

2018 IL App (1st) 161562-U
No. 1-16-1562
Order filed September 28, 2018

Fifth Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County,
)	
v.)	No. 16 MC1 600060
)	
JOSEPH HENSON,)	Honorable
)	Maria Kuriakos Ciesil,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

- ¶ 1 *Held:* Conviction for direct criminal contempt reversed. The alleged contempt did not occur in the court's presence, so notice and a hearing were required, and the evidence of the alleged contempt was insufficient because none was presented.
- ¶ 2 The circuit court found defendant Joseph Henson in direct criminal contempt of court in April 2016 and sentenced him to two days of jail. Defendant contends, and the State agrees, that

defendant's direct criminal contempt conviction must be vacated because he did not commit contempt in the court's presence. As explained below, we reverse the contempt conviction.¹

¶ 3 On April 6, 2016, defendant was before the central bond court of the circuit court, having been charged with unlawful use of a weapon by a felon. The court noted that, on the previous day, it had found probable cause and ordered defendant to submit to fingerprinting. The State told the court that defendant was refusing to be fingerprinted despite the order. The court immediately found a:

“direct contempt because you were brought in front of me, it was on the record, and I [signed] the fingerprint order, you need to submit to fingerprints. You told me you would and you failed to comply. So that is direct contempt. So now you are going to face a separate charge and sentencing will occur today for that.”

The court told defendant that he would be held without bail on the underlying charge and warned him that he would be found in contempt again the next day if he had not submitted to fingerprinting by then.

¶ 4 After the court allowed defendant to consult with counsel, defense counsel told the court that defendant “will comply with Your Honor's fingerprint order.” The court replied “No, there is a contempt. I'm not dealing with that right now. Right now he failed to comply so I'm proceeding against him on a contempt.” The court also stated that “we are now going to go forward with the contempt charge, then we will deal with what you are going to do tomorrow.” Defense counsel noted that defendant did not have a right to a trial on direct contempt, and the

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

court agreed, stating that “it happened all in open court and it’s all on the record, and that’s the difference. The evidence is right here in open court.” The court asked the defense for mitigation, and counsel stated that defendant was 22 years old, lived in the county his entire life, lived with his family, “has his GED,” and was employed as a cook. The court sentenced defendant to two days of jail, warned him that he faced up to 365 days in jail if he failed to comply by the next day, and reiterated that the underlying case was held until the next day.

¶ 5 After a discussion where the State informed the court that defendant’s fingerprints were not necessary for the State to obtain his criminal record for a bond hearing, the court confirmed for the State that the contempt finding and two-day sentence would stand – “we are done with the two-day contempt” – because “the contempt charge was separate and apart.” The court issued a mittimus for two days in jail for “direct contempt,” with no description of how defendant could purge or avoid it. The record does not include any proceedings for the following day.

¶ 6 On appeal, defendant contends that there was no direct criminal contempt because his refusal to submit to fingerprinting did not occur in the court’s presence. The State agrees. The parties dispute whether this case was properly an indirect criminal contempt as defendant argues, or an indirect civil contempt as the State argues. However, the parties agree that due process requires fair notice of the charge and an evidentiary hearing before the court may find an indirect contempt because an indirect contempt is based on extrinsic evidence. They also agree that a remand is moot because, as the State remarks in its brief, the records of the clerk of the circuit court in the underlying case, No. 16 CR 6200, indicate that a bond hearing was held so that “defendant must have complied with the court’s order.”

¶ 7 Courts have the inherent power to punish contempt, which is conduct calculated to embarrass, hinder or obstruct a court in its administration of justice or derogate from its authority or dignity. *People ex rel. City of Chicago v. Le Mirage, Inc.*, 2013 IL 113482, ¶ 62. A contempt proceeding is criminal if the main purpose of the sanction is to punish prior conduct, or civil if its main purpose is to coerce future conduct. *In re Estate of Lee*, 2017 IL App (3d) 150651, ¶ 39. Contemptuous conduct in the court's presence is direct contempt, and indirect contempt if it did not occur in the court's presence. *Id.* The appropriate procedure for a contempt proceeding depends on the type of contempt. *Id.* ¶ 40. Direct contempt, whether criminal or civil, may generally be addressed summarily without pleadings, notice, or a hearing because the court witnessed the offending conduct. *Id.* A person charged with indirect criminal contempt is entitled to the constitutional protections afforded other criminal defendants, including the right to a public hearing where he may present evidence and confront and cross-examine witnesses and he must be proven guilty beyond a reasonable doubt. *Id.* A person charged with indirect civil contempt is entitled by due process to notice and a hearing, and a civil contempt order must state in writing what the offending party must do to purge the contempt. *Id.*

¶ 8 Where there were violations of procedural due process but the evidence was sufficient to support the court's finding of contempt, the remedy is to vacate the contempt conviction and remand for further proceedings compliant with due process. *People v. Perez*, 2014 IL App (3d) 120978, ¶ 26. Conversely, if the evidence was insufficient, we must reverse the conviction to avoid double jeopardy. *Id.*

¶ 9 Here, the court found defendant in direct contempt despite the fact that he did not refuse in the court's presence to be fingerprinted as the court had ordered. The court also made clear

that it was punishing his alleged past refusal rather than prompting his future obedience. The court was unswayed by defense counsel's representation that defendant would submit to fingerprinting, and the court stated that defendant's compliance with the fingerprinting order would be addressed the next day because his existing contempt was "separate and apart" from his future compliance. The court stated that the two-day sentence would stand as "done" and provided defendant no means of purging his contempt to avoid the jail term. We find that the contempt sentence was intended to be punitive of defendant's past conduct and thus criminal.

¶ 10 The standard of review for sufficiency of the evidence in a criminal contempt case is the same as in any other criminal case: whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Le Mirage, Inc.*, 2013 IL 113482, ¶ 64. For indirect criminal contempt, the State must prove (1) the existence of a court order and (2) willful violation of that order. *Id.* ¶¶ 64-65.

¶ 11 Defendant was supposed to receive, at the very least, notice of a contempt hearing at a later date rather than an immediate finding and sentence. The procedure here did not comply with due process. As to the sufficiency of the evidence for remand, the State presented no evidence that defendant refused to be fingerprinted but merely alleged or represented that he was refusing. Defendant did not admit in court that he had refused or was refusing, nor did the State present testimony from any witness to the act of defendant refusing to be fingerprinted. We find that the proceedings here did not comply with due process and that the evidence of defendant's contempt was insufficient for a remand. The contempt conviction must therefore be reversed.

¶ 12 Accordingly, the contempt judgment of the circuit court of April 6, 2016, is reversed.

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¶ 13 Reversed.