

STATE OF MICHIGAN
COURT OF APPEALS

CEMETERY COMMISSIONER,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 201437

Ingham Circuit Court

ALVIN BURCHAM,

LC No. 95-081956 CZ

Defendant-Appellant,

and

FLORAL LAWN MEMORIAL GARDENS, INC.
and DEBRA BURCHAM,

Defendants.

Before: Jansen, P.J., and Neff and O’Connell, JJ.

O’CONNELL, J. (dissenting).

I respectfully dissent. I would vacate the second sentence entirely and reinstate the first sentence with the proviso that the ten-day terms of incarceration for each offense must be served concurrently.

The trial court found defendant guilty of fifty-one separate acts of contempt of court. The trial court sentenced the defendant to ten days in jail and assessed a fine of \$250 per violation, this amounting to total fine of \$12,750. I find no error in assessing a fine of \$250 per violation.

At the conclusion of the three-day show cause hearing the trial court made the following remarks from the bench:

There is substantial circumstantial evidence in the exhibits to support a finding that the preliminary injunction and the permanent injunction were violated. . . . I found Alvin Burcham’s testimony to be totally not believable. . . . The Court sentences the

Defendant to 10 days in the Ingham County Jail for each count and to a \$250 fine for each violation.

It is clear from this part of the lower court record that the trial court found defendant guilty of separate acts of criminal contempt and imposed separate sentences for each. Had the proceedings ended at this point I would affirm the sentence of the trial court.

Subsequently, defense counsel requested a chance to address the right to allocution in a criminal contempt case. The trial court stayed the sentence and scheduled a resumption of proceedings for Friday, February 14, 1997. On that occasion, the trial judge stated that she had not intended to revise her original sentence of ten days and \$250 per count, but rather that she had simply adjourned the matter. She noted that as far as she was concerned: “. . . we’re starting right at the point where I found him guilty of the numerous counts of criminal contempt, and anything that happened after just did not happen.”¹ The judge then concluded that she had the legal authority to “stack” jail sentences up to a maximum of six months, and to fine defendant \$250 for each contempt violation. The trial court then stated, “However, having had time to review the record and taking into consideration the comments made by Defense Counsel, I am imposing 30 days in the Ingham County Jail for contempt and a fine of \$12,750, which is \$250 times 51”

In partial agreement with the majority opinion, I feel that this revised sentence was error. I agree with that portion of the majority opinion that concludes that “[t]here is really no authority to permit the trial court to ‘stack’ the fines in this case.” However, concerning the other aspect of the sentence, I note that the majority opinion, in footnote two, concludes that defendant was originally sentenced to over five hundred days in jail (a calculation based on the cumulative length of the ten-day sentence for each contempt violation). Although this may be one way of looking at the sentence, I am of the opinion that those terms of incarceration must run concurrently, in which case defendant would serve only a maximum of ten days in jail. I would vacate the second sentence imposed and reinstate the first one. Defendant’s original sentence of ten days in jail and a fine of \$250 for each violation, the fines being cumulative but the jail terms concurrent, is not unlawful under the facts of this case.

/s/ Peter D. O’Connell

¹ The trial judge meant to indicate that she was resentencing defendant. The judge’s statement was a “short hand version” way of getting to that result.