

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**FILED**

June 27, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 150299-U

NO. 4-15-0299

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
MARQUKIE D. MARSHALL,	)	No. 15CC1
Defendant-Appellant.	)	
	)	Honorable
	)	John P. Schmidt,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Presiding Justice Turner and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* We grant OSAD's motion for leave to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), and affirm, finding no meritorious claims can be raised on appeal.

¶ 2 This case comes to us on a motion from the office of the State Appellate Defender (OSAD) pursuant to *Anders v. California*, 386 U.S. 738 (1967). OSAD moves to withdraw as appellate counsel, arguing the potential issues raised on appeal are frivolous and without merit.

We grant OSAD's motion and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In March 2015, defendant appeared before the trial court in unrelated Sangamon County case No. 15-CF-54, and defendant's attorney requested a continuance. Defendant

objected to his counsel's request for a continuance and asked the court if he could file *pro se* motions. The court informed defendant he could not file *pro se* motions because he had an attorney. Defendant stated defense counsel was ineffective and began speaking about his case and medical conditions. The court attempted to quiet defendant, but defendant continued talking over the court. The court then stated:

“Sir, please listen to me. If you speak over me again, I’m going to have a contempt proceeding. You will be in direct criminal contempt of the Court, because it’s occurred in my presence. I can sentence you between zero and 180 days dead time, you do every single day of it. So I’m going to ask you now to not speak over me. Am [I] clear with you, sir? Yes or no? Is that clear, yes or no? I’ll take that as a yes.”

¶ 5 The trial court continued the proceeding and granted defense counsel’s motion for a continuance. The following statements were then made:

“THE DEFENDANT: So y’all just keep screwing me over. Forget your contempt, this is my life you fucking over.

THE COURT: Whoa, whoa, whoa, correctional officer.

THE DEFENDANT: I was subjected to police brutality, racism, the man tased me for no reason.

THE COURT: I need you to hold him for a second because I’m going to do a contempt hearing.

THE DEFENDANT: I don't care. This is my life you're fucking over. What you mean, subject me to racism, police killing black males everywhere. What you mean I'm just—fuck you then fag, homosexual ass mother fucker. Fuck you and your contempt, you going to keep fucking over my life.”

Defendant was escorted from the courtroom until the trial call was finished.

¶ 6 The trial court then held a contempt hearing. The court explained defendant's contemptuous behavior and allowed defendant to make a statement. Defendant apologized for his conduct and explained he “was frustrated by the length of time his case has taken.” The court issued a written order, finding defendant in direct criminal contempt and sentencing him to 20 days in jail.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 OSAD was appointed to represent defendant on appeal. In December 2016, OSAD filed an *Anders* motion and brief seeking to withdraw as counsel. The record shows service of the motion on defendant. This court granted defendant leave until January 30, 2017, to file additional points and authorities. He filed none. In discharging our responsibilities, we have examined the record and decided, as did OSAD, this case presents no colorable issues and the appeal is without merit.

¶ 10 In its *Anders* brief, OSAD raises two potential issues: (1) whether the trial court properly found defendant to be in direct criminal contempt of court, and (2) whether defendant's 20-day jail sentence was proper.

¶ 11

#### A. Direct Criminal Contempt

¶ 12 OSAD points out defendant was properly found in direct criminal contempt of court.

“ ‘A court has the inherent power to punish, as contempt, conduct that is calculated to impede, embarrass, or obstruct the court in its administration of justice or derogate from the court's authority or dignity, or to bring the administration of the law into disrepute. [Citation.] A finding of criminal contempt is punitive in nature and is intended to vindicate the dignity and authority of the court. [Citation.]’ ” *People v. Geiger*, 2012 IL 113181, ¶ 26, 978 N.E.2d 1061 (quoting *People v. Ernest*, 141 Ill. 2d 412, 421, 566 N.E.2d 231, 235 (1990)).

“When reviewing a finding of direct criminal contempt, we look to whether (1) ‘there is sufficient evidence to support the finding of contempt,’ and (2) ‘whether the judge considered facts outside of the judge's personal knowledge.’ ” *In re Contempt of Turner*, 2016 IL App (4th) 160245, ¶ 24, 69 N.E.3d 895 (quoting *People v. Simac*, 161 Ill. 2d 297, 306, 641 N.E.2d 416, 420 (1994)). “A finding of direct criminal contempt is ‘strictly restricted to acts and facts seen and known by the court, and no matter resting upon opinions, conclusions, presumptions or inferences should be considered.’ ” *Id.* (quoting *Simac*, 161 Ill. 2d at 306, 641 N.E.2d at 420).

¶ 13 At the outset, we note nothing in the record indicates the trial court based its contempt finding on any facts outside the record. During his hearing, defendant spewed a slew of profanity and used a derogatory term for homosexual to describe either the trial judge or the

corrections officer (the transcript is unclear to whom defendant was referring). Defendant's conduct, as OSAD argues, "was an affront to the dignity of the court," which obstructed, embarrassed, and impeded the court in its administration of law in the case below. We conclude defendant's conduct supported a finding of direct criminal contempt.

¶ 14 B. Defendant's 20-Day Jail Sentence

¶ 15 OSAD argues the trial court did not abuse its discretion by imposing a 20-day jail sentence. "When imposing a sentence for contempt, courts should keep in mind that [t]he contempt power is an extraordinary one that should be used sparingly and with the utmost sensitivity." (Internal quotation marks omitted.) *Geiger*, 2012 IL 113181, ¶ 25, 978 N.E.2d 1061. "A sentence imposed for direct criminal contempt, like any other sentence, is subject to review for an abuse of discretion." *Id.* ¶ 27. "In contempt cases, however, because there are no sentencing guidelines, appellate courts have a 'special responsibility for determining that the [contempt] power is not abused, to be exercised if necessary by revising themselves the sentences imposed.' " *Id.* (quoting *Green v. United States*, 356 U.S. 165, 188 (1958)). When reviewing a sentence for contempt, we consider "(1) the extent of the willful and deliberate defiance of the court's order, (2) the seriousness of the consequences of the contumacious behavior, (3) the necessity of effectively terminating the defendant's defiance as required by the public interest, and (4) the importance of deterring such acts in the future." *Id.* ¶ 28.

¶ 16 Applying these principles, we conclude defendant's 20-day jail sentence was not an abuse of discretion. Defendant's conduct was willful and deliberate, and his outbursts continued after the trial court repeatedly directed him to refrain from speaking. Defendant's repeated profanities and name-calling seriously affronted the court and impeded the

administration of justice in the case below. The public interest in deterring such conduct warrants defendant's 20-day jail sentence, and the sentence was not manifestly disproportionate to the nature of his conduct. Indeed, one-year and six-month sentences have been given for similar conduct. See *People v. Baxter*, 50 Ill. 2d 286, 287-88, 278 N.E.2d 777, 778 (1972) (one-year sentence for stating "the court acted as a '[Ku] Klux Klan, Gestapo Setup, Jim Crow Justice and a Crime Syndicate' "); *People v. Minor*, 281 Ill. App. 3d 568, 572, 575, 667 N.E.2d 538, 541, 543 (1996) (six-month sentence for accusing the court of racism). We conclude defendant's 20-day jail sentence was not an abuse of discretion.

¶ 17

### III. CONCLUSION

¶ 18 We conclude any potential basis for OSAD to appeal would be frivolous and without merit. We grant its motion to withdraw as counsel on appeal and affirm the trial court's judgment.

¶ 19 Affirmed.