

STATE OF MICHIGAN  
COURT OF APPEALS

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In re Contempt of CHRISTINE A. KOWAL

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CHRISTINE A. KOWAL,

Appellant,

v

WAYNE CIRCUIT JUDGE,

Appellee.

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UNPUBLISHED

July 15, 2010

No. 291836

Wayne Circuit Court

LC No. 09-008856-AS

Before: O'CONNELL, P.J., and METER and OWENS, JJ.

PER CURIAM.

Appellant, an assistant prosecutor with the Wayne County Prosecutor's Office, appeals as of right from a circuit court order holding her in criminal contempt and sentencing her to serve one day in the county jail. We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

We review the trial court's issuance of an order of contempt for an abuse of discretion. *In re Contempt of Henry*, 282 Mich App 656, 671; 765 NW2d 44 (2009). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

"Contempt of court is a wilful act, omission, or statement that tends to impair the authority or impede the functioning of a court. Courts have inherent independent authority, as well as statutory authority, to punish a person for contempt." *In re Contempt of Robertson*, 209 Mich App 433, 436; 531 NW2d 763 (1995) (citations omitted). Direct contempt is behavior that occurs in front of the court and in which all facts necessary to a finding of contempt are within the judge's personal knowledge. *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 712; 624 NW2d 443 (2000). Direct criminal contempt, which punishes the contemnor for past conduct that affronts the dignity of the court, may be punished summarily by a fine of up to \$7,500, imprisonment up to 93 days, or both. *Id.* at 713; MCL 600.1711(1); MCL 600.1715(1).

Conduct punishable for contempt includes "insolent behavior directly tending to interrupt the proceeding or impair the respect due to the court's authority and disobedience of any lawful order of a judge." *People v Williams*, 162 Mich App 542, 546; 414 NW2d 139 (1987). When

the contemnor is a lawyer who has been punished for his conduct in the courtroom, this Court should be “ever mindful of the importance of maintaining a proper balance between the trial judge’s right ‘to maintain discipline and decorum in his court, and the right of counsel to fulfill to the ultimate the obligation of advocacy.’” *People v Kurz*, 35 Mich App 643, 651; 192 NW2d 594 (1971), quoting *People v Ravitz*, 26 Mich App 263, 269; 182 NW2d 75 (1970). Although a lawyer should not engage in “discourteous conduct toward the tribunal,” MRPC 3.5(c), the court “should not be overly sensitive.” *In re Gilliland*, 284 Mich 604, 610; 280 NW 63 (1938). “Criticism of the courts within limits should not be discouraged and it is a proper exercise of the rights of free speech and press. Such criticism should not subject the critic to contempt proceedings unless it tends to impede or disturb the administration of justice.” *Id.* at 610-611. Furthermore, “[t]he arguments of a lawyer in presenting his client’s case strenuously and persistently cannot amount to a contempt of court so long as the lawyer does not in some way create an obstruction which blocks the judge in the performance of his judicial duty.” *In re Meizlish*, 72 Mich App 732, 736; 250 NW2d 525 (1976), quoting *In re McConnell*, 370 US 230, 236; 82 S Ct 1288; 8 L Ed 2d 434 (1962). Therefore, “[u]nless a lawyer’s conduct manifestly transgresses that which is permissible it may not be the subject of charges of contempt. Any other rule would have a chilling effect on the constitutional right to effective representation and advocacy.” *Kurz*, 35 Mich App at 651.

Appellant, an assistant prosecuting attorney, appeared on behalf of the prosecution at a criminal defendant’s sentencing hearing. Appellant had a right to advise the court of any circumstances that she believed the court should consider in imposing a sentence. MCR 6.425(E)(1)(c). Appellant began her remarks by taking exception to the trial court’s factual findings and verdict at the underlying defendant’s bench trial. Whether appellant agreed with the court’s findings and verdict was not relevant to determining the sentence to be imposed for the crimes for which the defendant was convicted. Therefore, it was proper for the trial court to cut off appellant’s “lecture.” However, the court overreacted by refusing to let appellant speak at all, even after she attempted to turn her remarks to considerations relevant to sentencing, and by holding her in contempt when she insisted on exercising her right to allocute. Because appellant was acting within her right to request an opportunity to allocute, she did not act in a “highly inappropriate and disrespectful” manner in addressing the court, *In re Meizlish*, 72 Mich App at 739, and because appellant’s conduct was not such as to impede the administration of justice or to obstruct the court in the performance of its duties, the trial court’s decision to hold appellant in contempt was not within the principled range of outcomes. Thus, the court abused its discretion in holding appellant in contempt.

Reversed.

/s/ Peter D. O’Connell  
/s/ Patrick M. Meter  
/s/ Donald S. Owens