

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,)	No. 66416-6-I
v.)	DIVISION ONE
CHRISTOPHER SHAWN RUST,)	UNPUBLISHED OPINION
Appellant,)	
GERALD JAMES ADAMS, SHAELY)	
DAWN ZIEGELGRUBER, and KEITH)	
THOMAS BLAIR, and each of them,)	
Defendants.)	FILED: June 11, 2012
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Appelwick, J. — After receiving a valid grant of immunity, Rust refused to comply with the trial court's order to answer questions during the trial of a codefendant. The trial court found Rust in contempt and imposed a sanction of 10 days in jail. Because Rust's refusal to answer constituted a direct contempt, the trial court properly imposed a summary punitive sanction under RCW 7.21.050. We reject Rust's claim that he has a state constitutional right to a jury trial under these circumstances and affirm the finding and order of contempt.

FACTS

Christopher Rust pleaded guilty to three counts of residential burglary and one count of second degree identity theft. The court imposed a standard range sentence totaling 75 months. On December 1, 2010, after Rust's sentencing, the State called him as a witness in the trial of his codefendant, Keith Blair.

Following a lengthy discussion, the State offered Rust use and derivative use immunity from prosecution in both King County and Snohomish County. Despite repeated orders from the court, Rust refused to answer any questions about his participation in the prior King County burglary. After the court warned Rust of the potential sanctions for contempt, Rust reaffirmed his intention to refuse to answer any further questions.

The court found Rust in contempt "for willful violation of a court order in the presence of the Court." Rust declined an opportunity to speak in mitigation. The court then imposed a sanction of 10 days in jail, to be served at the conclusion of Rust's current sentence.

In its written order of contempt, filed the same day, the court found that Rust had committed contempt "within the courtroom and in the presence of the undersigned judge" and that sanctions were "necessary to preserve order in the court and to protect the authority and dignity of the court." See RCW 7.21.050(1). The court further determined that a remedial sanction would be "meaningless [because] the trial must proceed and contemnor is already in prison, serving a

lengthy sentence."

Based on Rust's failure to testify, the State moved to dismiss the residential burglary and first degree trafficking in stolen property charges against Blair. Blair's trial then proceeded on a charge of one count of second degree trafficking in stolen property.

DISCUSSION

Rust contends that the trial court violated his right to due process and a jury trial when it imposed a punitive contempt sanction without affording him a jury trial. But under well established federal and state law, the trial court's imposition of a summary punitive sanction for a direct contempt committed in the court's presence does not entitle Rust to a jury trial.

The trial court's finding of contempt and imposition of a sanction was based on RCW 7.21.050:

RCW 7.21.050 provides for summary imposition of sanctions for a "direct contempt", one committed in the courtroom. Both punitive and remedial sanctions are authorized for direct contempt. RCW 7.21.050. Summary sanctions may only be imposed "if the judge certifies that he or she saw or heard the contempt" and "only for the purpose of preserving order in the court and protecting the authority and dignity of the court."

State v. Hobble, 126 Wn.2d 283, 293, 892 P.2d 85 (1995) (footnote omitted) (quoting RCW 7.21.050(1)). In accordance with RCW 7.21.050(1), the trial court also provided Rust with the opportunity to speak in mitigation. A punitive sanction may include "imprisonment for not more than thirty days." RCW 7.21.050(2).¹

Rust acknowledges that the Sixth Amendment right to a jury trial applies only to offenses for which the punishment exceeds six months and that the same limitation applies to contempt sanctions. See Bloom v. Illinois, 391 U.S. 194, 210, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968) (“By deciding to treat criminal contempt like other crimes insofar as the right to jury trial is concerned, we similarly place it under the rule that petty crimes need not be tried to a jury.”). He maintains, however, that because article I, section 22 of the Washington Constitution² provides for a more expansive jury trial right than does the federal constitution, a court may not impose punitive contempt sanctions without affording the contemnor a jury trial. See generally Pasco v. Mace, 98 Wn.2d 87, 99-100, 653 P.2d 618 (1982). But, our Supreme Court has expressly rejected this claim in the context of the summary imposition of punitive sanctions for a direct contempt under RCW 7.21.050.

In Hobble, a case that Rust does not address, the defendant pleaded guilty to attempted second degree burglary. 126 Wn.2d at 285. Under the terms of the plea agreement, the defendant was required to testify at his codefendant’s trial. Id. When the defendant repeatedly refused to answer certain questions, despite the

¹ Despite the trial court’s references to “inherent contempt,” the court’s oral ruling and the written order of contempt clearly establish that the court’s decision was based on RCW 7.21.050. See State v. Boatman, 104 Wn.2d 44, 48, 700 P.2d 1152 (1985) (court may use inherent contempt power only if reliance on statutory basis would be inadequate).

² Const. art. 1, § 21 provides: “The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record.” Const. art. 1, § 22 (amend. 10) provides “[i]n criminal prosecutions the accused shall have the right ... to ... trial by an impartial jury.”

court's order, the court found him in contempt and sanctioned him to 30 days in jail, to be served consecutively to his current sentence. Id. at 289.

On appeal, our Supreme Court upheld the trial court's contempt order, concluding that it satisfied the requirements for the summary imposition of punitive sanctions under RCW 7.21.050. Id. at 303. The court noted that this section provided an exception to the general statutory requirements governing remedial and punitive sanctions "for a 'direct contempt', one committed in the courtroom." Id. at 293.

The Hobble court also flatly rejected the defendant's claim, echoed by Rust, that the Washington Constitution requires a jury trial whenever the court imposes a punitive sanction. Id. at 301. The court concluded that under common law existing at the time the state constitution was adopted, "no absolute right to trial by jury was afforded in the case of direct contempt." Id.; see Pasco, 98 Wn.2d at 96 (Const. art. 1, § 21 "preserves the right as it existed at common law in the territory at the time of its adoption."). The court also distinguished the same cases that Rust relies on, noting that they involved indirect contempt, not direct contempt, and did not address the summary contempt procedures under RCW 7.21.050. Hobble, 126 Wn.2d at 298-303 (distinguishing Pasco, 98 Wn.2d at 99; State v. Browet, Inc., 103 Wn.2d 215, 691 P.2d 571 (1984); State v. Boatman, 104 Wn.2d 44, 700 P.2d 1152 (1985); Bloom, 391 U.S. at 198 n.2)).

Rust had no state constitutional right to a jury trial. The trial court did not err

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in summarily imposing punitive sanctions under RCW 7.21.050.

Affirmed.

Appelwijk, J.

WE CONCUR:

Sorenson, A.C.J.

Eccleston, J.