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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2243**

State of Minnesota,
Respondent,

vs.

Eric Ordell Johnson,
Appellant.

**Filed September 4, 2012
Affirmed
Peterson, Judge**

Winona County District Court
File No. 85-CR-08-3748

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Karin Sonneman, Winona County Attorney, Stephanie E. Nuttall, Assistant County Attorney, Winona, Minnesota (for respondent)

Bradford W. Colbert, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a contempt conviction and sentence that are based on findings that the district court made following a remand by this court, appellant argues that (1) comments he made to the district court did not justify a contempt finding, and, if the

comments were contemptuous, they did not justify a sentence longer than 90 days; (2) findings that the district court made following the remand should not be used to justify a sentence longer than 90 days; and (3) the district court violated this court's instructions on remand. We affirm.

FACTS

A jury found appellant Eric Odell Johnson guilty on four charges, and the district court sentenced appellant to 189 months in prison. After the sentence was announced, the following occurred in the courtroom:

THE COURT: . . . Based upon the Court's sentence, did you wish to have execution of the 19-month sentence so you don't have that hanging out there?

[APPELLANT]: Might as well. Shit.

...

THE COURT: All right, anything else from the state at this juncture?

[APPELLANT]: Like you --

THE COURT: Just a minute.

[PROSECUTOR]: No your Honor. Thank you.

THE COURT: Anything else from the defense . . . ?

[APPELLANT]: You just -- you just sentenced me to 17 years?

THE COURT: You beat up that woman so harshly. That is absolutely justified by the physical evidence --

[APPELLANT]: She lied her as[s] off on the stand.

THE COURT: She's not lying --

[DEFENSE COUNSEL]: Just stop.

THE COURT: -- at all. I find her credible, believable

--

[DEFENSE COUNSEL]: Just stop.

THE COURT: -- and extremely sympathetic. My sentence is justified by the evidence, and you get an extra year for that. I find you in civil contempt of Court.

In an appeal challenging his convictions, appellant also challenged the district court's contempt finding and the one-year sentence for contempt. Because this court could not determine the basis for the district court's contempt finding, it reversed the contempt finding and remanded "with instructions to the district court to state the conduct and/or statements on which the contempt finding is based." This court also instructed the district court that, on remand, it shall not impose a sentence for contempt longer than six months and that it must state the grounds justifying a sentence longer than 90 days.

Shortly after this court's remand, the district court issued findings of fact regarding the basis for the contempt finding and sentence. In a letter to the district court, appellant stated his intention to file a petition for review by the supreme court, noted that the district court did not have jurisdiction for 30 days or until his petition for review was denied, and requested that the district court vacate the findings. Appellant also requested that "in the event that this matter comes back before the court on the contempt issue, [appellant] would like the opportunity to address the court on the propriety of the contempt sentence before the court issues new Findings." The district court vacated the findings.

Appellant's petition for review was denied. *State v. Johnson*, No. A10-965, 2011 WL 2622688 (Minn. App. July 5, 2011), *review denied* (Minn. Sept. 28, 2011). In October 2011, 18 months after the initial contempt finding and sentence, the district court issued findings of fact regarding the basis for the contempt finding and sentence and denied appellant's request for a hearing. The district court found that appellant "yelled," "holler[ed]," "cleared the counsel table, microphones, drinks and all onto the floor while

yelling and swearing at the Court,” and “ignored warnings from counsel to settle down.” The district court sentenced appellant to six months for direct criminal contempt. Regarding appellant’s request for a hearing, the district court concluded that “no further hearing is required under the rules, the statute or the caselaw interpreting the contempt statute.” This appeal followed.

D E C I S I O N

I.

We review the district court’s contempt decisions for an abuse of discretion and its factual findings for clear error. *In re Welfare of J.B.*, 782 N.W.2d 535, 538 (Minn. 2010). “When reviewing a challenge to the sufficiency of the evidence, we conduct a painstaking analysis of the record viewed in the light most favorable to the conviction.” *State v. Lingwall*, 637 N.W.2d 311, 313 (Minn. App. 2001).

Direct contempts are those occurring in the immediate view and presence of the court, and arise from one or more of the following acts: (1) disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course of a trial or other judicial proceedings; (2) a breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the business of the court.

Minn. Stat. § 588.01, subd. 2 (2010). Criminal contempt is restricted to conduct “directly tending to interrupt [the court’s] proceedings, or to impair the respect due its authority.”

Minn. Stat. 588.20, subd. 2(1) (2010).

A direct contempt may be punished summarily, for which an order shall be made reciting the facts as occurring in the immediate view and presence of the court or officer, and adjudging the person proceeded against to be guilty of a

contempt, and that the person be punished as therein specified.

Minn. Stat. § 588.03 (2010).

I.

Appellant argues that the comments that he made before the district court found him in contempt do not rise to the level of disorderly, contemptuous, or insolent behavior. But the district court's contempt finding was not based only on the comments that appellant made in the presence of the court. On remand, the district court found that "[appellant's] attorney kept telling him to stop his behavior and sit down. [Appellant] then cleared the counsel table, microphone, drinks and all onto the floor while yelling and swearing at the Court. . . . For his behavior, [appellant] was found in contempt of court." These findings indicate that the contempt finding was based on appellant's words and actions. Pushing everything from the counsel table onto the floor was disorderly, contemptuous, and insolent behavior that tended to interrupt the sentencing proceeding.

Appellant argues that, even if his actions were contemptuous, the six-month sentence was excessive. Appellant contends that in order to exceed the ordinary 90-day maximum sentence, the district court must point to aggravating factors, and his use of two expletives and calling into question the victim's honesty do not amount to contempt beyond the ordinary meaning. Citing *Lingwall*, appellant argues that there are no aggravating factors that justify his six-month sentence.

In *Lingwall*, the contemnor uttered three expletives in the district court's presence, one directed at the contemnor's counsel and two directed at the court. 637 N.W.2d at

312-13. The district court found the contemnor in contempt for each of the three expletives and imposed a six-month sentence for each offense. *Id.* On appeal, this court determined that there were aggravating factors and that the district court did not err in exceeding a 90-day sentence for contempt that consisted of three expletives that “all appeared to have the same objective of flaunting [the contemnor’s] disrespect for the court.” *Id.* at 314. But this court concluded that because the three statements occurred in a single behavioral incident, the district court erred in sentencing the contemnor separately on each of the three findings of contempt. *Id.* at 314. Accordingly, this court modified the contemnor’s sentence by vacating two of the three six-month sentences. *Id.* at 315.

In arguing that there are not aggravating factors that justify his six-month sentence, appellant again fails to recognize that the district court’s contempt finding was not based only on appellant’s statements. The district court found appellant in contempt for directing expletives at the court and for pushing everything from the counsel table onto the floor. As in *Lingwall*, appellant’s words and actions appeared to have the same objective of flaunting appellant’s disrespect for the court. And appellant’s violent conduct was arguably a greater threat to those present in the courtroom than were the contemnor’s words in *Lingwall*. The district court did not err in exceeding a 90-day sentence for appellant’s contempt.

II.

Appellant argues that although direct criminal contempt may be summarily punished, the amount of time that passed between the original contempt sentencing and

the district court's additional findings warranted an evidentiary hearing. Appellant contends that supplementing the record "without input from the parties should not be used to justify exceeding the maximum sentence and was clearly erroneous."

But, in appellant's previous appeal, this court could not determine the basis for the district court's contempt finding and, therefore, reversed the contempt finding and remanded "with instructions to the district court to state the conduct and/or statements on which the contempt finding is based." *Johnson*, 2011 WL 2622688, *6. This instruction directed the district court to make additional findings that described the conduct or statements that were the basis for its contempt finding.

[The] district court's duty on remand is to execute the mandate of the remanding court strictly according to its terms. When the [district] court receives no specific directions as to how it should proceed in fulfilling the remanding court's order, the [district] court has discretion to proceed in any manner not inconsistent with the remand order.

Bauerly v. Bauerly, 765 N.W.2d 108, 110-11 (Minn. App. 2009) (citation and quotation omitted).

This court's remand order did not require the district court to seek input from the parties. And appellant has not cited any authority that contradicts the district court's conclusion that "no further hearing is required under the rules, the statute or the caselaw interpreting the contempt statute." Under the contempt statute, "[d]irect contempts are those occurring in the immediate view and presence of the court." Minn. Stat. § 588.01, subd. 2. Because neither this court's remand instruction nor any other authority required the district court to seek input from the parties on remand, the district court did not abuse

its discretion by making additional findings about what occurred in its immediate view and presence without conducting an evidentiary hearing.

III.

Appellant argues that the district court violated this court's instructions on remand when it "made no attempt to justify a sentence exceeding the 90-day maximum." In its earlier opinion, this court noted that the maximum sentence for ordinary instances of summary and punitive contempt orders is 90 days and instructed the district court that it "must state the grounds justifying a longer sentence." *Johnson*, 2011 WL 2622688, *6. Appellant contends that the district court failed to "provide reasoning why Appellant's behavior exceeded an ordinary instance of summary judgment." But, in addition to making findings about the events that occurred in its immediate view, the district court found:

8. [Appellant's] behavior was outrageous. His behavior was intentional, willful, insolent and interrupted the Court's proceeding.
9. The purpose of direct criminal contempt is to punish the behavior. This behavior was some of the worst ever seen by this Court. Frankly, [appellant] was angry and vicious. He ignored warnings from counsel to settle down. There is no excuse for his actions or his words.
10. Because of the above words and actions, the 6 months are imposed and run consecutive to [appellant's] sentence of 189 months.

These findings state the district court's grounds for a sentence longer than 90 days, and they are sufficient to allow this court to review the district court's sentencing decision for an abuse of discretion. The findings indicate that the district court concluded

that appellant's behavior exceeded an ordinary instance of summary and punitive contempt because the conduct was intentional and willful, rather than a reflexive reaction, and continued after appellant's counsel warned him to stop.

Affirmed.