2018 IL App (4th) 150771-U

NO. 4-15-0771

FILED
July 3, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
LARRY L. EDWARDS, JR.,	)	No. 13CF135
Defendant-Appellant.	)	
	)	Honorable
	)	Charles M. Feeney III,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Harris and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's direct criminal contempt conviction is affirmed and this case is remanded because postconviction counsel failed to comply with Rule 651(c).

¶ 2 This case comes to us on appeal from the trial court's judgment dismissing defendant's postconviction petition and convicting defendant for direct criminal contempt. We affirm defendant's direct criminal contempt conviction and remand as postconviction counsel failed to comply with Illinois Supreme Court Rule 651(c). Ill. S. Ct. R. 651(c) (eff. Feb. 6, 2013).

¶ 3 I. BACKGROUND

¶ 4 A. Procedural History

¶ 5 In August 2013, defendant, Larry L. Edwards Jr., was arrested and charged with three counts of home invasion (720 ILCS 5/19-6(a) (West 2012)), one count of aggravated

battery (720 ILCS 5/12-3.05(a)(1) (West 2012)), and one count of mob action (720 ILCS 5/25-1(a)(1) (West 2012).

¶ 6 In July 2014, defendant entered a negotiated guilty plea to one count of home invasion in exchange for a 10-year sentence, followed by three years of mandatory supervised release. The State dismissed the other four counts.

¶ 7 Defendant's trial counsel did not file a motion to withdraw defendant's guilty plea. In August 2014, defendant filed a *pro se* motion to withdraw the guilty plea. The trial court denied the motion because it was untimely.

¶ 8 In September 2014, defendant appealed. However, that appeal was dismissed on defendant's motion as he failed to file a timely postplea motion (although the trial court had admonished him on the necessity of doing so), a jurisdictional prerequisite. *People v. Edwards, Jr.*, No. 4-14-0799 (Feb. 3, 2015) (dismissed on defendant's motion).

¶ 9 B. Defendant's Postconviction Petition

¶ 10 In January 2015, defendant filed a *pro se* postconviction petition. In February 2015, defendant filed a *pro se* motion to amend his petition and a *pro se* amended postconviction petition.

¶ 11 The trial court appointed postconviction counsel for defendant, and in May 2015, counsel requested additional time so he could review the pleadings and consult with defendant. In July 2015, postconviction counsel filed a Rule 604(d) certificate. Ill. S. Ct. R. 604(d) (eff. Dec. 11, 2014).

¶ 12 At a July 2015 hearing, postconviction counsel told the trial court he would not amend defendant's *pro se* amended postconviction petition.

¶ 13 Later in July 2015, the State filed a motion to dismiss defendant's amended

postconviction petition.

¶ 14 C. The Contempt Ruling

¶ 15 In August 2015, defendant filed a *pro se* motion requesting bail.

¶ 16 In a hearing on August 24, 2015, the trial court dismissed defendant's amended postconviction petition and struck defendant's *pro se* motion requesting bail because defendant was represented by counsel. At the hearing, the court warned defendant several times to stop interrupting proceedings.

¶ 17 During recess, as defendant was leaving the courtroom, the trial court heard defendant state, "This is a crooked county and I know it. That's the sad fact, is the judge knows it." The court then stated to defendant, "Mr. Edwards, as you left the courtroom, you said that, 'this is a crooked county and I know it. That's the sad fact, is the judge knows it.' " Then, the court stated, "I find you in direct criminal contempt of court. Is there anything you want to say before I sentence you?" Defendant did not contest the finding of direct criminal contempt but instead discussed his postconviction petition. The court provided defendant with a second opportunity to contest the finding of direct criminal contempt by asking, "Anything you want to say about the disparagement of the court?" Defendant's response was, "Anything you want to do, Your Honor." The court then sentenced defendant to 90 days in jail for direct criminal contempt.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Defendant appeals the trial court's dismissal of his *pro se* amended postconviction petition and finding of direct criminal contempt. We address his contentions in turn.

¶ 21 A. The Certificate Filed by Postconviction Counsel Failed To Demonstrate Compliance With Supreme Court Rule 651(c)

¶ 22 Defendant first contends postconviction counsel did not substantially comply with Rule 651(c) because counsel failed to show he reviewed all of the trial court proceedings or to speak with defendant about his contentions of constitutional deprivations outside the plea and sentencing hearing. The State concedes the record shows the certificate filed by postconviction counsel failed to substantially comply with Rule 651(c), and we accept the State's concession.

¶ 23 Postconviction counsel must file a certificate indicating counsel "has consulted with petitioner by phone, mail, electronic means or in person to ascertain his or her contentions of deprivation of constitutional rights, has examined the record of the proceedings at the trial, and has made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner's contentions." Ill. S.Ct. R. 651(c) (eff. Feb. 6, 2013). The Illinois Supreme Court has held the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2016)) requires an appointed attorney to discuss with a petitioner his alleged grievances, and a failure to confer is a failure to observe even a minimal professional standard. *People v. Garrison*, 43 Ill. 2d 121, 123, 251 N.E.2d 200, 201 (1969). Further, the purpose of Rule 651(c) "is to ensure that all indigents are provided proper representation when presenting claims of constitutional deprivation under the Post-Conviction Hearing Act." *People v. Brown*, 52 Ill. 2d 227, 230, 287 N.E.2d 663, 665 (1972).

¶ 24 In *People v. Mason*, 2016 IL App (4th) 140517, 56 N.E.3d 1141, this court held postconviction counsel failed to comply with Supreme Court Rule 651(c) because we concluded that postconviction counsel's certificate failed to show he reviewed the transcripts of all proceedings; it also failed to show he had spoken with the defendant regarding his claims of constitutional deprivations. *Mason*, 2016 IL App (4th) 140517, ¶ 24. This court remanded for compliance with Rule 651(c). *Mason*, 2016 IL App (4th) 140517, ¶ 26.

¶ 25 In this case, defendant's postconviction counsel filed a Rule 604(d) certificate, cited Rule 604(d) instead of Rule 651(c), and tracked the language of Rule 604(d) instead of Rule 651(c). This court has held Rule 604(d) and Rule 651(c) certificates are noticeably different. *Mason*, 2016 IL App (4th) 140517, ¶ 22. Rule 604(d) deals with direct appeals of a guilty plea and only requires counsel to consult with defendant and review the records with respect to the plea and sentencing proceedings. *Mason*, 2016 IL App (4th) 140517, ¶ 22. In contrast, Rule 651(c) addresses appeals from postconviction proceedings and requires counsel to consult with defendant regarding any contentions of deprivation of constitutional rights and review the record of proceedings.

¶ 26 Because postconviction counsel filed a deficient certificate, postconviction counsel only showed he consulted with defendant regarding his contentions of error in the guilty plea and sentencing hearing. Postconviction counsel was required—but failed—to confer with defendant regarding any constitutional deprivations which may have occurred during the trial court proceedings. Additionally, though not necessarily required, postconviction counsel failed to amend defendant's *pro se* postconviction petition and failed to file a response to the State's motion to dismiss, which further demonstrates counsel misapprehended his responsibilities in this case.

¶ 27 "The attorney designated by the court to represent the defendant did not consult with him concerning his grievances prior to the hearing and thereby failed to discharge an elementary responsibility of representation." *People v. Jones*, 43 Ill. 2d 160, 162, 251 N.E.2d 218, 219 (1969). Thus, "[t]he defendant was not provided the benefit of counsel required under our view of the Post-Conviction Hearing Act." *Id.*

¶ 28 "Without assurances from the record that postconviction counsel fulfilled his duty

under Rule 651(c) rather than under Rule 604(d), we conclude postconviction counsel's certificate failed to substantially comply with Rule 651(c)." *Mason*, 2016 IL App (4th) 140517, ¶ 25. "Where a certificate is deficient, the appropriate remedy is to reverse the judgment of the trial court and remand this cause for compliance with Rule 651(c)." *Mason*, 2016 IL App (4th) 140517, ¶ 25. Accordingly, we accept the State's concession and remand this case for a proper Rule 651(c) certificate to be filed.

¶ 29 B. Defendant's Direct Criminal Contempt Conviction Is Affirmed

¶ 30 Defendant next argues that his direct criminal contempt conviction should be vacated because his statement was not calculated to embarrass, hinder, or obstruct the court in its administration of justice or derogate from its authority or dignity. In response, the State contends defendant's criminal contempt conviction should be affirmed because (1) defendant acquiesced in the trial court's finding of contempt, (2) did not contest the finding of contempt, and relinquished the opportunity to challenge the trial judge's assessment.

¶ 31 We affirm the trial court's finding of direct criminal contempt and conclude that (1) defendant was warned to stop interrupting but continued to interrupt the trial court, (2) the court heard defendant's comments, (3) defendant's misconduct meets the requirements for direct criminal contempt, and (4) the contempt rules apply in open court after a recess is declared as long as the judge is still present.

¶ 32 The Illinois Supreme Court defines criminal contempt of court 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. Javaras*, 51 Ill. 2d 296, 299, 281 N.E.2d 670, 671 (1972). In this case, after the trial court warned defendant several times not to interrupt proceedings, defendant continued to be

disruptive and stated, "This is a crooked county and I know it. That's the sad fact, is the judge knows it." We agree with the trial court that defendant's conduct was calculated to embarrass, hinder, or obstruct the trial court's administration of justice, derogated from the trial court's authority and dignity, and brought the administration of law into disrepute. "[A]ll 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).

¶ 33 Defendant's remarks disparaging the court as he left the courtroom were after the court called a recess, but the misconduct in question occurred in open court and the judge was still present. Contempt rules apply during recess. See *People v. L.A.S.*, 111 Ill. 2d 539, 544, 490 N.E.2d 1271, 1273 (1986); *People v. Stokes*, 293 Ill. App. 3d 643, 645, 689 N.E.2d 625, 627 (1997); *In re Marriage of Slingerland*, 347 Ill. App. 3d 707, 712, 807 N.E.2d 731, 735 (2004).

¶ 34 There are two types of criminal contempt: direct criminal contempt and indirect criminal contempt. *Javaras*, 51 Ill. 2d at 299. The Illinois Supreme Court has held, "Direct criminal contempt may occur in either of two ways." *People ex rel. Kunce v. Hogan*, 67 Ill. 2d 55, 60, 364 N.E.2d 50, 51 (1977). First, "[t]he contemptuous acts may all take place in the presence of the judge so that all of the elements of the offense are within his personal knowledge." *Id.* Second, "the direct contempt may be committed out of the immediate physical presence of the judge but within an integral part of the court." *Id.* Direct contempt is "restricted to acts and facts seen and known by the court, and no matter resting upon opinions, conclusions, presumptions, or inferences should be considered." *Simac*, 161 Ill. 2d at 306. See also *In re Marriage of Betts*, 200 Ill. App. 3d 26, 49, 558 N.E.2d 404, 419 (1990) ("A finding of direct contempt may be made in a summary manner immediately after the contemptuous conduct

occurs").

¶ 35 Here, defendant's contemptuous act occurred in the first way—that is, when he stated in the presence of the judge, "This is a crooked county and I know it. That's the sad fact, is the judge knows it," his statement made all of the elements of defendant's contempt within the judge's personal knowledge.

¶ 36 The Illinois Supreme Court holds the standard of review on appeal for direct criminal contempt is whether sufficient evidence in the record supports a finding of contempt and whether the judge considered facts outside the judge's personal knowledge. *People v. Graves*, 74 Ill. 2d 279, 284, 384 N.E.2d 1311, 1314 (1979). "Where, as here, the conduct in question is committed in the presence of the court, neither notice nor pleading is necessary; the contemnor may be punished summarily 'because the acts occur in the presence of the judge and presumably within his personal observation and knowledge.' " *Id.* (quoting *People v. Gholson*, 412 Ill. 294, 299, 106 N.E.2d 333, 336 (1952)). Defendant was punished summarily because his comments were in the presence of the judge and within the judge's personal observation and knowledge.

¶ 37 "A court must be presented with willful conduct on the part of the alleged contemnor before citing him for contempt." *People v. Ernest*, 141 Ill. 2d 412, 424, 566 N.E.2d 231, 236 (1990). However, intent may be inferred from the actions of the party and the surrounding circumstances. *Id.* Here, the trial court warned defendant several times to stop interrupting proceedings. Defendant refused to stop and then accused the county of being crooked and asserted the judge knows it. Thus, we deem defendant's contemptuous behavior to be willful and intentional.

¶ 38 The Illinois Supreme Court has held that "[a]s a general rule, a direct criminal

contempt (involving punishment of less than six months imprisonment) which is personally seen by the judge may be summarily punished without the necessity of a hearing or other procedural formalities." *Javaras*, 51 Ill. 2d at 299. Defendant contends that his comments were inaudible and the court did not hear defendant's comments as he was leaving the courtroom. Defendant's contention has no merit.

¶ 39 After defendant made his comments, the trial court stated to defendant, "Mr. Edwards, as you left the courtroom, you said that, 'this is a crooked county and I know it. That's the sad fact, is that the judge knows it,' " which shows defendant's comments were audible and the court heard them. The court then provided defendant with two opportunities to respond to the finding of contempt, which further shows defendant's comments were audible and the court heard them.

¶ 40 During his first opportunity to respond to the finding of contempt, defendant discussed his postconviction petition. During his second opportunity, defendant stated "Anything you want to do, Your Honor." The trial court then punished defendant with a 90-day jail sentence for contempt. Under the circumstances, we conclude that the court's summary punishment of defendant without a hearing or other procedural formalities was proper.

¶ 41 The State argued that defendant acquiesced in the trial court's finding and encouraged the court to do anything it wanted to do. We disagree. Defendant chose not to challenge the court's finding of criminal contempt, but he did not acquiesce in or encourage the court's finding.

¶ 42 Criminal contempt proceedings are directed to preserve the dignity and authority of the court. *People ex rel. Chicago Bar Ass'n v. Barasch*, 21 Ill. 2d 407, 409, 173 N.E.2d 417, 418 (1961). Imprisonment for criminal contempt is inflicted as punishment for conduct that has

been committed. *Barasch*, 21 Ill. 2d at 409-10. Because defendant's statements offended the dignity and authority of the court, the trial court judge properly punished defendant with a 90-day jail sentence for contempt. We affirm defendant's direct criminal contempt conviction.

¶ 43 III. CONCLUSION

¶ 44 We affirm defendant's direct criminal contempt conviction and remand with directions for the Rule 651(c) certificate to be filed in accordance with the rule. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 45 Affirmed in part; remanded in part.