

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 9, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1571-CR

Cir. Ct. No. 2009CF161

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RAZIGA IMANI,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Grant County: ROBERT P. VAN DE HEY, Judge. *Affirmed.*

Before Blanchard, P.J., Lundsten and Sherman, JJ.

¶1 PER CURIAM. Raziga Imani appeals a judgment of conviction and an order denying postconviction relief. The issue is whether Imani was deprived of his right to return to court after being removed for disruptive behavior. We conclude he was not. We affirm.

¶2 At the start of voir dire, Imani argued with the court in a way that caused the court to order him removed from the courtroom. After Imani was removed, the court instructed Imani's attorney to inform Imani that "he will be waiving his right to be present at the trial if he continues to be disruptive," that, if he abided by the rules of the court, he could remain, but if he would not agree to abide by the rules, the court would consider that a waiver of his right to be present. Imani's attorney left the courtroom, and then returned and reported that he had spoken with Imani. Counsel stated that counsel could not report "any reaction from [Imani] that would be helpful to tell you right now."

¶3 The court then summarized Imani's conduct, stated that it considered that conduct to be a waiver of Imani's right to be present at the trial, and asked counsel to proceed with the trial. The court further stated that, if Imani indicated to the court staff that he wished to join the proceedings at a future time, he could. The court asked the bailiff to advise Imani of Imani's ability to return to the trial.

¶4 Later, the court interrupted voir dire and said it had received information from the bailiff that required the court to consult with counsel outside the jury's presence. The court indicated the jury panel had exited and then indicated the court had been advised that Imani had asked to return to the courtroom. Imani was brought back in. The court advised Imani that he had been returned to the trial at his request, but that it was "contingent upon you allowing the Court to proceed in a normal, rational manner If you disrupt the Court again, you will be removed and returned to [the prison]."

¶5 The exchange continued:

THE DEFENDANT: I will go right to the joint?
Oh, well, I will go right now. I am ready to go right now. I am saying if I was going to be sitting in the holding cell

during these proceedings, I might as well be at the jail. If I can go right to the joint right now, I will gladly go back.

THE COURT: No. You are given the opportunity to remain here. You must not interfere. Do you understand that?

THE DEFENDANT: But if I do they are going to send me right back to [the prison], right?

THE COURT: You will be deemed to have waived your right to be present at your trial –

THE DEFENDANT: Uh-huh.

THE COURT:– and you will then be returned to [the prison].

THE DEFENDANT: Immediately?

THE COURT: Immediately.

THE DEFENDANT: Oh, let's go right now.

THE COURT: I consider it a waiver of your right to be present. You have been advised of that right, and you will now be escorted out.

THE DEFENDANT: You're wasting my morning with this nonsense anyway.

The trial then resumed, and concluded that day without Imani's presence. Imani filed a postconviction motion arguing that he was denied his right to reclaim his right to be present at trial. The court denied that part of the motion.

¶6 On appeal, Imani does not argue that the court erred by removing him from the courtroom the first time. Instead, he argues that the court's action in returning him to the prison deprived him of his right to "reclaim" his right to attend the trial, as case law suggests he is allowed to do. See *Illinois v. Allen*, 397 U.S. 337, 343 (1970); *State v. Haynes*, 118 Wis. 2d 21, 26, 345 N.W.2d 892 (Ct. App. 1984). Imani argues that any forfeiture or waiver that occurred as a result of his conduct was improperly made irrevocable by his return to the prison, due to

practical constraints such as Imani's inability to communicate easily from prison and the travel times involved. Further, Imani asserts that nothing in the record shows that he knew he could reclaim his right to attend the proceedings at any time during or after his transport to the prison.

¶7 We understand Imani to be arguing that the court's granting of his request to be returned to the prison had the effect of communicating to Imani that he no longer had the option to return to court if he would behave. However, Imani does not argue that the court's initial statement of what his rights were was insufficient. That is, the court told Imani, through his attorney and the bailiff, that if Imani behaved he could be present, and if not he would be excluded. Imani does not argue that this was an insufficient statement of his right, and thus the starting point is that Imani knew that he had the right to be present if he behaved.

¶8 The question then becomes, after Imani was returned to court, whether the court's granting of Imani's request to go back to the prison would have suggested or communicated to Imani that he no longer had the option of returning to court. We conclude that it did not. The court did not say anything to that effect and, if Imani subjectively drew that conclusion, it would have been a mistake of his own making. There is no indication that the court would not have stopped the proceedings and had Imani returned to court if Imani had expressed a desire to return and a willingness to behave.

¶9 As to the argument about the distance to the prison, we do not regard that as a relevant point. Imani does not cite authority holding that he must be held in a location near the courtroom. The relevant point is whether the court would have been willing to stop the proceedings to allow Imani to return to court, and whether Imani understood that. As discussed above, Imani was advised of that

right, and nothing the court did after that point communicated to Imani that his right was irrevocably forfeited.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

