This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1732

State of Minnesota,
Respondent,

vs.

Anthony Steven Kalland,
Appellant.

Filed August 21, 2023
Affirmed in part, reversed in part, and remanded
Cochran, Judge

Morrison County District Court
File No. 49-CR-21-726

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian J. Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Cochran, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal from final judgment, appellant challenges the district court's contempt finding. He argues that his statements did not constitute direct criminal contempt. Alternatively, appellant contends that the district court abused its discretion by summarily

sentencing him to 180 days and by ordering that the 180-day contempt sentence be served consecutive to a subsequently imposed prison sentence. We conclude that the district court did not abuse its discretion by finding appellant in contempt of court but did abuse its discretion by imposing a 180-day contempt sentence without sufficient findings. Accordingly, we affirm in part, reverse in part, and remand for resentencing.

FACTS

Respondent State of Minnesota charged appellant Anthony Steven Kalland with one count of third-degree possession of a controlled substance based on allegations that law enforcement discovered approximately 19 grams of methamphetamine in Kalland's vehicle following a traffic stop.

In May 2022, Kalland pleaded guilty to third-degree possession of a controlled substance and was placed on conditional release until sentencing. Based on the agreement of the parties, the district court set bail in the amount of $100,000 on the condition that Kalland continue to participate in and comply with his ongoing drug-treatment program. At the end of the hearing, the district court informed the parties that sentencing would be scheduled for September.

In July, prior to sentencing, Kalland appeared before the district court on allegations that he had violated the conditions of his release. The state informed the district court that Kalland was facing new criminal charges, including charges for drug possession, unlawful possession of a firearm, and motor-vehicle theft. The state also noted that Kalland had violated the terms of his conditional release by not completing drug treatment. The state requested that Kalland be held without bail pending sentencing or, in the alternative, that

unconditional bail be set at five million dollars because of concerns for public safety. Kalland asked that he be released on the same conditions as previously set by the district court—$100,000 and compliance with his drug-treatment program. He argued that the new charges were separate from the third-degree possession charge and therefore did not warrant additional release conditions. Due to significant concerns for public safety and based on multiple conditional-release violations, the district court set unconditional bail at $750,000. The district court further ordered that Kalland be held until a presentence investigation was completed.

Immediately after the district court announced its ruling, the following exchange occurred between Kalland and the district court:

> KALLAND: Now I'm going to pull my plea, and I want to fire my attorney.
> THE COURT: Okay. You need to—
> KALLAND: I need a new—
> THE COURT: —not speak right now.
> KALLAND: Well, I need a new attorney then, and then I need to—
> THE COURT: You need to not—
> KALLAND: I need to—
> THE COURT: —speak.
> KALLAND: —to pull my plea. I'm not pleading guilty to anything—
> THE COURT: Mr. Kalland, if you keep—
> KALLAND: —in this courtroom.
> THE COURT: —speaking I'm going to hold you in contempt of court.
> KALLAND: Go ahead, ma'am, because I'm not going anywhere anyways.
> THE COURT: You are now held in—in contempt of court. The [c]ourt will deal with it—Sit down, now.
> KALLAND: Ma'am, this is bullsh-t.
> THE COURT: Sit. Now you're again held in contempt of court for your behavior.

After this exchange, the district court asked the parties if they had anything further for the court to consider. The parties stated that they did not. The district court ended the hearing by explaining its contempt findings and pronouncing Kalland's contempt sentence:

> Mr. Kalland was found in contempt of court. He was told that he needed to stop speaking. He continued to speak. The [c]ourt found him in—in contempt of court, and then he uttered that this is bullshit while the court hearing was still pending. As such, the [c]ourt is assessing a 180-day contempt sanction. That's to be served consecutive to and after any other prison sentence in this pending matter.

In September, the district court sentenced Kalland to 57 months in prison for third-degree possession of a controlled substance. The warrant of commitment provides that Kalland must serve "180[ ]days on contempt order consecutive."

Kalland appeals.

DECISION

Kalland challenges the district court's decision to find him in contempt of court and the district court's contempt sentence. Appellate courts review a district court's decision to invoke its contempt powers for an abuse of discretion. *In re Welfare of Child. of J.B.*, 782 N.W.2d 535, 538 (Minn. 2010). Specifically, a contempt order is reviewed "for arbitrariness, capriciousness, and oppressiveness." *State v. Tatum*, 556 N.W.2d 541, 547 (Minn. 1996).

"Traditionally, the law of contempt in Minnesota has been organized around two classifications—one judicially crafted and the other statutorily mandated." *Id.* at 544. Minnesota caselaw recognizes two types of contempt orders: punitive and remedial. *Id.* at

544, 544 n.2. The primary purpose of a punitive or "criminal" contempt order is to "vindicat[e] the court's authority by punishing the contemnor for past behavior." *Id.* at 544. By contrast, the primary purpose of a remedial or "civil" contempt order is to "vindicate[e] the rights of a party by imposing a sanction that will be removed upon compliance with a court order that has been defied." *Id.*

In addition, Minnesota Statutes specify two types of contemptuous behavior: direct and constructive. Minn. Stat. § 588.01, subd. 1 (2020). A direct contempt occurs "in the immediate view and presence of the [district] court" and arises from either "(1) disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course of a . . . judicial proceeding[];" or "(2) a breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the business of the court." *Id.*, subd. 2 (2020). A constructive contempt, on the other hand, does not occur in the immediate presence of the court and arises from various other types of misconduct. *Id.*, subd. 3 (2020).

Here, the district court found Kalland in direct contempt of court and summarily sentenced him to 180 days for punitive or "criminal" purposes. *See id.*, subd. 2(1) (defining direct contempt); *Tatum*, 556 N.W.2d at 544, 546 (defining "criminal" contempt orders as punitive); *cf.* Minn. Stat. § 588.03 (2020) (explaining the requirements for summary punishment for direct contempt).

Kalland argues that the district court abused its discretion by finding him in direct, criminal contempt of court based on statements that he made at the end of his conditional-release violation hearing. In the alternative, Kalland contends that the district

court abused its discretion by summarily imposing a 180-day contempt sentence and by ordering that his contempt sentence be served consecutively to his sentence for third-degree possession of a controlled substance. We consider each issue in turn.

I. The district court did not abuse its discretion by finding Kalland in direct, criminal contempt of court.

As discussed above, a district court "retains inherent authority to punish direct contempt." *Tatum*, 556 N.W.2d at 547. "This power is intended to be punitive in order to preserve the dignity of the courtroom proceedings." *Id.* We defer to a district court's finding of direct contempt because "the sneering, sarcastic, and insolent manner in which words are spoken is obvious to those who hear them, but is shown very imperfectly, if at all, by the printed record." *In re Cary*, 206 N.W. 402, 403 (Minn. 1925). But a district court may impose a sanction for direct contempt only if "the alleged contemnor has acted contumaciously, in bad faith, and out of disrespect for the judicial process." *Minn. State Bar Ass'n v. Divorce Assist. Ass'n*, 248 N.W.2d 733, 740 (Minn. 1976).

Kalland argues that his statements do not meet "the legal standard for contempt" because they were "not contumacious, committed in bad faith, and made out [of] disrespect for the judicial process," and they did not "interrupt[] the due course of the judicial proceedings or the business of the court." Kalland contends that his statements were not contumacious because they asserted his legal position—namely, his desire to withdraw his guilty plea and fire his attorney. Kalland asserts that his statements did not interrupt a judicial proceeding because they were uttered after the district court had heard argument

from counsel and set bail. Kalland therefore argues that the district court acted capriciously in finding Kalland in contempt. We disagree.

The record demonstrates that Kalland's statements were contumacious, made in bad faith, and disrespectful to the judicial process, and that they interrupted a judicial proceeding. The district court found Kalland in contempt because "[h]e was told that he needed to stop speaking," but "[h]e continued to speak," and because "he uttered that this is bullsh-t while the court hearing was still pending." The record supports these findings. The district court repeatedly instructed Kalland to remain quiet, and Kalland repeatedly disobeyed that instruction. Moreover, Kalland's interjections were disruptive *and* disrespectful. When the district court told Kalland that it was going to hold him in contempt for speaking out of turn, Kalland responded: "Go ahead, ma'am, because I'm not going anywhere anyways." At this point, Kalland was no longer asserting his legal position; he was merely being insolent. Kalland continued to act disrespectfully when the district court instructed him to sit down, and he stated: "Ma'am, this is bullsh-t." Lastly, Kalland made these contumacious statements before the district court had adjourned the hearing. Thus, there is no basis for concluding that Kalland's statements did not interrupt a judicial proceeding. In sum, Kalland's statements were contumacious, made in bad faith, and disrespectful to the judicial process, and they interrupted a judicial proceeding. These statements therefore meet "the legal standard for contempt," and the district court did not act capriciously in punishing Kalland for uttering them.

II. The district court abused its discretion by imposing a 180-day contempt sentence without finding that aggravating factors were present.

Kalland also challenges the summary sentence of 180 days for direct contempt that the district court imposed. To summarily punish direct contempt, the district court must issue an order that recites the facts that occurred in view of the court, adjudicates the contemnor guilty, and specifies the contemnor's punishment. Minn. Stat. § 588.03; *see Tatum*, 556 N.W.2d at 547. While a court may punish contempt by imprisonment, a summary sentence for direct contempt cannot exceed six months and should not ordinarily exceed 90 days. Minn. Stat. § 588.02 (2020); *Tatum*, 556 N.W.2d at 547. To impose a sentence greater than 90 days, the district court must find aggravating factors. *See Tatum*, 556 N.W.2d at 547; *State v. Lingwall*, 637 N.W.2d 311, 314 (Minn. App. 2001) (concluding that aggravating factors justified the district court's 180-day sentence for direct contempt). Typically, aggravating factors exist only when the contemnor's behavior is significantly more disrespectful or disruptive than ordinary contumacious behavior. *See Lingwall*, 637 N.W.2d at 314 (concluding that the contemnor's "stream of profanities constituted a highly aggravated verbal attack on the court's authority"); *cf. State v. Schloegl*, 915 N.W.2d 14, 21 (Minn. App. 2018) (describing the contemnor's 90-day contempt sentence for an "outburst of two profanities *and* a pitcher tossing" as "sort of a bargain" in light of this court's decision to uphold the contemnor's 180-day contempt sentence for an outburst of three profanities in *Lingwall*), *rev. denied* (Minn. July 17, 2018).

Here, the district court summarily sentenced Kalland to 180 days based on two findings of contempt.[1] But the district court did not find aggravating factors to support its sentence. Accordingly, the district court acted capriciously by sentencing Kalland to 180 days for direct contempt. *See Lingwall*, 637 N.W.2d at 314. We therefore reverse and remand Kalland's contempt sentence for resentencing consistent with this opinion.

We note that a 90-day sentence "is the maximum penalty for ordinary instances of summary and punitive contempt orders" and that the district court must justify its decision to impose a longer sentence. *Tatum*, 556 N.W.2d at 548. On the record before us, it does not appear that there are any aggravating factors to support a contempt sentence greater than 90 days. But that determination is properly made by the district court, and we leave it to the district court to decide what punishment is appropriate under the circumstances. *See id.* at 547.

Lastly, Kalland contends that the district court abused its discretion by ordering that his contempt sentence be served consecutively to his sentence for third-degree drug possession, even though his sentence for third-degree drug possession was imposed after his contempt sentence.

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[1] We note that Kalland's 180-day contempt sentence cannot be considered to be two consecutive, 90-day contempt sentences for two reasons. First, the district court described Kalland's sentence as "a 180-day contempt sanction." We assume the district court meant what it said. Second, in *Lingwall*, we held that the district court abused its discretion by imposing three consecutive contempt sentences for contumacious conduct that occurred as part of "a single behavioral incident." 637 N.W.2d at 314-15. Similarly, here, Kalland's contumacious statements occurred during a single exchange with the district court. We therefore consider Kalland's 180-day contempt sentence to be a single sentence based on two contempt findings that occurred during a single behavioral incident, and we review the sentence accordingly. *See id.*

Because we are reversing Kalland's contempt sentence and remanding for resentencing, we decline to reach the merits of this issue. We nevertheless note that Kalland has not cited any caselaw which would preclude the district court from imposing a consecutive contempt sentence under these circumstances, especially because the district court clearly announced the consecutive nature of the sentence, in keeping with Minn. Stat. § 609.15, subd. 1 (2020). We therefore defer to the district court to decide on remand whether to impose a consecutive or concurrent contempt sentence.

Affirmed in part, reversed in part, and remanded.