NO. COA01-919

NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2002

STATE OF NORTH CAROLINA

v. Pasquotank County
No. 96 CRS 5357

ANTHONY C. LAMBERT

Appeal by defendant from judgment entered 14 February 2001 by Judge William C. Griffin, Jr., in Pasquotank County Superior Court. Heard in the Court of Appeals 28 May 2002.

Attorney General Roy Cooper, by Assistant Attorney General Thomas H. Moore, for the State.

Anthony C. Lambert, in propria persona, defendant appellant.

McCULLOUGH, Judge.

Defendant appeared in Pasquotank County Superior Court on 12 February 2001 for a hearing on his motion for appointment of counsel to assist him with an appeal. As the session ended, the trial court called defendant to come forward. The following transpired:

THE COURT: Mr. Lambert, I'm not going to have time to deal with your matter today. I want to ask you to be back in the morning at 9:30.

MR. LAMBERT: I have court --

THE COURT: I am sorry. You be back at

9:30 in the morning.

MR. LAMBERT: I have court --

THE COURT: You be here at 9:30 in the morning, Mr. Lambert.

MR. LAMBERT: I have court in Portsmouth.

THE COURT: I am going to issue an order for your arrest if you are not here.

MR. LAMBERT: If you wanted to hear my case, you should have heard my case today.

THE COURT: Mr. Lambert --

MR. LAMBERT: I have court --

THE COURT: Sheriff, take him into custody. I am not going to be talked back to like that.

MR. LAMBERT: I have to be in court tomorrow. I have a criminal case with the Common Wealth [sic] of Virginia.

THE COURT: He is in direct contempt of court, take him into custody and hold him.

Two days later defendant apologized to the trial court, and he was released. The trial court then proceeded to hear and deny defendant's pending motion for appointment of counsel. Defendant filed notice of appeal from the order of contempt and from the order denying his motion for appointment of counsel.

Defendant presents two assignments of error: (1) the trial court erred in finding defendant in direct criminal contempt because his speech did not constitute contempt of court and was constitutionally protected under the First Amendment; and (2) the

trial court erred in failing to provide any notice or hearing on the charge of direct criminal contempt and in failing to make findings of fact and conclusions of law prior to imposing punishment, thereby denying defendant due process of law.

While a person has the right to freedom of expression under the First Amendment of the United States Constitution, this freedom is not absolute and yields to the compelling state interest of maintaining order, decorum and respect in the operations of its courts. *See In re Hennis,* 6 N.C. App. 683, 689, 171 S.E.2d 211, 214 (1969), *rev'd on other grounds*, 276 N.C. 571, 173 S.E.2d 785 (1970). The power to punish for contempt for one's disobedience or disrespect has long been inherent in the courts. *Ex Parte McCown*, 139 N.C. 95, 100, 51 S.E. 957, 959 (1905). Thus, when confronted with a disruptive, contumacious or defiant defendant, a trial judge may constitutionally cite the defendant for contempt or remove the defendant from the courtroom until the defendant agrees to behave. *State v. Sweezy*, 291 N.C. 366, 382, 230 S.E.2d 524, 534 (1976).

Consistent with the common law, the General Assembly has codified examples of conduct constituting criminal contempt in N.C. Gen. Stat. § 5A-11 (2001). Among such conduct is "[w]illful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority." N.C. Gen. Stat. § 5A-11(a)(2). If the conduct is committed within the sight or hearing of a presiding judicial official, then it is considered direct criminal contempt and the presiding judge may punish the offender summarily pursuant to N.C.

Gen. Stat. § 5A-14(a) (2001) in order to maintain the dignity and authority of the court. N.C. Gen. Stat. § 5A-13(a)(3) (2001). Formal notice, hearing and findings of fact are not required in that situation. *In re Owens*, 128 N.C. App. 577, 581, 496 S.E.2d 592, 595 (1998), *aff'd*, 350 N.C. 656, 517 S.E.2d 605 (1999).

Pursuant to N.C. Gen. Stat. § 5A-14(a):

> The presiding judicial official may summarily impose measures in response to direct criminal contempt when necessary to restore order or maintain the dignity and authority of the court and when the measures are imposed substantially contemporaneously with the contempt.

N.C. Gen. Stat. § 5A-14(a)(1999). However,

> Before imposing measures under this section, the judicial official must give the person charged with contempt summary notice of the charges and a summary opportunity to respond and must find facts supporting the summary imposition of measures in response to contempt. The facts must be established beyond a reasonable doubt.

N.C. Gen. Stat. § 5A-14(b) (1999). The Official Commentary to the statute notes that it:

> was intended not to provide for a hearing, or anything approaching that, in summary contempt proceedings, but merely to assure that the alleged contemnor *had an opportunity to point out instances of gross mistake about who committed the contemptuous act or matters of that sort.*

N.C. Gen. Stat. § 5A-14 (Official Commentary 1999) (emphasis added).

State v. Terry, 149 N.C. App. 434, 439, 562 S.E.2d 537, 540-41 (2002). *Terry*, relying on the case of *Owens*, 128 N.C. App. 577, 496 S.E.2d 592, stated further that this Court noted that the "'requirements of [§ 5A-14] are meant to ensure that the individual has an opportunity to present reasons not to impose a sanction.'" *Terry*, 149 N.C. App. at 440, 562 S.E.2d at 541 (quoting *Owens*, 128 N.C. App. at 581, 496 S.E.2d at 594).

Recently, this Court has held under similar facts that a trial judge failed to comply with the statutory requirements by failing to give a defendant the "summary opportunity to respond." *See State v. Randell*, No. COA01-1151, slip op. at 4 (filed 20 August 2002). In that case, while defendant's actions were contemptuous in failing to rise when the trial court adjourned, the judge merely informed the contemnor that he had been found guilty of contempt and was in the custody of the sheriff. *Id.*, slip op. at 1-2. In the case *sub judice* the same failure is present. While the present defendant's conduct is disrespectful and contemptuous, the judge did not follow the statutory procedure for summary contempt. Therefore, we must reverse. It is the better practice for trial court judges to inform potential contemnors of their perilous predicament before imposing punishment.

Reversed.

Chief Judge EAGLES and Judge TIMMONS-GOODSON concur.

Report per Rule 30(e).