

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002072-MR
AND
NO. 2001-CA-002073-MR
AND
NO. 2001-CA-002074-MR
AND
NO. 2001-CA-002075-MR

JUSTIN DECKER

APPELLANT

v. APPEAL FROM HART CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
ACTION NOS. 98-CR-00062, 99-CR-00022,
99-CR-00023, and 00-CR-00106

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: COMBS, DYCHE, KNOPF, JUDGES.

KNOPF, JUDGE: Justin Decker appeals from an order of the Hart Circuit Court holding him in contempt of court for violating his work-release order by bleaching his hair, mustache, and eyebrows while on work-release, thereby engaging in conduct not authorized by the order granting work-release. Decker contends that there was insufficient evidence to support the trial court's finding of

criminal contempt in that there was no evidence that he had violated any term or condition of his work-release order.

In May 19, 1998, in circuit court case 98-CR-00062, Decker was indicted for first-degree criminal mischief, first-degree wanton endangerment, and first-degree complicity to wanton endangerment. In February 1999, in circuit court case 99-CR-00022, Decker was indicted for receiving stolen property and complicity to receiving stolen property. Also in February 1999, in circuit court case 99-CR-00023, Decker was indicted for first-degree trafficking in a controlled substance, first-degree possession of a controlled substance, leaving the scene of an accident, operating a motor vehicle while license suspended, and attempting to elude.

On July 9, 1999, Decker entered a plea agreement resolving the foregoing indictments. Pursuant to the plea agreement, after consideration of concurrent sentencing, Decker was sentenced to a total of five years to serve, with the final one and one-half years of the sentence being probated for a period of five-years, conditioned upon the payment of restitution.

In September 2000, in circuit court case 00-CR-00106, Decker was indicted for second-degree escape and second-degree persistent felony offender. The charges resulted from the allegation that on June 29, 2000, Decker left the work-site while on work-release. Pursuant to a plea agreement, Decker subsequently pled guilty to third-degree escape and was sentenced

to twelve months imprisonment to be served concurrently with his previous sentence.

Despite his previous escape attempt while on work-release, on June 19, 2001, the trial court entered an order again granting Decker work-release. Decker's employer was to be a business owned by his father, Steve Decker Roofing.

On July 3, 2001, while on work-release, Decker bleached his hair, moustache, and eyebrows, significantly changing his appearance. Prior to bleaching, Decker's hair had been brown. Upon his return to jail that evening, Decker's change of appearance was logged and an incident report form was filed. The report form noted that the incident was being logged and reported because "it may be a violation of [Decker's] court-order [sic] work release since he is supposed to be working and not having make-overs."

The incident report was referred to the trial court, and on July 5, 2001, Decker's work-release privileges were terminated. On July 12, 2001, the trial court entered an order directing Decker to show cause why he should not be held in contempt for violation of the previously entered work-release order. The caption of the order listed circuit court cases 98-CR-00062, 99-CR-00023, 99-CR-00022, and 00-CR-00106, and a copy of the order was filed in all four cases. The show-cause hearing was held on August 21, 2001. On August 28, 2001, the trial court entered an order holding Decker in contempt of court for violating his work-release order and ordering him to serve 179 days in each of the four circuit court cases, to run

concurrently. Notices of appeal were subsequently filed in each of the four circuit court cases, resulting in these four appeals.

Decker contends that there was insufficient evidence to support the trial court's finding of criminal contempt on the basis that there was no evidence presented that he had violated any term or condition of his work release order. We disagree.

The power to punish for contempt is inherent in every court.¹ Any court or judge may punish any person guilty of contempt for disobeying a judicial order entered under the authority of the Court.²

Contempt is "the willful disobedience toward, or open disrespect for, the rules or orders of a court. 'Contempts are either civil or criminal.'"³ The purpose of civil contempt is to coerce the contemnor into conforming his behavior in accordance with the court's commandment. The familiar phrase defining the characteristic of civil contempt is that those so charged "carry the key of their prison in their own pockets."⁴

Alternatively, some contempts are deemed criminal and are punished accordingly. The act of disobedience consists of

¹Newsome v. Commonwealth, Ky. App., 35 S.W.3d 836, 839 (2001) (citing Arnett v. Meade, Ky., 462 S.W.2d 940, 947 (1971); Underhill v. Murphy, Ky., 117 Ky. 640, 78 S.W. 482, 484 (1904); and Vuitton Et Fils S.A. v. J. Young Enterprises, Inc., 644 F.2d 769, 779 (9th Cir.1981)).

²Id. (citing Kentucky Revised Statute (KRS) 432.280).

³Commonwealth v. Burge, Ky., 947 S.W.2d 805, 808 (1996) (quoting Gordon v. Commonwealth, 141 Ky. 461, 133 S.W. 206, 208 (1911)).

⁴Shillitani v. United States, 384 U.S. 364, 368, 86 S.Ct. 1531, 16 L.Ed.2d 622, 626 (1966) (citation omitted); Blakeman v. Schneider, Ky., 864 S.W.2d 903, 906 (1993).

doing something which the court has prohibited.⁵ “[C]riminal contempts are all acts in disrespect of the court or its process which obstruct the administration of justice, or tend to bring the court into disrepute.”⁶ The court seeks to punish conduct which has already occurred rather than to compel a course of action. It is the purpose of the punishment (rather than the fact of punishment per se) that distinguishes civil from criminal contempt.⁷

Criminal contempt can take one of two forms; that is, either direct or indirect. Direct contempt is committed in the actual presence of the court, insulting the court's decorum and proceedings. This form of contempt can be punished summarily absent any need for fact-finding proceedings as all elements of the offense are within the personal knowledge of the court.⁸ Indirect contempt occurs outside the court and requires that a hearing be had on all elements of the offense to establish whether the court's order has been violated. Its punishment requires proceedings which satisfy due process.⁹

The order appealed from found Decker to be in criminal contempt as it was clearly intended to punish rather than coerce.

⁵Blakeman, 864 S.W.2d at 906.

⁶Levisa Stone Corp. V. Hays, Ky., 429 S.W.2d at 414 (1966) (quoting Jones v. Commonwealth, 308 Ky. 233, 213 S.W.2d 983, 985 (1948)).

⁷Blakeman, *supra*.

⁸Burge at 808.

⁹Id.

Further, since the contempt occurred outside of court, the conduct was indirect contempt.

The crime of criminal contempt contains three essential elements: (1) there must be a violation; (2) of a clear, unambiguous, and reasonably specific order of the court; and (3) the violation must have been willful.¹⁰ The evidence necessary for a finding of contempt must show willful disobedience toward, or open disrespect for, the rule or orders of a court.¹¹ To be punished for criminal contempt, it is necessary to prove that the defendant had knowledge of a valid order that prohibited the conduct in question and that he intentionally violated it.¹² When contempt is criminal in nature, it is necessary for all elements of the contempt to be proven beyond a reasonable doubt.¹³

We are persuaded that the evidence supports, beyond a reasonable doubt, the trial court's holding of Decker in criminal contempt of court.

The June 19, 2001, work-release order contained a provision which clearly, unambiguously, and with reasonable specificity, proscribed the conduct for which Decker was held in contempt. Paragraph three of the order provided as follows:

[T]he Defendant shall be in the Hart County Jail at all times when not at work or en route to and from work, with the Defendant

¹⁰U.S. v. Heavrin, 144 F.Supp.2d 769, 782 (W.D.Ky. 2001).

¹¹Commonwealth v. Pace, Ky. App., 15 S.W.3d 393, 396 (2000).

¹²Butts v. Commonwealth, Ky., 953 S.W.2d 943, 944 (1997).

¹³Pace at 396 (citing Brannon v. Commonwealth, 162 Ky. 350, 172 S.W. 703 (1915)).

being furloughed from the jail for work
between the hours of 6:00 a.m. to 6:00 p.m.
Mon - Friday.

The work-release order thus provided for three possibilities: (1) that Decker be at work; (2) that Decker be en route to or from work; or (3) that Decker be in the Hart County Jail. Further, the order provided that "the Defendant's work release privileges be and they are hereby restricted to" Steve Decker Roofing. Steve Decker is Justin Decker's father, and Decker's work release employment was roofing.

Beyond a reasonable doubt, when Decker was bleaching his hair, mustache, and eyebrows, he was not working, en route to or from work, or in the Hart County Jail. It follows that, beyond a reasonable doubt, Decker violated the order. We are persuaded that the nature of the violation - the appellant's bleaching of his hair so as to significantly alter his appearance - is circumstantial evidence sufficient to support a finding, beyond a reasonable doubt, of willful disobedience toward, or open disrespect for, the trial court's work-release order. Accordingly, all of the necessary elements to support a finding of criminal contempt are met.

Decker argues that the evidence was insufficient because he bleached his hair at his father's home, which also serves as the roofing business office and which was listed on the work-release order as the employer's address. Decker alleges that he bleached his hair while he waited for his father to make business calls and for the other roofers to arrive, "during a period when he and his supervisor were required to 'wait' as a

matter of business necessity, and applying bleach to his relatively short hair and beard, [was] a process surely not taking longer than an ordinary restroom break." Decker equates his conduct to smoking a cigarette, having a cup of coffee, watching television, or reading the paper during an inconsequential period of idleness at the job site.

Decker's conduct was of significantly greater consequence than merely killing time during a period of down-time idleness by, for example, reading the newspaper. It is doubtful that if one of the other workers had arrived early, business-owner Steve Decker would have approved of the employee going into the office bathroom and bleaching his hair. Similarly, if Decker had been employed by another roofer rather than his father, it is doubtful that his supervisor, during a period of down-time, would have condoned Decker entering the office bathroom and bleaching his hair. Further, the hair bleaching, according to the deputy jailer's testimony, completely altered Decker's appearance and would not have been permitted on the jail premises.

We are not persuaded that the trial court erred or abused its discretion. Decker's conduct could reasonably be thought to have demonstrated disrespect for the trial court's order granting Decker the significant privilege of work-release. It was thus lawful for the trial court to hold Decker in contempt, both to punish him for disrespecting the work-release order, and to communicate a message to other work-release prisoners that engaging in conduct outside the terms of work-release will result in disciplinary action by the court.

For the foregoing reasons the judgment of the Hart
Circuit Court is affirmed.

COMBS, JUDGE, CONCURS.

DYCHE, JUDGE, CONCURS WITH RESULT.

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