STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July19, 2011
v	No. 298260 St. Clair Circuit Court
DAVID MICHAEL MCLEAN, Defendant-Appellant.	LC No. 09-000435-FH

Before: M. J. KELLY, P.J., and O'CONNELL and SERVITTO, JJ.

PER CURIAM.

Defendant appeals by leave granted from the circuit court's denial of his motion to vacate his conviction for absconding on bond, MCL 750.199a. We affirm.

Defendant claims that his conviction for absconding on bond following a conviction for criminal contempt of court arising out of the same act constitutes a violation of his right against double jeopardy. We disagree. We review defendant's constitutional argument de novo. *People v Lett*, *466* Mich 206, 212; 644 NW2d 743 (2002).

Both the United States and the Michigan Constitutions provide protection for a criminal defendant from twice being put in jeopardy for a single crime. US Const, Am V; Const 1963, art 1, § 15. The right against double jeopardy has three distinct protections: protection from multiple prosecutions for the same offense after acquittal, protection from multiple prosecutions for the same offense after conviction, and protection from multiple punishments for the same offense. *People v Torres*, 452 Mich 43, 64; 549 NW2d 540 (1996), citing *United States v Wilson*, 420 US 332, 343; 95 S Ct 1013; 43 L Ed 2d 232 (1975).

The Michigan Supreme Court has adopted the test articulated in *Blockburger v United States*, 284 US 299, 304; 52 S Ct 180; 76 L Ed 306 (1932), for determining whether a defendant's constitutional right against double jeopardy has been violated. *People v Nutt*, 469 Mich 565; 677 NW2d 1 (2004). Under the *Blockburger* test, the prohibition against double jeopardy is violated where conviction for the two criminal offenses stemming from the same action requires proof of the same elements. *Blockburger*, 284 US at 304. Conversely, where conviction of one offense requires proof of elements that the other offense does not require, the double jeopardy protection does not bar conviction for the second offense. *Id*.

MCL 600.1745 states that "[p]ersons proceeded against according to the provisions of this chapter, shall also be liable to indictment for the same misconduct, if it be an indictable offense." This statute explicitly provides for findings of criminal contempt and criminal indictment for the same conduct. In this case, defendant was convicted of criminal contempt, and then charged with absconding on bond, an indictable offense under MCL 750.199a, which arose out of the same misconduct.

Moreover, applying the *Blockburger* test, the elements that must be proved for a conviction of absconding from bond are different from the elements necessary for a criminal contempt conviction. Under MCL 750.199a, "[a]ny person who shall abscond on or forfeit a bond given in any criminal proceedings wherein a felony is charged shall be deemed guilty of a felony." In construing MCL 750.199a, this Court has held that "the necessary elements which the prosecution must prove are that the defendant did abscond and that he did so from a criminal proceeding wherein a felony was charged." *People v Litteral*, 75 Mich App 38, 42; 254 NW2d 643 (1977).[1] A criminal contempt conviction requires that "a willful disregard or disobedience of a court order must be clearly and unequivocally shown." *DeGeorge v Warheit*, 276 Mich App 587, 592; 741 NW2d 384 (2007), citing *People v Matish*, 384 Mich 568, 572; 184 NW2d 915 (1971). Therefore, under *Blockburger* there are not multiple prosecutions for the same offense when a defendant is charged with criminal contempt and absconding on bond.

Concerning the "multiple punishments" prong of a double jeopardy claim, in *People v McCartney*, 141 Mich App 591, 595-596; 367 NW2d 865 (1985), this Court found that MCL 600.1745 applied to the "multiple punishments" analysis by finding that the statute clearly evinced the Legislature's intent that punishment be permissible for both criminal contempt and the criminal act giving rise to such contempt:

> As the Supreme Court noted in a case where the crime of perjury was the subject of contempt proceedings, "the one act constitut[es] two offenses, one against the State and the other against the court." *In re Murchison*, 340 Mich 151, 155-156; 65 NW2d 301 (1954), rev'd on other grounds, 349 US 133; 75 S Ct 623; 99 L Ed 942 (1955). . . . Thus, contempt is designed to punish offenses against the court and, as such, represents a separate and distinct offense from the criminal act which provides the basis for the contempt adjudication. [Alteration by *McCartney*.]

In this case, defendant was found in criminal contempt for an underlying act that also constituted an indictable offense, i.e., absconding on bond. Defendant's conviction for criminal contempt was based on an offense against the circuit court, while his conviction for absconding on bond was based on an offense against the state. See *McCartney*, 141 Mich App at 596. As a

---

[1] In *Litteral*, this Court adopted the definition of "abscond" articulated by the Michigan Supreme Court in *McMorran v Moore*, 113 Mich 101, 104; 71 NW 505 (1897): "'[A] design to withdraw clandestinely, to hide or conceal one's self, for the purpose of avoiding legal proceedings.'" *Litteral*, 75 Mich App at 42.

result, defendant has failed to demonstrate that his constitutional double jeopardy right against multiple punishments has been violated.

Finally, defendant argues for the first time on appeal that MCL 750.199a is void because the compilation of the laws violates Const 1963, art 4, §§ 23 and 36. Specifically, defendant contends the compilation does not include the constitutionally required enacting language. This argument is without merit.

Const 1963, art 4, § 23 provides, "The style of the laws shall be: The People of the State of Michigan enact." Const 1963, art 4, § 36 provides, "No general revision of the laws shall be made. The legislature may provide for a compilation of the laws in force, arranged without alteration, under appropriate heads and titles." Section 23 refers to the style to be used in drafting legislation, i.e., all public acts, whether they originate in the house or senate, must include the enacting language. Defendant concedes "that the House Bill and Public Act have the proper enacting language." Moreover, the compilations of the public acts from 1949 and 1962 include the appropriate language. 1962 CL 79; 1949 CL 94. Further, the Michigan Penal Code (MPC), MCL 750.1 *et seq.*, includes the enacting language with respect to 1931 PA 328 (enacting the MPC).

Affirmed.

/s/ Michael J. Kelly
/s/ Peter D. O'Connell
/s/ Deborah A. Servitto