

NO. 66416-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

In re the Interest of
CHRISTOPHER RUST,
Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE RONALD KESSLER

BRIEF OF RESPONDENT

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A. ISSUE

1. Whether Christopher Rust has failed to show that the trial court abused its discretion by summarily imposing a punitive sanction under RCW 7.21.050 without affording him the right to a jury trial?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged Rust with three counts of Residential Burglary and one count of Identity Theft in the Second Degree. CP 10-24. Rust pled guilty as charged. CP 30-63. The trial court imposed a standard-range sentence of 75 months for each residential burglary conviction, and 57 months for the identity theft conviction. CP 87-94.

2. SUBSTANTIVE FACTS

Following his sentencing, the State called Rust to testify at the trial of his codefendant, Keith Blair. RP 6.¹ The Office of Public Defense ("OPD") reappointed Rust's counsel who had previously

¹ The Verbatim Report of Proceedings consists of one volume, designated as "RP."

represented him on the case. RP 6-8. Although the State offered Rust "use immunity"² in exchange for his testimony, Rust's counsel and the court questioned whether the offer was sufficient to protect Rust's Fifth Amendment privilege against self-incrimination. RP 12-13. Consequently, the State offered Rust "derivative use immunity"³ to ensure that his rights were protected. RP 21-22.

Rust continued to refuse to testify, arguing that the State's offer was insufficient to protect him from prosecution in other jurisdictions. RP 25-27. As a result, the State contacted the Snohomish County Prosecutor's Office and obtained authorization to offer Rust use and derivative use immunity from prosecution in Snohomish County.⁴ RP 34, 39; CP 7-8. Following the State's broader offer of immunity, the court ordered Rust to testify, and indicated that it would take a "question-by-question" approach and

² "'Use immunity' prohibits the direct use of compelled statements in a later criminal trial." In re J.R.U.-S, 126 Wn. App. 786, 797, 110 P.3d 773 (2005).

³ "Derivative use immunity" prohibits the use of any evidence derived from the witness's statements. Id. When granted together, use and derivative use immunity provide protection that is "coextensive" with the Fifth Amendment privilege against self incrimination. Id. at 797-98.

⁴ Nothing in the record indicated that Rust had been involved in criminal activity in other counties. RP 34.

only order Rust to answer questions that could lead to prosecution in King or Snohomish County. RP 43.

Rust subsequently took the stand and refused to answer any questions about his relationship with Blair, or his involvement in a prior burglary to which he had pled guilty. RP 49- 52. The following exchange ensued:

STATE: Mr. Rust, I would like to focus now on one of those residential burglaries for which you were convicted earlier this year, and that's specifically the burglary of the Yu residence in Kirkland. Do you recall that?

RUST: I would like to plead the Fifth. . . .

COURT: I order you to answer that question.

RUST: I'd still like to plead the Fifth.

COURT: Alright. We'll treat that as just a refusal. Go ahead.

STATE: Mr. Rust, do you remember speaking with the police and giving them information about that burglary?

RUST: I would like to plead the Fifth.

COURT: I order you to answer the question.

RUST: I still plead the Fifth. I refuse to answer the question.

COURT: Alright.

STATE: And did that burglary occur on April 1st?

RUST: I plead the Fifth.

COURT: I order you to answer the question.

RUST: And I'll refuse to answer that question.

COURT: Alright. Let's see if we can cut through the chase here. Are you going to refuse to answer all questions regarding that burglary?

RUST: Yes, I'm just going to maintain the Fifth.

COURT: Whether I order you to do it or not?
RUST: Yes, sir.

RP 51-53.

Based on this exchange, the State asked the court to hold Rust in contempt. RP 53. The court told Rust that there were "three possibilities": he could be (1) held in civil contempt and detained in jail until he answered the questions, (2) formally charged with criminal contempt and afforded the right to a jury trial, or (3) held in contempt of court and receive a maximum 30-day jail sentence, consecutive to his current prison sentence. RP 54. Despite the court's warning, Rust maintained his refusal to answer the court's questions. RP 54.

Consequently, the court found Rust in contempt "for willful violation of a court order in the presence of the court" and provided Rust with an opportunity "to speak in mitigation." RP 57; CP 4-5. Rust declined the court's offer. RP 58. The court entered written Findings of Fact and Conclusions of Law, specifically finding that Rust committed "a contempt of court within the courtroom" and in the judge's presence. CP 4-5. The court concluded that sanctions were "necessary to preserve order in the court" and to protect the court's "authority and dignity." CP 4-5. Relying on RCW 7.21.050,

the court imposed a "punitive sanction" of 10 days in jail, consecutive to Rust's prison sentence, since a "remedial sanction" would be "meaningless" in light of Rust's "lengthy" prison sentence. CP 5.

Without Rust's testimony, the State moved to dismiss the residential burglary and first-degree trafficking in stolen property charges against Blair, and proceeded solely on the amended charge of one count of second-degree trafficking in stolen property. RP 58-59.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY FOUND RUST IN CONTEMPT OF COURT UNDER RCW 7.21.050.

Rust argues that the trial court erred by imposing a punitive contempt sanction without affording him the right to a jury trial. His argument fails in light of the court's statutory authority to summarily impose a punitive contempt sanction, and the longstanding state and federal precedent recognizing a court's authority to impose such a sanction without a jury trial. Rust cannot show that the trial court abused its discretion by imposing summary sanctions against him for refusing to testify without affording him the right to a jury trial.

By statute, a trial court can impose three types of sanctions for contempt of court: (1) remedial sanctions that coerce the contemnor into performing an act, (2) punitive sanctions that punish the contemnor for past acts of contempt, and (3) summary sanctions that address "direct contempt" occurring in the courtroom. RCW 7.21.010, 7.21.030, 7.21.040, and 7.21.050; State v. Hobble, 126 Wn.2d 283, 292-93, 892 P.2d 85 (1995). A court also has inherent authority to punish contempt when its statutory powers are inadequate. In re M.B., 101 Wn. App. 425, 452-53, 3 P.3d 780 (2000), review denied, 142 Wn.2d 1027 (2001).

Unlike the remedial sanctions statute requiring prior notice and a hearing and the punitive sanctions statute requiring a separate criminal trial, the summary sanctions statute requires only that the court offer the contemnor "an opportunity to speak in mitigation of the contempt." RCW 7.21.030; RCW 7.21.040; RCW 7.21.050(1). The statute authorizes a court to "summarily impose either a remedial or punitive sanction" without any reference to a jury trial. RCW 7.21.050(1). The Legislature's grant of this authority dates back to the late 19th century. Hobble, 126 Wn.2d 301 (citing Code of 1881, § 726-27). Under the current statute, the

court may impose a maximum \$500 fine and 30 days in jail for each finding of direct contempt. RCW 7.21.050(2).

In addition to the statutory framework, state and federal courts have held for more than a century that a trial court may impose summary sanctions without affording the contemnor a right to a jury trial. See Ex parte Terry, 128 U.S. 289, 307, 9 S. Ct. 77, 32 L. Ed. 405 (1888) (holding "the petitioner was not entitled, of absolute right, either to a regular trial of the question contempt, or to notice by rule of the court's intention to proceed against him, or to opportunity to make a formal answer to the charges"); State v. Buddress, 63 Wash. 26, 32-33, 114 P. 879 (1911) (same, relying on Ex parte Terry); In re Willis, 94 Wash. 180, 185-86, 162 P. 38 (1917) (same). Courts have reached the same conclusion in recent decades. Hobble, 126 Wn.2d at 303; see also Pounders v. Watson, 521 U.S. 982, 987-88, 117 S. Ct. 2359, 138 L. Ed. 2d 976 (1997) (confirming "the summary contempt exception" to the "normal due process requirements" of counsel, a hearing, and the opportunity to call witnesses).

These decisions make sense. Given that the trial judge witnessed the direct contempt, "[t]here is no prosecution, no plea, nor issue upon which there can be a trial." Hobble, 126 Wn.2d at

297 (quoting Ex parte Terry, 128 U.S. 289 at 308). In contrast, in cases involving "indirect contempt," occurring "beyond the eye or hearing of the court," the court must have third-party testimony or the contemnor's confession to have knowledge of the contempt. Id. at 293 n.2. "[C]ases involving indirect contempt are not on point where direct contempt is involved." Id. at 299.

Summary contempt proceedings are particularly appropriate when a witness refuses to testify in open court. Id. at 294. A refusal to testify can be more disruptive than violent conduct in the courtroom because "[v]iolent disruptions can be cured swiftly by bodily removing the offender from the courtroom, or by physical restraints," while "a contumacious refusal to answer" disrupts the proceedings and has the potential to destroy a prosecution, or a defendant's ability to establish a case. United States v. Wilson, 421 U.S. 309, 316, 95 S. Ct. 1802, 44 L. Ed. 2d 186 (1975).

A witness's refusal to testify need not be rude, disrespectful, or boisterous to warrant a contempt finding. Id. at 314-16. Both the Washington and United States Supreme Courts have upheld summary contempt sanctions where a witness refused to testify against a former codefendant, despite being granted immunity, in a

manner that was neither loud nor disrespectful. Hobble, 126 Wn.2d at 285-86, 293-94; Wilson, 421 U.S. at 315-16.

The question of whether contempt is warranted lies within the sound discretion of the trial court. In re King, 110 Wn.2d 793, 798, 756 P.2d 1303 (1988). A trial court's finding of contempt and imposition of sanctions will be upheld on appeal absent an abuse of discretion. Id.; Schuster v. Schuster, 90 Wn.2d 626, 630, 585 P.2d 130 (1978). An abuse of discretion occurs when a trial court's decision is "manifestly unreasonable" or based on "untenable grounds or reasons." State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

Rust argues that the trial court erred by imposing punitive contempt sanctions against him under its "*inherent authority*" without affording him the right to a jury trial. Appellant's Br. at 6 (emphasis added). Rust is mistaken. The trial court imposed summary sanctions against him under its statutory authority, specifically citing "RCW 7.21.050" in its Order of Contempt. CP 5.

Although the prosecutor asked the court to hold Rust in "inherent contempt," the court's oral remarks and written order confirm that the court sanctioned Rust for refusing to testify in direct contempt of the court's orders under the summary sanctions

statute. See RP 57-58 (orally finding Rust "in contempt for willful violation of a court order in the presence of the Court," offering him an opportunity "to speak in mitigation," and imposing a ten-day punitive sanction); CP 5 (contempt order finding Rust "committed a contempt of court within the courtroom" and imposing sanctions under the court's authority "to summarily impose either a remedial or punitive sanction pursuant to RCW 7.21.050").⁵

Despite his claims to the contrary, Rust did not have a right to a trial by jury. The trial court properly exercised its statutory authority to impose summary punitive sanctions based on Rust's direct contempt. See Hobbie, 126 Wn.2d at 297, 303 (affirming the trial court's imposition of summary sanctions based on the contemnor's refusal to testify and holding that neither a state nor federal constitutional right to a trial by jury existed). Rust cannot show that the trial court abused its discretion by finding him in direct contempt for refusing to testify and imposing a punitive sanction

⁵ To the extent the court's oral opinion conflicts with its written opinion, the court's written order controls given that its oral opinion was never formally incorporated. State v. Head, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998) ("An oral opinion 'has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment.'") (citation omitted).

within the 30-day maximum prescribed by statute. RCW 7.21.050(2).

While relying on United States Supreme Court decisions to mistakenly claim that the trial court exercised its inherent authority to sanction him, Rust concedes that "direct contempts, those which occur in a court's presence, have always been and remain within a court's authority to summarily adjudicate." Appellant's Br. at 8. Rust does not dispute a court's authority to impose summary sanctions for direct contempt. Instead, Rust overlooks the explicit statutory basis for the court's contempt order to argue that the court erred by failing to afford him a jury trial while allegedly exercising its inherent authority to sanction him. Rust's argument is fundamentally flawed because it rests on a misunderstanding of the record.

Moreover, Rust's argument that the state constitution provides a greater right to a trial by jury than the federal constitution was explicitly rejected by the Washington Supreme Court in Hobble. 126 Wn.2d at 298-03. Indeed, many of the cases on which Rust relies were dismissed by the court as inapposite in Hobble because they addressed "indirect contempt" and did not consider direct contempt or summary contempt procedures.

Compare Appellant's Br. at 9-10, with Hobble, 126 Wn.2d at 299-03 (dismissing the contemnor's reliance on Pasco v. Mace, 98 Wn.2d 87, 653 P.2d 618 (1982), 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), and Bloom v. Illinois, 391 U.S. 194, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968)).

The two cases on which Rust relies that were not considered in Hobble are equally inapposite. See In re King, 110 Wn.2d at 797 (considering "whether a trial court's general contempt power . . . is circumscribed by the specific contempt provision of the juvenile dependency statute"); United Mine Workers v. Bagwell, 512 U.S. 821, 827 n.2, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994) (addressing "only the procedures required for adjudication of indirect contempts" and recognizing that direct contempts "may be immediately adjudged and sanctioned summarily").

Rust's refusal to testify against his former co-defendant, despite the court's orders and grant of immunity from the prosecution, dramatically impacted the State's ability to prosecute its case. See RP 58-59 (prosecutor dismissing the residential burglary and first-degree trafficking in stolen property charges and proceeding solely on the amended charge of second-degree

trafficking in stolen property). Rust's 75-month prison sentence rendered any potential remedial sanction imposed by the court meaningless. CP 87-94.

Given the record and the statute authorizing courts to summarily impose sanctions for direct contempt, Rust cannot show that the trial court's contempt order constituted an abuse of discretion. The trial court properly exercised its statutory authority to summarily impose punitive sanctions under RCW 7.21.050.

D. CONCLUSION

For the foregoing reasons, the Court should affirm the trial court's contempt sanction.

DATED this 8th day of September, 2011.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Gregory C. Link, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Respondent's Brief, in In re the Interest of CHRISTOPHER RUST, Cause No. 66416-6-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



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