatively, defendant was not prejudiced since the court

considered his motion to reconsider that included an allegation that he would have apologized to the court had he been given the opportunity to make a statement in allocution.

¶ 16 A. Mootness

¶ 17 As a preliminary matter, we consider whether this appeal is moot. The State contends the appeal is moot because defendant has served his 30-day sentence imposed pursuant to the trial court's contempt finding. The State further argues the cause does not fit within an exception to the mootness doctrine and, thus, we must dismiss the appeal. We disagree.

¶ 18 An adjudication of contempt imposing a fine or imprisonment is an appealable order. *People v. Buckley*, 164 Ill. App. 3d 407, 412, 517 N.E.2d 1114, 1117 (1987). "[A]n appeal from a contempt order is ordinarily considered moot where the party held in contempt has served the sentence." *In re J.L.D.*, 178 Ill. App. 3d 1025, 1030, 534 N.E.2d 190, 193 (1989). A recognized exception to the mootness doctrine is the public-interest exception, which allows appellate review of an otherwise moot order where (1) the question presented is of a public nature; (2) an authoritative determination is needed for the future guidance of public officials; and (3) the question is likely to recur. *In re Alfred H.H.*, 233 Ill. 2d 345, 355, 910 N.E.2d 74, 80 (2009).

¶ 19 In this case, the question presented is of a public nature because it involves a trial court's contempt power and the due-process rights a contemnor must be afforded in such proceedings. An authoritative determination is needed to guide trial courts in the exercise of their contempt power, which is unique and should not be exercised lightly. Finally, the question is likely to recur given the fact the trial court failed to recognize and apply its own court rule. We will consider defendant's appeal.

¶ 20 B. Forfeiture

¶ 21 The State also argues defendant forfeited his claim the trial court failed to allow him to offer a statement of allocution. Specifically, the State contends defendant "had the benefit of counsel, Randall Rosenbaum, who did not object when the court imposed a 30-day [jail sanction] for contempt, without affording defendant an opportunity to make a statement in mitigation."

¶ 22 Defendant did not forfeit his claim—he raised the issue of the trial court's failure to allow him to make a statement in allocution in his May 2012 motion to reconsider. We deem this sufficient to preserve defendant's claim of error.

¶ 23 C. The Sufficiency of the Evidence

¶ 24 Defendant argues we must vacate his adjudication and sentence for direct criminal contempt because the evidence in this case does not support a finding of contempt. Specifically, defendant argues the trial court erred by holding him in contempt where he (1) did not intend to hinder the judge's ability to administer justice, and (2) did not embarrass, hinder, or obstruct the administration of justice. We disagree.

¶ 25 "It is well established that all courts have the inherent power to punish contempt; such power is essential to the maintenance of their authority and the administration of judicial powers." *People v. Simac*, 161 Ill. 2d 297, 305, 641 N.E.2d 416, 420 (1994). The supreme court has defined direct criminal contempt "as conduct which is calculated to embarrass, hinder or obstruct a court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute." (Internal quotation marks omitted.) *Id.* Direct criminal contempt involves conduct occurring in the presence of the judge. *Id.* at 306, 641 N.E.2d at 420. Consequently, direct criminal contempt may be summarily found and punished "because all elements are before the court and, therefore, come within its own

immediate knowledge." *Id*. Review of direct criminal contempt orders requires this court to determine "whether there is sufficient evidence to support the finding of contempt and whether the judge considered facts outside of the judge's personal knowledge." *Id*.

¶ 26 "Before citing one with contempt, a court must find that the alleged contemnor's conduct was willful." *Id*. at 357, 641 N.E.2d at 421. An alleged contemnor's state of mind need not affirmatively be proved, but rather may be inferred from the allegedly contemptuous conduct itself. *Id*. In other words, whether contempt has been committed depends on the act itself, and not upon the alleged intent of the contemnor. *People ex rel. Kunce v. Hogan*, 67 Ill. 2d 55, 60, 364 N.E.2d 50, 52 (1977).

¶ 27 In this case, the evidence, while not demonstrating egregious conduct by defendant, is minimally sufficient to support the trial court's finding of contempt. The record contains no indication the court considered any evidence other than what occurred during the arraignment proceedings. Defendant interrupted the proceedings despite the court's warning that if he continued to be disruptive, it would find him in contempt and sentence him to a term in the county jail. This supports an inference defendant's conduct was willful. The fact that defendant did not speak again after the court imposed sanctions for the contempt finding further supports this inference.

¶ 28 D. A Trial Court Must Permit a Contemnor To Make a Statement in Allocution Before Summarily Imposing Sanctions for Contempt

¶ 29 Defendant argues the trial court erred by not permitting him to make a statement in allocution before summarily imposing sanctions for contempt, citing Sixth Judicial Circuit Rule 8.1 (6th Judicial Cir. Ct. R. 8.1(b)(2) (eff. Nov. 1, 1992)). We agree.

¶ 30 The Sixth Judicial Circuit has adopted local rules governing contempt proceedings. Rule 8.1 governs direct contempt proceedings and states, in pertinent part, "prior to

imposition of sanctions, the court shall permit the contemnor an opportunity to present a statement in mitigation." 6th Judicial Cir. Ct. R. 8.1(b)(2) (eff. Nov. 1, 1992). In this case, the trial court did not comply with Sixth Judicial Circuit Rule 8.1(b)(2)—it imposed sanctions pursuant to the contempt finding without first allowing defendant to offer a "statement in mitigation." Thus, the court committed error. *People v. Schroeder*, 2012 IL App (3d) 110240, ¶ 39, 969 N.E.2d 987.

¶ 31 More fundamentally, because a court's contempt power is extraordinary, a contemnor must be afforded basic due-process protections. *Taylor v. Hayes*, 418 U.S. 488, 498-500 (1974). Neither party cites *Taylor*, a decision we find controlling on this issue. The trial court in that case found the petitioner in contempt of court and sanctioned him to six months' imprisonment without first allowing him an opportunity to make a statement in allocution. *Id*. at 490-91, 494. The United States Supreme Court held, before a trial court may summarily impose sanctions pursuant to a finding of contempt, a contemnor must be afforded certain basic due-process protections. *Id*. at 498-500. Among these protections is the opportunity to be heard in defense before sanctions are imposed. *Id.* at 498. The *Taylor* Court ultimately set aside the contempt judgment "[b]ecause these minimum requirements of due process of law were not extended to the petitioner." *Id.* at 500.

¶ 32 In this case, the trial court did not allow defendant an opportunity to make a statement in allocution before sentencing him to 30 days in the Champaign County jail. Because the error infringed on a fundamental due-process right, we are compelled to set aside the judgment. *Id.*

¶ 33 In the interest of judicial economy, however, we decline to send the matter back to the trial court for further proceedings. Defendant has already been credited against his 7-year

sentence for theft for the 30 days at issue. Accordingly, we reverse the trial court's contempt judgment.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we reverse the trial court's contempt judgment.

¶ 36 Reversed.