COURT OF APPEALS
DECISION
DATED AND FILED

December 18, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-0394 **Cir. Ct. No. 02CF000162**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE FINDING OF CONTEMPT IN STATE OF WISCONSIN V. JOHN D. TIGGS, JR.:

JOHN D. TIGGS, JR.,

APPELLANT,

V.

GRANT COUNTY CIRCUIT COURT AND THE HONORABLE GEORGE S. CURRY, PRESIDING,

RESPONDENTS.

APPEAL from an order of the circuit court for Grant County: GEORGE S. CURRY, Judge. *Affirmed*.

¶1 DEININGER, P.J.[1] John Tiggs appeals an order summarily finding him in contempt of court under WIS. STAT. § 785.03(2) and imposing thirty days in jail as a sanction. He claims the trial court erred both in its contempt finding and in imposing the maximum jail term as a sanction. We disagree and affirm the appealed judgment.

BACKGROUND

¶2 The State charged Tiggs with violating various criminal statutes in Grant County while incarcerated at the Wisconsin Secure Program Facility in Boscobel. During a status conference on the pending criminal charges, Tiggs's attorney asked to withdraw because Tiggs wanted a new attorney. The court granted the request and asked Tiggs if he wanted to proceed without an attorney. Tiggs replied that he wanted thirty days to try to find an attorney, and if he was not able to find one on his own, he wanted another attorney appointed by the State Public Defender's Office.

¶3 The trial court informed Tiggs that there would no further opportunity to plea bargain the case and scheduled another status conference twenty-nine days later. The court also instructed Tiggs to be ready to proceed with or without counsel at the next hearing. The court and the prosecutor then engaged in a discussion regarding the trial date. Tiggs interrupted, saying, "This isn't what Mr. Tiggs wants. Mr. Tiggs is asking for a substitution of judge for Judge Curry. That's the motion I'm making." The court denied the motion and began to call the next case. As he was leaving the courtroom, Tiggs again

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

interrupted with the following: "I didn't know you could try to force plea bargains either, Judge Curry. It's good to know that you're following the Constitution there, my friend."

¶4 The court called Tiggs back before it and the following colloquy ensued:

> THE COURT: Okay. Come back here, Mr. Tiggs.
>
> THE DEFENDANT: What do you want?
>
> THE COURT: We're going to conduct a summary contempt of court proceeding. Mr. Tiggs, as he was leaving, made some comments on the record. Did you get those down?
>
> THE COURT REPORTER: (Nodding head)
>
> THE DEFENDANT: And I'll restate those comments. I did not know that the Court can force an individual to take a plea bargain.
>
> THE COURT: Mr. Tiggs, your proceeding was completed. You were being walked out of the court –
>
> (Inaudible)
>
> THE DEFENDANT: No. The proceeding was not completed. The proceeding was not completed. It never had begun as far as I'm concerned because the Court never acquired jurisdiction.
>
> When the State filed the criminal summons and complaint, they failed to follow 968.04. WSPF is not a facility listed under 303 – Wisconsin Statute – .01.
>
> Therefore it should have been filed with a law enforcement officer and not a correctional official.
>
> (Inaudible)
>
> THE COURT: Mr. Tiggs, that's it. I don't want to hear another word out of you.
>
> THE DEFENDANT: Then this proceeding is over as far as I'm concerned.

THE COURT: You're in contempt of court. You failed to follow the rules of decorum. You're contemptuous of the Court. When you walked by the Court's station, you made comments to the Court. You made – your conduct is totally out of line, and your attorney has already left.

THE DEFENDANT: I don't have an attorney as far as I'm concerned. That is not an attorney. An attorney is a person –

(Inaudible)

THE COURT: And disrespect towards the court –

THE DEFENDANT: The Court is disrespecting the law.

THE COURT: The Court is not going to tolerate this, and therefore the Court is going to find that your conduct is contemptuous of the Court and find that you are in contempt of Court at 3:40 p.m. on January – February 4, 2003. The record has been made. The –

THE DEFENDANT: Indeed it should be an adequate record for the Wisconsin Court of Appeals.

THE COURT: And you're going to just – I told you you're in contempt. Do you understand that?

THE DEFENDANT: No, I don't understand it, Jury Curry. If I understood it, I wouldn't be sitting here talking to you.

THE COURT: Well, you just obviously think you're going to run the show, don't you?

THE DEFENDANT: If I wanted to run the show, Your Honor, I would have had this matter taken care of already. This is not a prosecutable case. Here we're dealing with a person who defended himself from an attack of six prison officials.

THE COURT: Okay. You're in contempt of court. The Court has found you in contempt. You continuously acted in contempt of the Court, and therefore the proper question now is what remedies should the Court impose.

The Court can impose 30 days in jail, a $500 fine, or combination of both on the appropriate relief. You get the right of allocution, to speak before the Court imposes contempt of the court.

What do you think the sentence should be?

THE DEFENDANT: What do I think the sentence should be? I think that Judge Curry should recuse himself and allow this case to go in front of another judge. That's what I think. I think that Judge Curry should take a minute to listen to what the defendant is saying.

Counsel has never even come and seen the defendant. How can that be representation? That is not affirmative representation. How can Judge Curry come and withdraw any plea bargaining? I have not discussed any plea bargain with this lawyer. This lawyer can't go and haggle on my behalf. That's something she should have taken up with me.

THE COURT: You're not – you don't – is that all you want to say about exercising your right of allocution or do you want to say anything else?

THE DEFENDANT: Of course I want to say more. There is a number of motions that haven't been filed. There is no preliminary transcript. There is no discovery. I've never seen none of these documents. Where are the documents? How come I haven't received them?

THE COURT: Well, I don't want to talk about your other case. We're dealing with the contempt right now and that's it.

THE DEFENDANT: All right. Fine. I mean, whatever. I mean, that's your choice, Judge. I'm still concerned about the other case that still has not come under Article I, Section 7 of the Wisconsin Constitution or the Fourteenth Amendment. I'm still worried about the representation I never received consistent with the Sixth Amendment.

I'm worried about the court representation of this matter contrary to the statutory law described by law, the District Attorney's representation of this matter contrary to 968.04.

Those are the problems – we have to get to the root of those problems before we can get to additional problems, Your Honor.

THE COURT: I'm not discussing your other case. This is only the contempt. Since you don't want to discuss your allocution or say anything further, the Court is going to

> sentence you to 30 days in jail consecutive to any other jail sentence you're serving.
>
> THE DEFENDANT: And the defendant wishes to file a notice of appeal under that case.
>
> THE COURT: That's all. Goodbye.
>
> THE DEFENDANT: Then consider a notice of appeal filed. As a matter of fact, consider a John Doe proceeding against the Court.
>
> I'm not going to waste any time with you people. I don't know who you people think y'all are, railroading the defendant. It's bad enough to be already convicted inside the jail.
>
> That's the best you can do? You're pathetic, Judge. If "Judge" is an appropriate term for you.

¶5 Two weeks later, the court entered a written order that included the following findings:

> After [Tiggs's former counsel] withdrawal as counsel and after the court had continued his status conference to a later date, the defendant while leaving the courtroom and walking past the bench engaged in yelling directed at the judge while court was still in session. He was then reseated, and he continued this conduct. His conduct was clearly calculated to disrupt court proceedings and interfere and impair the administration of justice while court was in session. Due to said conduct, the court found the defendant in summary contempt as well as for those reasons stated in the record.
>
> …Since he is already a prisoner at the maximum-security prison in Boscobel, the longest sentence allowable to the court is the penalty that may have a deterrent effect on his contemptuous behavior and punish him for his contempt.

Tiggs appeals the order, both as to the finding of contempt and as to the sanction imposed.

ANALYSIS

¶6 The circuit court has far better opportunity to determine whether an act or remark is a contempt of court than does a reviewing court. ***Oliveto v. Crawford County Cir. Ct.,*** 194 Wis. 2d 418, 427, 533 N.W.2d 819 (1995). Accordingly, the circuit court's finding that a person has committed a contempt of court will not be reversed by a reviewing court unless the finding is clearly erroneous. ***Id***. at 428. Put another way, a trial court's finding of contempt will not be reversed unless it is contrary to the great weight and clear preponderance of the evidence. *See* ***Currie v. Schwalbach***, 139 Wis. 2d 544, 551-52, 407 N.W.2d 862 (1987).

¶7 Tiggs first argues that we must disregard the finding in the trial court's written order that he "yelled" his remarks as he was leaving the courtroom. He cites two Indiana cases and ***Eaton v. City of Tulsa***, 415 U.S. 697 (1974) for the proposition that a court cannot supplement findings made during the contempt proceeding in a subsequent written order because to do so violates an alleged contemnor's right to due process by convicting him "upon a charge not made." ***Id***. at 699. Although we do not agree that the trial court's written order violated Tiggs's constitutional right to due process,[2] we are willing to assess the correctness of the trial court's contempt finding on the basis of Tiggs's conduct and the court's findings as reflected in the transcript of the proceedings.

[2] We note that in ***Oliveto v. Crawford County Cir. Ct.,*** 194 Wis. 2d 418, 533 N.W.2d 819 (1995), the court augmented its findings made on the record in a subsequent written order to include observations regarding the demeanor of the contemnor and the audibility of the statement made. ***Id***. at 426. The supreme court considered these additional findings in its review and decision. *See* ***id***. at 433.

¶8 There is no indication in the record that Tiggs was engaged in a private conversation that the court inadvertently overheard. Regardless of whether Tiggs "yelled" his remarks, they were clearly spoken loudly enough for the court reporter to hear and record them, which strongly suggests that the judge, other court personnel, and other parties and attorneys present that day heard them as well. Thus, if Tiggs's remarks were of the kind that "interfere[] with a court proceeding or with the administration of justice, or which impair[] the respect due the court," WIS. STAT. § 785.01(1)(a), the court did not err in its contempt finding. That, and not the decibel level at which the remarks were uttered, is the dispositive question.

¶9 Tiggs contends that his remarks did not merit the imposition of contempt sanctions. Specifically, he claims that his conduct "did not imperil the authority of the court," that a "summary contempt procedure was not necessary to preserve order in the court," and that his statements did not constitute "intentional misconduct." Tiggs points to the supreme court's direction that summary contempt procedure may be used only if four requirements are met: (1) the allegedly contumacious act must be committed in the actual presence of the court; (2) any sanction must be imposed for the purpose of preserving order in the court; (3) the sanction must be imposed for the purpose of protecting the authority and dignity of court; and (4) the sanction must be imposed immediately after the contempt. *See* ***Oliveto***, 194 Wis. 2d at 429-30 (quoting ***Currie***, 139 Wis. 2d at 552). Tiggs challenges only the existence of the second and third prerequisites.

¶10 As a preface to his more specific arguments, Tiggs asserts that a court's "near-despotic authority" to summarily sanction contempt should be used "only sparingly," a proposition with which we have little quarrel. Tiggs relies on federal case law and a law review article to argue that remarks which are merely

disrespectful to a judge, as opposed to those which disrupt a court proceeding, are beyond the reach of a court's summary contempt power. For example, Tiggs quotes in his brief a passage from Dan B. Dobbs, *Contempt of Court: A Survey*, 56 CORNELL L. REV. 183, 208 (1971), which includes the following commentary: "[I]t should be emphasized that mere personal insult or irritating conduct should not readily be accepted as contempt…. [P]ersonal discourtesy or insult is on an altogether more trivial plane, and a certain amount of that should be tolerated when it falls short of interfering with the nature of the trial."

¶11 We generally agree with the premise that judges must develop reasonably thick skins, especially when dealing with pro se litigants, and that they should not resort to summary contempt proceedings to redress every instance of disrespectful words or behavior directed toward them. However, a judge who is too forgiving of conduct that "impairs the respect due the court," WIS. STAT. § 785.01(1)(a), runs the risk of allowing the level of decorum in his or her court room to deteriorate to the point where public confidence in the court's proceedings and respect for its rulings is undermined. As we have noted, whether the line between "merely disrespectful" conduct and sanctionable misconduct has been crossed is a decision that the judge on the scene is far better positioned than we to make. *See* ***Oliveto***, 194 Wis. 2d at 427.

¶12 We therefore reject any implicit invitation to substitute our judgment for that of the trial court in this case as to whether Tiggs committed sanctionable contempt within the meaning of WIS. STAT. § 785.01(1)(a) in the trial court's presence. We conclude that the trial court's determination that he did so is not clearly erroneous, regardless of whether we might have concluded otherwise had we been there. As the supreme court noted in ***Oliveto***, Wisconsin precedents on summary contempt permit "even a single contumacious act or remark …

irrespective of its content or purpose" to be deemed contempt if it "is disruptive of courtroom order." ***Oliveto***, 194 Wis. 2d at 432 (quoting ***Currie***, 139 Wis. 2d at 555). "It is the intent, content, and effect of the contumacious behavior, not its frequency, that is relevant." ***Id***. Moreover, "'[t]he content or substance of a single contumacious action or remark may be more disruptive than behavior which, irrespective of its content or purpose, disrupts intermittently because it is repetitive.'" ***Id***.

¶13 The sanctioned conduct in ***Oliveto*** was an attorney's utterance of a single word ("ridiculous") after the court had sentenced her client and denied him bail pending appeal. ***Id***. at 423. The supreme court upheld the court's finding of contempt (although it reversed for the court's failure to permit allocution prior to the imposition of the sanction). ***Id***. at 433-34. Tiggs argues that ***Oliveto*** is distinguishable, however, because the contemnor there was an attorney who should have known better, as opposed to a pro se litigant unschooled in the ways of the courtroom, and also because the proceeding in ***Oliveto*** was a "decorous judicial proceeding" (sentencing) as opposed to a "routine status hearing" as in this case. We reject the attempted distinctions. WISCONSIN STAT. § 785.01(1)(a) makes no distinction between attorneys and non-attorneys in defining sanctionable contempt, nor does it create a hierarchy of court proceedings, declaring some to be less worthy of protection from interference than others.[3]

[3] We also note that the record reflects that Tiggs was no stranger to court proceedings and procedures. In addition to the obvious fact that he had past experience with criminal court proceedings, he made various references during the contempt proceeding to the court's jurisdiction and to numerous statutes and constitutional provisions. At the conclusion of the proceeding, he told the court to "consider a notice of appeal filed," as well as a "John Doe proceeding against the Court." Although not an attorney, it cannot be said that Tiggs had no familiarity with legal processes and proceedings.

¶14 The trial court summoned Tiggs back before it after he made disrespectful and gratuitous comments while the court was attempting to call the next case ("I didn't know you could try to force plea bargains either, Judge Curry. It's good to know that you're following the Constitution there, my friend."). Then, after the court informed him it would conduct a summary contempt proceeding, Tiggs, instead of apologizing for the interruption or otherwise attempting to explain his behavior, began arguing with the court as to its jurisdiction and declared, "Then this proceeding is over as far as I'm concerned." It was at that point the court found Tiggs in contempt of court, finding his conduct to be "totally out of line."[4] As the supreme court did in ***Oliveto*** with respect to the attorney's

[4] Tiggs argues in his reply brief that, in assessing whether the court erred in finding him in contempt, we should not consider any statements he made after his initial interruption. Alternatively, he argues that only his conduct before the trial court actually made its contempt finding should be considered. We agree with the latter contention and, in reviewing the correctness of the court's finding, we do not consider any of Tiggs's comments or actions reflected after line 14, page 7 of the transcript.

We see no due process violation in our considering all of Tiggs's comments and actions up until the point the court actually made its finding. Although the trial court announced its intention to "conduct a summary contempt of court proceeding" immediately upon Tiggs's interruption, it did not make its contempt finding until Tiggs had uttered additional confrontational statements. Until then, the court could have abandoned the contempt inquiry and might have done so had Tiggs's subsequent conduct and comments been appropriate. Tiggs's intervening comments clearly figured in the court's contempt finding ("Mr. Tiggs, *that's it*. I don't want to hear another word out of you.… You're in contempt of court." (emphasis added)).

> Due process and concepts of fundamental fairness are satisfied when the record following a summary contempt proceeding demonstrates all of the following: (1) a statement indicating the judge's decision to hold a person in contempt as well as the factual basis for the holding; (2) a statement from the judge informing the contemnor of the right of allocution and a further statement inviting the contemnor to exercise that right prior to imposition of sanction; and (3) the judge's final decision to impose sanction and the sanction, if any, is imposed.

Oliveto, 194 Wis. 2d at 435-36. These requirements are satisfied on the present record.

utterance of the single word "ridiculous," we conclude the trial court did not err in finding that Tiggs's comments were "disruptive, rude and offensive." ***Id***. at 428. We further "conclude that a disruptive remark which denigrates and impairs the respect due the court, and which is uttered, as here, in the presence of the court, satisfies the 'preserving order' requirement." ***Id***. at 433.

¶15 Tiggs next argues that his conduct was not intentional, as is required by WIS. STAT. § 785.01(1)(a). Remarks uttered at a time when a reasonable person would have known there was no right to speak may be deemed intentional misconduct for purposes of summary contempt proceedings. *See* ***Currie,*** 139 Wis. 2d at 557. Furthermore, "[i]t is common knowledge that gratuitous, out-of-turn, berating, threatening, and derogatory comments are not permitted in the course of court proceedings." ***Id***. Tiggs spoke after his status conference was completed as he was moving out of the courtroom. He also continued his argumentative behavior after the court summoned him to address that behavior, but before the court found him to be in contempt (e.g., "Then this proceeding is over as far as I'm concerned."). We have no difficulty concluding that a reasonable person would have known that Tiggs's remarks to the court constituted "a serious breach of courtroom decorum." ***Id***.

¶16 Tiggs also suggests that, before a court may find misconduct intentional, it should first warn a person to correct his or her "borderline" conduct. In support, he cites ***Anderson v. Milwaukee County Cir. Ct.***, 219 Wis. 2d 1, 578 N.W.2d 633 (1998), but ***Anderson*** did not involve summary contempt procedures under WIS. STAT. ch. 785. The case dealt with the imposition of sanctions under WIS. STAT. §§ 802.10 and 805.03 for violation of a scheduling order. ***Id***. at 4. We are aware of no authority to the effect that a court must first warn a person of potentially contemptuous conduct before making a contempt finding and imposing

sanctions. We note that no warning preceded the contempt finding in ***Oliveto***, which, as we have noted, the supreme court upheld.

¶17 Finally, Tiggs asserts that the maximum penalty of thirty days imprisonment was harsh and excessive under the circumstances. The purpose of a sanction under the summary contempt procedure is punishment and imposing a summary contempt sanction is thus "analogous to imposition of a sentence." ***Currie***, 139 Wis. 2d at 559. We have applied Wisconsin's traditionally deferential standard for appellate review of criminal sentences in reviewing an allegedly excessive summary contempt sanction. *See* ***State v. Van Laarhoven***, 90 Wis. 2d 67, 71, 279 N.W.2d 488 (Ct. App. 1979) (adopting sentence review standard set forth in ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975)). "An abuse of [sentencing] discretion will be found only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Ocanas***, 70 Wis. 2d at 185.

¶18 Although the trial court gave little in the way of explanation of the sanction it imposed during the contempt proceeding, just as we will consider a sentencing court's explanation of its sentence during postconviction proceedings,[5] we will consider the court's rationale for the sanction it imposed as set forth in the appealed contempt order. The court explained in its order that (1) it imposed the 30-day term of imprisonment not only as punishment for Tiggs's contempt but to deter him from engaging in similar conduct in the future, and (2) it deemed the sanction imposed to be necessary to serve those purposes because Tiggs was

[5] *See, e.g.,* ***State v. Fuerst***, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994).

already incarcerated in a maximum-security prison. We cannot conclude that the court's conclusions are unreasonable, or that the 30-day sanction was "so excessive and unusual … as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Ocanas***, 70 Wis. 2d at 185.

¶19 Our conclusion is bolstered by the fact that Tiggs chose to squander his opportunity for allocution. *See* ***Currie***, 139 Wis. 2d at 560 (noting that allocution affords a contemnor the opportunity to mitigate or completely explain away the contumacious act, especially "where the contemnor is unfamiliar with the legal system and courtroom decorum"). Even though we do not weigh Tiggs's behavior during his allocution against him in affirming the trial court's contempt finding (see footnote 4), we may certainly do so in reviewing the court's exercise of sanctioning discretion. We conclude that the arrogance, defiance and non-responsiveness to the business at hand that Tiggs continued to exhibit as the court was determining an appropriate sanction gave the court no cause to believe that anything less than the maximum sanction would accomplish the goals of punishment and deterrence.

CONCLUSION

¶20 For the reasons discussed above, we affirm the appealed order.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.