[Cite as *State ex rel. Yost v. Crossridge, Inc.*, 2022-Ohio-1455.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

STATE OF OHIO, ex rel. DAVE YOST, OHIO ATTORNEY GENERAL,

Plaintiff-Appellee,

v.

CROSSRIDGE, INC., et al.,

Defendants-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 21 JE 0016

Civil Appeal from the
Court of Common Pleas of Jefferson County, Ohio
Case No. 99-CV-137

BEFORE:
Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:
Reversed and Remanded.

Atty. Dave Yost, Ohio Attorney General, *Atty. Amy M. Geocaris*, *Atty. Sarah T. Bloom Anderson*, *Atty. Amber Wootton Hertlein*, *Atty. Emily E. Hudson*, Assistant Attorneys General, Environmental Enforcement Section, 30 East Broad Street, Columbus, Ohio 43215, and *Atty. Matthew E. Meyer*, Assistant Attorney General, Environmental Enforcement Section, 615 W. Superior Ave., 11th Floor, Cleveland, Ohio 44113, for Plaintiff-Appellee

Atty. Steven A. Stickles, 500 Market Street, Suite #2, Steubenville, Ohio 43952, for Defendant-Appellant Joseph G. Scugoza.

Dated: March 28, 2022

WAITE, J.

{¶1} Appellant Joseph G. Scugoza appeals a July 14, 2021 Jefferson County Court of Common Pleas judgment entry. In this civil contempt action, Appellant argues that the trial court failed to establish purge conditions and instead imposed a jail sentence to be immediately served. Appellant also argues that the court improperly imposed a substantial jail sentence on all twenty counts of the complaint and ordered those sentences to run consecutively. For the reasons provided, Appellant's arguments have merit. Accordingly, the judgment of the trial court is reversed and the matter is remanded for the purpose of imposing purge conditions and for resentencing.

Factual and Procedural History

{¶2} This matter has been litigated at length before the trial court and this Court since its inception in April of 1999. The facts up until this point are largely taken from our Opinion in *State ex rel. DeWine v. C&D Disposal Techs*., 2016-Ohio-476, 58 N.E.3d 614 (7th Dist.) ("*C&D II*").

> Crossridge is a corporation that operated a landfill in Jefferson County. Joseph N. Scugoza, now deceased, was the principle shareholder of Crossridge. In April of 1999, the Ohio Environmental Protection Agency brought an enforcement action against Crossridge and Mr. Scugoza. In May of 2001, the estate of Joseph N. Scugoza was substituted as a party

> in place of Mr. Scugoza after a suggestion of death was filed. After Mr. Scugoza's death, his son, Appellee, took over as managing member and principle shareholder of Crossridge. Appellee was also the principle and sole shareholder of C&D.
>
> In October of 2003, the parties reached a settlement and entered into a consent order and final judgment ("2003 consent order"). As part of the agreement, the estate of Joseph N. Scugoza was dismissed. In return, C&D consented to become a party defendant and to guarantee Crossridge's compliance with the order and the payment of the applicable civil penalties. The 2003 consent order resolved the environmental enforcement action and enjoined and ordered the parties to comply with its terms. Appellee signed the order as both executor of his father's estate and as the principle of C&D. In October of 2007, the parties entered into an extra-judicial agreement ("2007 extra-judicial agreement"), which partially amended the 2003 consent order.

C&D II at ¶ 3-4.

{¶3} In March of 2011, the state filed contempt charges against Crossridge, C&D, and Appellant as an individual for failure to comply with the 2003 consent order. The trial court dismissed the complaint due to the state's failure to reference the 2007 extra-judicial agreement. The state appealed the trial court's decision in *State ex rel. DeWine v. C&D Disposal Technologies*, 7th Dist. Jefferson No. 11 JE 19, 2012-Ohio-3005, ("*C&D I*"). On appeal, we reversed the trial court's decision and held that the court

abused its discretion in dismissing the contempt complaint without first holding a show cause hearing.

{¶4} On remand, notice of a hearing was sent to all parties. Appellant's notice was sent to his attorney, who informed the court that he had withdrawn from representation of Appellant. However, he claimed that he had forwarded the notice to Appellant at his business address. Appellant failed to attend the hearing. The trial court entered judgment against Appellant (individually), Crossridge, and C&D, jointly and severally. In the court's 2012 contempt order, the defendants were ordered to provide financial assurances within thirty days, comply with the final and post-closure plans, close the landfill within one year, begin post-closure care of the landfill, and pay the stipulated penalty of $19,316,000. Instead of directly appealing the trial court's order, Appellant filed a pro se Civ.R. 60(B)(1) motion on behalf of not only himself, but he also purported to represent Crossridge and C&D. The court denied the motion. Importantly, Appellant did not appeal the court's decision. *Id.* at ¶ 7.

{¶5} Approximately one year later, Appellant filed a second and successive Civ.R.60 (B)(1) motion, this time through counsel. The trial court granted Appellant's second motion. In *C&D II,* we reversed the judgment of the trial court, holding that Appellant's remedy was to have filed a direct appeal, not a successive Civ.R. 60(B) motion. It does not appear that any attempt has been made to date to enforce the 2012 contempt finding.

{¶6} Since that time, there have been several filings and hearings before the trial court. Relevant to this matter, on October 28, 2019, the state filed "Written Charges in

Contempt, Motion to Show Cause & Request Hearing" against Appellant, Crossridge Inc., C&D Disposal Technologies, LLC, and the Estate of Joseph N. Scugoza.

{¶7} The same charges were also filed against "new parties": Barbara Scugoza (wife of Joseph N. Scugoza, deceased), Delores Russell Scugoza (wife of Joseph G. Scugoza), Kevin Lisewski (day-to-day manager and operator of the site and manager of Phoenix Scrap Metals LLC), Phoenix Scrap Metals, LLC (owned by Delores Russell Scugoza), and Phoenix Off Road Park, LLC (owned by Delores Russell Scugoza). According to the state, although these new parties were not included in any previous court order, there is evidence that they acted in concert or participated in the violation of the court's orders.

{¶8} The charges included: (1) failure to provide financial assurance for the Crossridge Landfill, (2) failure to complete closure of the Crossridge Landfill, (3) failure to properly remove leachate from the Crossridge Landfill and open dump area and provide receipts, (4) failure to perform explosive gas monitoring at the Crossridge Landfill, (5) failure to perform groundwater monitoring of the Crossridge Landfill, (6) failure to begin post-closure care of the Crossridge Landfill, (7) failure to pay stipulated penalties, (8) failure to provide accounting for off-road events, (9) failure to cover the C&D Disposal Landfill, (10) failure to cover erosion rills on the C&D Disposal Landfill, (11) acceptance of additional waste, (12) failure to apply for NPDES permits, (13) failure to pay civil penalties, (14) failure to remove and dispose of solid waste and other materials at the open dump area and provide financial assurance for the C&D Disposal Landfill, (15) failure to close the C&D Disposal Landfill, (16) failure to perform post-closure care and provide financial assurance for the C&D Disposal Landfill, (17) failure to obtain a storm-

water general permit, (18) failure to stabilize the disturbed area of the site, (19) failure to install and maintain proper stormwater controls, and (20) failure to provide written discovery.

{¶9} Appellant and Crossridge filed an answer to the charges. Delores Russell-Scugoza, Phoenix Scrap Metals, LLC, and Phoenix Off Road Park, LLC filed a motion to dismiss the charges filed against them based on lack of personal jurisdiction. Barbara Scugoza filed a similar motion to dismiss. It does not appear that either of these motions have been resolved to date. It does not appear that Kevin Lisewski has ever filed an answer or motion to dismiss.

{¶10} We note that this matter as it concerns defendant C&D Disposal is subject to a bankruptcy stay as of March 20, 2019. It does not appear that the stay has yet been lifted. The trial court determined that the stay did not apply to codefendant Crossridge. Regardless, this appeal involves only Appellant Joseph G. Scugoza, who has admitted to his contempt.

{¶11} A hearing on the contempt charges was originally set for December 17, 2019, however, procedural issues within this case delayed the hearing. After this Court's remand on February 8, 2016, the parties continued to file motions and the trial court continued to rule on those motions and set hearing dates. However, on December 2, 2019, the trial court requested the assignment of a visiting judge. The Ohio Supreme Court appointed a visiting judge to preside over the case on December 30, 2019. The original trial court judge continued all hearings and held all motions in abeyance while the appointment was pending. Some motions continue to remain outstanding even after the appointment, however, these motions do not involve Appellant. The rulings have been

delayed, at least in part, due to the fact that the visiting judge retired on February 1, 2020, just over a month after the appointment. On February 26, 2020, a second visiting judge, who is retired, was appointed to the case.

{¶12} After the appointment of the second visiting judge, a hearing was held where Appellant admitted to his contempt. Then, on July 14, 2021, the trial court sentenced Appellant to a $250 fine and 10 days to be served at the Jefferson County Jail on each of the twenty counts to run consecutively, for an aggregate total of 200 days in jail, and a $5,000 fine. It is from this entry that Appellant timely appeals.

{¶13} On July 19, 2021, we granted Appellant's motion for a stay of execution of sentence pending appeal. We specified that the stay applied only to the jail sentence.

{¶14} After the notice of appeal was filed in this matter, the state filed several motions both to the trial court and in this Court. First, the state filed a motion in the trial court requesting a *nunc pro tunc* entry specifying that this matter involves civil contempt and requesting the inclusion of purge conditions. The trial court responded by filing a one-paragraph handwritten entry stating that this matter involves civil contempt and that Appellant "may purge the civil contempt order upon a motion and hearing to this court and this judge. So ordered." (7/28/21 *Nunc Pro Tunc*.) The state filed a motion in this Court requesting that we enlarge the appellate record to include the *nunc pro tunc* entry. We overruled the motion, as the state had a procedure by rule, App.R. 3(C) (Cross appeal), available for this purpose. The state also filed a motion asking this Court to reconsider the issue of whether Appellant must pay a supersedeas bond. We overruled the motion.

{¶15} On July 28, 2021, the state filed a motion seeking to supplement the appellate record with the missing portions of the transcripts Appellant originally had requested in the praecipe. However, this motion was improperly filed under the trial court caption and never became a part of the appellate record. As such, we were not given the opportunity to rule on the motion.

{¶16} However, during our review of this case, it was readily apparent that Appellant's praecipe requested "Transcript of Day 1 of the hearing wherein the defendant Joseph G. Scugoza admitted to contempt and the transcript of the entirety of the proceedings on July 14, 2021." Despite this instruction, the court reporter prepared only a partial transcript of the July 14, 2021 hearing. Thus, we were not given any part of the "Day 1 hearing" or the remaining July 14, 2021 transcripts Appellant had requested. Accordingly, on January 11, 2022, we issued a judgment entry allowing the parties seven days to file the additional transcripts. On January 18, 2022, we received the full transcripts.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ERRED IN FAILING TO SET FORTH SPECIFIC PURGE TERMS AFTER ISSUING SANCTIONS AS THE CONTEMPT WAS CIVIL IN NATURE.

{¶17} Appellant explains that purge conditions must be provided if a defendant is sentenced to a jail term for civil contempt. Appellant argues that the trial court failed to do so, here. The state concedes error.

{¶18} A finding of contempt is entered when a party "disagrees or disobeys an order or command of judicial authority." *Seoud v. Bessil*, 7th Dist. Mahoning No. 15 MA 0090, 2016-Ohio-8415, ¶ 14, citing *Spickler v. Spickler*, 7th Dist. Columbiana No. 01 CO 52, 2003-Ohio-3553; *First Bank of Marietta v. Mascrete, Inc*., 125 Ohio App.3d 257, 708 N.E.2d 262 (4th Dist.1998).

{¶19} When a contempt proceeding is classified as civil, "the punishment is conditional, and for this reason the contemnor is said to carry the keys of his prison in his pocket." *Seoud* at ¶ 16, citing *Burke v. Burke*, 7th Dist. Mahoning No. 13 MA 24, 2014-Ohio-1402; *Pugh v. Pugh*, 15 Ohio St.3d 136, 472 N.E.2d 1085 (1984). "The condition for terminating the contempt sanction is referred to as the purge condition." *Seoud* at ¶ 16*,* citing *Burke*; *Liming v. Damos*, 133 Ohio St.3d 509, 2012-Ohio-4773, 979 N.E.2d 297. Purge conditions are generally required in a civil contempt sanction. *Burke, supra,* at ¶ 24, *Nichol v. Nichol*, 7th Dist. Mahoning No. 97-CA-143, 2000 WL 652537, *5 (May 8, 2000); *State v. Kilbane*, 61 Ohio St.2d 201, 206-207, 400 N.E.2d 386 (1980).

{¶20} The parties agree that the contempt proceedings were civil in nature. Thus, the trial court was required to provide purge conditions. Although the state submits that the issue was corrected through the *nunc pro tunc* entry, the trial court did not specify purge conditions at the sentencing hearing. Hence, the addition of purge conditions within a *nunc pro tunc* entry cannot reflect what was actually decided at the hearing, and do not constitute the proper use of a *nunc pro tunc* entry. Even so, the court's *nunc pro tunc* entry did not actually impose purge conditions. It merely informed Appellant that he could purge his contempt "upon a motion and hearing." (7/28/21 J.E.) It provided no indication of the steps it would be necessary for Appellant to take in order to purge.

{¶21} It is generally error to hold one in contempt in the absence of clear language detailing the purge conditions and an opportunity to purge the contempt. *Machnics v. Sloe*, 11th Dist. Geauga No. 2013-G-3138, 2015-Ohio-2592, ¶ 29, citing *Ruben v. Ruben*, 10th Dist. Franklin No. 12AP-717, 2013-Ohio-3924, ¶ 39; *Rich v. Rich*, 11th Dist. Trumbull No. 2012-T-0089, 2013-Ohio-2840, ¶ 18. As we have previously acknowledged, "for a purge condition to be valid, it must provide a 'clear opportunity to purge the contempt' rather than regulate future conduct." *Burke at* ¶ 10, citing *Frey v. Frey*, 197 Ohio App.3d 273, 2011-Ohio-6012, 967 N.E.2d 246 (3d Dist.).

{¶22} The trial court's "purge conditions" essentially ordered Appellant to take unspecified actions towards remediation, file a motion, and then the court would determine if those actions were sufficient to purge the contempt. However, the law requires specific and clear conditions that, if satisfied, would purge the contempt. In other words, the contemptor must know in advance without guesswork what actions will be sufficient.

{¶23} We note that the issue of purge conditions was part of some confusion during the proceedings. At the sentencing hearing, the following conversation occurred where the state appears to have initially believed the contempt was not "purgeable." The court disagreed and determined that the contempt was civil, however, the court's view regarding the purge process appears to be inaccurate.

> [Defense Counsel]: * * * the Court has to allow an opportunity to purge. Failure to allow that -- in my understanding of the reading of that case, it's the establishment of some terms.

THE COURT: Well, if he can perhaps purge by cleaning up this -- the site, all right, to my -- to my satisfaction, then I'll listen to it, and he could be set free.

* * *

[The state]: In a situation of a criminal contempt sanction, criminals' contempt are not purgeable. Now, if [Appellant] wants to submit a motion for judicial release, the State will respond, but we would respectfully disagree with that statement, the distinction being that civil contempt is purgeable.

MALE SPEAKER: This is civil.

[Defense Counsel]: This is civil.

* * *

THE COURT: I hear you, but I -- if you can bring something to me that shows that I'm going to determine that there's been material efforts to try to cure the situation at this landfill, on these other charges, I will seriously consider it and purge it. That's it.

(7/14/21 Sentencing Hrg., pp. 92-93.)

{¶24} At the hearing, Appellant proposed the following purge conditions. First, he urged the court to consider his plans to sell the site to a group of investors who are financially sound and would be in a better position to fund the remediation efforts, as he

lacks the financial ability to complete the efforts himself. Second, he offered to assign to the state the royalties from an oil and gas lease he holds with Ascent that includes approximately fifty acres of land. According to Appellant, that lease has a value of $3,000 to $7,000 per acre, for a total value of $150,000 to $350,000 per year, apparently.

{¶25} Appellant acknowledged the ongoing nature of his remediation duties. To assist in those efforts, Appellant requested the court return to an order previously entered by Judge Michelle G. Miller to allow an offroad company to operate on the site, which would allow leachate hauling and remediation efforts to the recycling area. It is unclear when the order was entered and why it is no longer in effect. In lieu of a jail sentence, which would preclude his ability to remediate, Appellant offered 180 days of house arrest. Appellant explained that the standard for house arrest in Jefferson County is that three days of house arrest equates to one day in jail, thus his sentence would equal 60 days of jail. Appellant offered weekly, biweekly, or monthly reports to the court regarding the remediation efforts during this time.

{¶26} The court responded that it was up to the state whether to accept those purge conditions. However, while a trial court may request recommendations from the parties, the court must ultimately adopt or create purge conditions and specify those terms within an order. The state responded by offering the following conditions: the removal of 7,500 tons of solid waste per month from the open dump; a payment of $7,000,000 into a trust fund for cleanup and closure of the landfills; and the payment of the $19 million civil fines, apparently in full. The state suggests in its brief that we adopt these recommendations as the purge conditions. We decline to do so, as the trial court bears the duty to impose purge conditions.

{¶27} As conceded by the state, Appellant's first assignment of error has merit and is sustained.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED IN ITS IMPOSITION OF CONSECUTIVE SANCTIONS CONTRARY TO LAW.

{¶28} Appellant argues that the trial court improperly sentenced him on each count listed in the complaint in violation of *Pugh v. Pugh,* 15 Ohio St.3d 136, 472 N.E.2d 1085 (1984); *Brown v. Brown,* 12th Dist. Clermont No. CA2019-01-007, 2019-Ohio-3619; and *Mackowiak v. Mackowiak,* 12th Dist. Fayette No. CA2010-04-009, 2011-Ohio-3013. Appellant also argues that it was error for the court to order those sentences to run consecutively.

{¶29} In response, the state urges that because Appellant failed to provide the full transcripts in this matter this Court must presume the regularity of the proceedings. Had those transcripts been provided in full, the state argues that the egregious behavior that resulted in Appellant's contempt charges would have clearly demonstrated why consecutive sentences were appropriate in this matter. Additionally, the state contends that each charge within the complaint constitutes a separate offense and can be sentenced separately, in accordance with *State ex rel. Charmain H. v. Paul M*., 6th Dist. Erie Nos. E-00-067, E-00-65, E-00-66, 2001 WL 844645 (July 27, 2001).

{¶30} R.C. 2705.05(A) provides that:

(A) In all contempt proceedings, the court shall conduct a hearing. At the hearing, the court shall investigate the charge and hear any answer or

testimony that the accused makes or offers and shall determine whether the accused is guilty of the contempt charge. If the accused is found guilty, the court may impose any of the following penalties:

(1) For a first offense, a fine of not more than two hundred fifty dollars, a definite term of imprisonment of not more than thirty days in jail, or both;

(2) For a second offense, a fine of not more than five hundred dollars, a definite term of imprisonment of not more than sixty days in jail, or both;

(3) For a third or subsequent offense, a fine of not more than one thousand dollars, a definite term of imprisonment of not more than ninety days in jail, or both.

{¶31} At the onset, we note that there is no caselaw discussing whether a trial court must make the R.C. 2929.14(C) findings when imposing consecutive sentences for civil contempt. We recognize that the law regarding the findings necessary to impose a consecutive sentence differs depending on whether that offense is a felony or a misdemeanor. However, civil contempt is not classified as either a misdemeanor or felony. It is civil in nature.

{¶32} Even if we were to accept Appellant's logic regarding the criminal behavior from which a contempt charge springs, the law provides that a court is only required to make the findings where a consecutive sentence is actually imposed. If a court is merely reserving the right to impose that sentence at some future date, the findings need not be immediately set forth. See *State v. Bates*, 6th Dist. Williams No. WM-12-002, 2013-Ohio-

1270 and *State v. Hess*, 11th Dist. Portage No. 2018-P-0106, 2019-Ohio-4223. Again, accepting Appellant's logic, civil contempt would fall within this principle, as the contemptor has the ability to purge the contempt, making any jail sentence more akin to a reserved sentence in a criminal matter, and the trial court would not be required to make the R.C. 2929.14(C) findings, here. However, our analysis does not end, as Appellant also raises another issue with his sentence.

{¶33} As noted by Appellant, the Ohio Supreme Court has held that, pursuant to R.C. 2705.05, "appellant may only be imprisoned for a maximum of ten days if he is found guilty of contempt. He cannot be imprisoned for each violation which composes the contempt charge. However, this ruling does not limit the number of contempt actions which may be brought." *Pugh*, 15 Ohio St.3d at 143.

{¶34} The state argues that other Ohio appellate districts have since held that the legislature is unable to limit the ability of a court to punish contempt, and so the sentencing limits found within R.C. 2705.05 are merely guidelines. These cases rely on *State ex rel. Johnson v. Cty. Court of Perry Cty*., 25 Ohio St.3d 53, 54, 495 N.E.2d 16 (1986).

{¶35} Although the issue in *State ex rel. Johnson* was "whether county courts have jurisdiction through inherent power or under R.C. 2705.02 to punish contempts," the holding in that case has been extended over the years to apply to R.C. 2705.05 as well. *Id.* at syllabus.

> "A court created by the constitution has inherent power to define and punish contempts, such power being necessary to the exercise of judicial functions." *State, ex rel. Turner, v. Albin* (1928), 118 Ohio St. 527, 161 N.E.2d 792, paragraph one of the syllabus. "The general assembly is

> without authority to abridge the power of a court created by the constitution to punish contempts * * *, such power being inherent and necessary to the exercise of judicial functions * * *." *Hale v. State* (1896), 55 Ohio St. 210, 45 N.E. 199, paragraph one of the syllabus. Statutory powers to deal with contempts are merely cumulative and in addition to the inherent authority of the court. *Univis Lens Co. v. United Electrical Radio & Machine Workers of America* (1949), 86 Ohio App. 241, 245, 89 L.Ed.2d 658 [41 O.O. 158]. However, where a procedure has been prescribed for the exercise of the power to punish contempts by rule or by statute, it is the duty of the court to follow such procedure. See *In Matter of Lands* (1946), 146 Ohio St. 589, 595, 67 N.E.2d 433 [33 O.O. 80]. A court created by statute, however, has only limited jurisdiction, and may exercise only such powers as are directly conferred by legislative action. *Oakwood v. Wuliger* (1982), 69 Ohio St.2d 453, 454, 432 N.E.2d 809 [23 O.O.3d 398]. County courts, therefore, as presently constituted in Ohio, have no inherent authority to punish contempts.

State ex rel. Johnson at 54.

{¶36} A dissent in a Tenth District case acknowledged that R.C. 2705.05(A) was initially intended only to require compliance with the statute where the case involved direct contempt. See *Copley Twp. Bd. of Trustees v. W.J. Horvath Co*., 193 Ohio App.3d 286, 2011-Ohio-1214, 951 N.E.2d 1054 (9th Dist.) (Dissent, J. Carr). However, the dissent explained that Ohio appellate courts began to extend that principle to indirect contempt. See *Byron v. Byron*, 10th Dist. Franklin No. 03AP-819, 2004-Ohio-2143; *Olmsted Twp. v.*

Riolo, 49 Ohio App.3d 114, 117, 550 N.E.2d 507 (8th Dist.1988); *Moraine v. Steger Motors, Inc*., 111 Ohio App.3d 265, 269, 675 N.E.2d 1345 (2nd Dist.1996).

{¶37} This issue has been addressed more recently by the Eighth District in *Dimalanta v. Dimalanta*, 8th Dist. Cuyahoga No. 108920, 2020-Ohio-6992. The *Dimalanta* court held that the judgment entry before them contained two separate "first offenses," meaning that two separate violations were included in the same complaint. *Id.* at ¶ 27. Because the entry provided two distinct contempt charges each of which could be punishable up to thirty days in jail, the court held that the sixty-day jail sentence did not violate R.C. 2705.05(A). *Id.* at ¶ 28.

{¶38} Other Ohio appellate districts have not expressly adopted either *Pugh* or *State ex rel. Johnson*, but have acknowledged that the sentencing limits within R.C. 2705.05(A) do not apply to direct contempt violations. Although the result in the instant matter is the same regardless which case we apply, we join the districts that have followed *Pugh* based on the clear guidance provided by the Ohio Supreme Court in *State ex rel. Johnson.* In *Johnson*, the Court made it clear that the legislature cannot limit a court's inherent power to punish contempt. That said, it is also clear that R.C. 2705.05(A) is to be considered as a guideline for the court when punishing a contemptor.

{¶39} The trial court's ability to impose a sentence is not limitless and is subject to appellate review. A civil contempt sanction is reviewed for an abuse of discretion. *Faubel v. Faubel*, 7th Dist. Mahoning Nos. 05-MA-101 and 05-MA-210, 2006-Ohio-4679, ¶ 19, citing *In re Olivito*, 7th Dist. No. 04-MA-42, 2005-Ohio-2701, at ¶ 53. "An abuse of discretion implies a decision that is unreasonable, arbitrary, or unconscionable." *Jeskey*

v. Jeskey, 7th Dist. Jefferson No. 14 JE 23, 2015-Ohio-5599, ¶ 10, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶40} The Second District has held that the imposition of consecutive thirty-day jail sentences for each of four violations contained in the complaint was not an abuse of discretion where the contemptor had a history of violating court orders and had previously served a thirty-day jail term for contempt of an order. *Johnson v. Johnson*, 2020-Ohio-1644, 154 N.E.3d 310, ¶ 24 (2nd Dist.). The court also heavily relied on the fact that the contemptor had ample time and resources to allow him to comply with the order. *Id.*

{¶41} Here, the underlying order was entered on October 8, 2003 ("2003 Consent Order"). Since that time, the state contends that four separate orders required the closure or substantial steps towards the closure of the landfill. These orders were entered on October 15, 2012; May 12, 2016; March 6, 2017; and September 11, 2019. In admitting his contempt in this matter, Appellant conceded that the landfill had not been closed nor have substantial steps been taken to achieve that goal.

{¶42} However, this case does not involve a simple, direct set of facts or procedure. The original 2003 Consent Order required closure of the landfill by July 5, 2006. In 2007, the parties entered into an extrajudicial agreement to extend the deadline until December 31, 2008. The 2012 contempt order, which replaced the 2003 Consent Order and 2007 extrajudicial agreement, contained certain additional requirements and provided an additional year to close the landfill. Since the original order in 2003, the state has not sought jail time or fines, despite the obvious lack of progress. Instead, the state has opted to enter into additional agreements with Appellant, including an extrajudicial agreement, in lieu of seeking sanctions.

{¶43} Significantly, the original consent order in this case was entered almost eighteen years ago. Despite this, the instant matter represents only the second contempt complaint, and the first attempt to seek sanctions. The record shows that the first contempt complaint was the subject of multiple appeals and that no attempt has been made to enforce that original finding. Now, the state not only seeks to have punishment levied for the first time but advocates for a possible jail sentence that is more than double the maximum punishment for a third offense under the guidelines. While the state's frustration with the slow pace of remediation efforts towards this environmental hazard is understandable, the imposition of a sentence of this magnitude exceeds the court's discretion considering that this is the first time in eighteen years that the state has opted to pursue sanctions.

{¶44} On one hand, similar to *Johnson,* Appellant has certainly had ample time to comply with the court's order, or at least to take substantial steps towards that goal. While the jail term ordered by the court is significantly higher than in *Johnson*, this case involved eight more contempt violations. In addition, the court did not impose the maximum possible jail term (60 days) for each violation.

{¶45} On the other hand, the rationale employed by both the trial court and the state appears to be punitive in nature. The intent of civil contempt is to encourage compliance with an order, unlike in cases of criminal contempt, which is intended to punish acts of disobedience. *State ex rel. Cordray v. Tri-State Group, Inc*., 7th Dist. Belmont No. 07-BE-38, 2011-Ohio-2719, ¶ 40-41. Here, the state urges this Court to affirm the sentence based on Appellant's "mass of transgressions" and his "outright defiant conduct," which the state claims form the basis of the trial court's judgment.

(Appellee's Brf., pp. 17, 18.) At the July 14, 2021 hearing, the state asserted "we believe the Court is in possession of the necessary facts to handle this matter appropriately and impose a **punishment that's truly reflective of the seriousness of the conduct**." (Emphasis added) (7/14/21 Hrg. Tr., p. 47.) Although Appellant's behavior could certainly be considered egregious, the state admits its rationale is based in punishment instead of an effort to gain compliance with the court's orders.

{¶46} Further, unlike *Johnson,* Appellant has not previously served a jail term in this matter despite the fact that judgment was entered in 2003. While abuse of discretion is a relatively high standard, two hundred days of jail for a first finding of contempt with no prior imposition of a jail sentence is, on its face, unreasonable. For context, the most severe punishment found within the R.C. 2705.05 guidelines is ninety days in jail for a third or greater offense. Appellant's punishment is more than double the highest maximum punishment in the guidelines. Again, the goal of civil contempt is to obtain compliance, not punishment.

{¶47} A jail sentence of this length can only serve to further impair the already slow moving remediation efforts and perhaps halt these efforts all together during the jail term, which amounts to more than six months. While a time may arise in the future where imposition of such a lengthy jail sentence might be necessary, that time has not yet arrived.

{¶48} We note that Appellant was also sentenced to an aggregate $5,000 fine. It is unclear whether Appellant contests his fine. However, as imposition of a fine is part of Appellant's sentence, all aspects of this sentence must be reconsidered by the trial court on remand.

{¶49} Because the trial court imposed a jail term that is excessive in light of the fact that this is the first contempt sentence, no previous jail term had been imposed, and the court's rational appears punitive in nature, Appellant's second assignment of error has merit and is sustained.

Conclusion

{¶50} Appellant argues that the trial court failed to provide purge conditions. Appellant also argues that the court erroneously ordered his jail term for each of the twenty violations to run consecutively. For the reasons provided, Appellant's arguments have merit. Accordingly, the judgment of the trial court is reversed and remanded for resentencing and for the purpose of imposing clear instructions as to conditions necessary for Appellant to purge his contempt.

Donofrio, P.J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are sustained and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Jefferson County, Ohio, is reversed. We hereby remand this matter to the trial court for further proceedings according to law and consistent with this Court's Opinion. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.