

66416-6

66416-6

No. 66416-6-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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In re the Interest of:

CHRISTOPHER RUST

Appellant.

2011 JUN 28 PM 4: 29

CLERK OF THE COURT  
JULIA S. BROWN  


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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court violated Christopher Rust's right to due process and his right to a jury trial by imposing a punitive contempt sanction without a trial by jury.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Article I, section 22 of the Washington Constitution guarantees a jury trial in all criminal cases. Because a punitive contempt sanction is "a crime in the ordinary sense," the jury-trial right applies in any circumstance in which a punitive contempt sanction is imposed. Does the trial court's imposition of a punitive contempt sanction on Mr. Rust without first affording him a jury trial violate Article I, section 22?

C. STATEMENT OF CASE

The State called Mr. Rust as a witness in the trial of Keith Blair. RP 47.<sup>1</sup> Though the State had granted Mr. Rust immunity, Mr. Rust refused to answer the State's questions. RP 47-52. Mr. Rust persisted in refusing even in the face of the trial court's order that he testify. RP 52.

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<sup>1</sup> The Verbatim Report of Proceedings consists of only that portion of Mr. Blair's trial concerning Mr. Rust's refusal to testify, and the trial court's contempt ruling.

The trial court found Mr. Rust in contempt for willfully violating the court's order in the court's presence. CP 4; RP 57. The court then imposed a 10 day "punitive sanction" to be served consecutively to Mr. Rust's other criminal sentences.<sup>2</sup> CP 5; RP 58.

D. ARGUMENT

THE TRIAL COURT'S CONTEMPT SANCTION  
DEPRIVED MR. RUST OF DUE PROCESS AND  
VIOLATED HIS RIGHT TO A JURY TRIAL.

1. The contempt sanction in this case is punitive. Courts have recognized three separate grounds on which a court may rely in exercising its contempt authority: (1) civil contempt; (2) criminal contempt; and (3) the court's inherent contempt authority. State v. Boatman, 104 Wn.2d 44, 46, 700 P.2d 1152 (1985). Regardless of the source of the court's authority to find a person in contempt, the sanction which the court may impose is limited by the requirements of due process.

Trial courts retain the inherent authority to "enforce compliance with their orders through civil contempt." United States v. Shillitani, 384 U.S. 364, 370-71, 86 S.Ct. 1531, 16 L.Ed.2d 622, (1966). However, due process does not permit a trial court to rely

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<sup>2</sup> Mr. Rust previously pleaded guilty to, and had been sentenced for, the burglary for which Mr. Blair was on trial. CP 87.

on its inherent authority to impose a criminal or punitive contempt absent a criminal trial. In re the Interests of M.B., et al., 101 Wn.App. 425, 453, 3 P.3d 780 (2000), review denied, 142 Wn.2d 1027 (2001) (citing King v. Department of Soc. and Health Servs., 110 Wn.2d 793, 800, 756 P.2d 1303 (1988)). Shillitani recognized a contempt sanction can meet the requirements of due process in one of two ways (1) a coercive and conditional contempt sanction where the contemnor can earn his or her release merely through compliance with the original order; or (2) a punitive sanction imposed following a criminal trial. 384 U.S. at 370-72.

A trial court's classification of contempt as civil, criminal, or inherent does not control. "The labels affixed either to the proceeding or to the relief imposed under state law are not controlling and will not be allowed to defeat the applicable protections of federal constitutional law". Allen v. Illinois, 478 U.S. 364, 368-369, 106 S.Ct. 2988, 92 L.Ed.2d 296 (1986). Instead, to determine whether a court's contempt order is coercive or punitive one must determine whether the contempt sanction seeks to coerce compliance with the court's order or punish past noncompliance. Hicks on Behalf of Feiock v. Feiock, 485 U.S. 624, 631, 108 S.Ct. 1423, 99 L.Ed.2d 721 (1988). Hicks offers:

The character of the relief imposed is thus ascertainable by applying a few straightforward rules. If the relief provided is a sentence of imprisonment, it is remedial if “the defendant stands committed unless and until he performs the affirmative act required by the court's order,” and is punitive if “the sentence is limited to imprisonment for a definite period.” [Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 442, 31 S.Ct. 492, 55 L.Ed. 797 (1911)]. If the relief provided is a fine, it is remedial when it is paid to the complainant, and punitive when it is paid to the court, though a fine that would be payable to the court is also remedial when the defendant can avoid paying the fine simply by performing the affirmative act required by the court's order. These distinctions lead up to the fundamental proposition that criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings.

Hicks, 485 U.S. at 631-32.

The touchstone of a civil contempt sanction is that “it is conditional and indeterminate, i.e., where the contemnor carries the keys of the prison door in his own pocket and can let himself out by simply obeying the court order.” King, 110 Wn.2d at 800 (citing In re Nevitt, 117 F. 448, 461 (8th Cir. 1902); and Shillitani, 384 U.S. 364); see also, State v. Buckley, 83 Wn.App. 707, 713, 924 P.2d 40 (1996). By contrast, criminal contempt, as a punitive sanction, may be determinate and need not provide the contemnor the ability to purge the contempt.

. . . . The critical feature that determines whether the remedy is civil or criminal in nature is not whether the contemnor is required to set foot in a jail but whether the contemnor can avoid the sentence imposed on him, or purge himself of it, by complying with the terms of the original order. . . .

Hicks, 485 U.S. at 635 n.7 (discussing Shillitani). In other words, a sanction is coercive only if the person is presently in contempt, and presently capable of curing the contempt. Where the sanction is aimed at past contumacious acts, the sanction is by definition punitive.

Shillitani provides a useful example. In that case, two individuals refused to testify before a grand jury despite a grant of immunity from prosecution. Shillitani, 384 U.S. at 365. The Court concluded the individuals could be confined until they agreed to testify, as the confinement sought to coerce their compliance with the court's order to testify, and thus remained civil. Id. at 371. However, the Court found that once the grand jury was discharged the court could no longer confine the individuals, absent a criminal proceeding, because at that point the witness "has no further opportunity to purge himself of contempt." Id. at 371-72.

Here, Mr. Rust was ordered to testify but refused. The trial court found him in contempt and stated it would impose a punitive

sanction to be served consecutively to any other sentence. The court's description of the sanction aside, the sanction is plainly punitive. The sanction will be served long after the completion of Mr. Blair's trial concluded; indeed, Mr. Blair was convicted and sentenced shortly after Mr. Rust's refusal. Thus Mr. Rust will not have the ability to purge by compliance with the court's order. The sanction imposed is punitive.

2. The Fourteenth Amendment Due Process Clause and Article I, section do not allow a court to impose a punitive contempt sanction as an exercise of its inherent authority or without a jury trial. The Fourteenth Amendment Due Process Clause does not permit a court exercising its inherent contempt authority to impose a punitive contempt. The United States Supreme Court has said courts retain the inherent authority to "enforce compliance with their orders through civil contempt." Shillitani, 384 U.S. at 370-71. While Shillitani's holding would appear to limit the exercise of inherent contempt authorities to civil or coercive remedies, a subsequent case at least impliedly might be viewed as expanding upon that authority.

Balancing the interests which give rise to a court's inherent contempt authority with the due process protections required before

a person may be sanctioned for a criminal act, the Supreme Court concluded that consistent with due process, a court may appoint a special prosecutor to prosecute a punitive contempt sanction.

Young v. United States ex rel. Vuitton et Fils, S.A., 481 U.S. 787, 800-01, 107 S.Ct. 2124, 95 L.Ed.2d 740 (1987). Young found due process was violated where in an exercise of its inherent contempt authority, a trial court permitted an interested party to prosecute the contempt action. Id. at 814.

Justice Scalia, in a concurring opinion, went beyond merely reversing the contempt order to question the very notion that the trial court had any inherent contempt authority in that circumstance at all. Id. at 815 (Scalia, J., concurring). Relying on both due process and separation of powers concerns, Justice Scalia concluded that trial courts lack inherent authority to prosecute and punish contempts. More recent caselaw demonstrates Young's holding that trial courts have the inherent authority to prosecute punitive contempts was at best an anomaly.

Subsequently, the Court clearly held that, with limited exceptions, none of which are present here, due process will not permit the exercise of inherent contempt powers to impose punitive sanctions. International Union, United Mine Workers of America v.

Bagwell, 512 U.S. 821, 833, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994). The Bagwell majority placed great reliance on Justice Scalia's concurrence in Young, rooted as it was in the Separation of Powers Doctrine. See e.g., Bagwell, 512 U.S. at 831-32 (citing Young, 481 U.S. at 822 (Scalia, J., concurring in judgment)). Bagwell concluded that direct contempts, those which occur in a court's presence, have always been and remain within a court's authority to summarily adjudicate. 512 U.S. at 832. This authority is necessary "to maintain order in the courtroom and the integrity of the trial process in the face of an actual obstruction of justice." (Internal quotes and citations omitted.) Id. However, such authority "becomes less justifiable once a court leaves the realm of immediately sanctioned, petty direct contempts." Id.

The Washington Supreme Court has similarly concluded trial courts lack the inherent authority to impose a punitive contempt sanction. King, 110 Wn.2d at 800. King held:

Although a court has statutory as well as inherent power to impose a civil contempt sanction, Keller v. Keller, 52 Wn.2d 84, 86, 323 P.2d 231 (1958), it may not impose a criminal contempt sanction unless the contemnor has been afforded those due process rights extended to other criminal defendants. [Boatman, 104 Wn.2d at 46-47]; [State ex rel. Herron v. Browet, Inc., 103 Wn.2d 215, 219, 691 P.2d 571 (1984)]; see also, [Hicks, 485 U.S. at 624].

King, 110 Wn.2d at 800.

Even for direct contempts, if the court imposes a punitive sanction, the right to a jury trial attaches in the same manner as would be true in a criminal case.

[C]onvictions for criminal contempt are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same. Indeed, the role of criminal contempt and that of many ordinary criminal laws seem identical -- protection of the institutions of our government and enforcement of their mandates.

Bloom v. Illinois, 391 U.S. 194, 201, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968). Bloom concluded that punitive contempt sanctions are subject to the Sixth Amendment right to a jury trial in the same way as any other criminal case. 391 U.S. at 210. Because the Sixth Amendment jury guarantee applies only offenses for which the punishment exceeds six months in jail, Baldwin v. New York, 399 U.S. 66, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970), a similar limitation exists for contempt sanctions. Bloom, 391 U.S. at 210.

Article I, section 22 of the Washington Constitution provides a greater right to a jury, guaranteeing a jury trial in any criminal prosecution regardless of the punishment which may be imposed. Pasco v. Mace, 98 Wn.2d 87, 99-100, 653 P.2d 618 (1982). Thus,

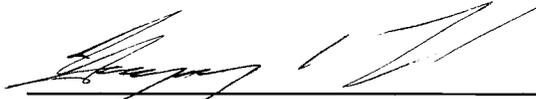
a court may not impose any punitive contempt sanction unless the contemnor is afforded a jury trial. State ex rel. Herron v. Browet, Inc., 103 Wn.2d 215, 219, 691 P.2d 571 (1984). This requirement applies equally to instances in which a trial purports to rely on its inherent contempt authority to impose a punitive sanction. Bagwell, 512 U.S. at 832-33; Boatman, 104 Wn.2d at 48.

Here, Mr. Rust was not afforded a jury trial, or any trial at all. The court, nonetheless, imposed a punitive contempt sanction. That sanction must be dismissed. Boatman, 104 Wn.2d at 48.

E. CONCLUSION

This Court must reverse and dismiss the contempt sanction in this case.

Respectfully submitted this 28<sup>th</sup> day of June 2011.

  
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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 66416-6-I
v.	)	
	)	
CHRISTOPHER RUST,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28<sup>TH</sup> DAY OF JUNE, 2011, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- |  |                   |                                     |
|--|-------------------|-------------------------------------|
| <input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY<br>APPELLATE UNIT<br>KING COUNTY COURTHOUSE<br>516 THIRD AVENUE, W-554<br>SEATTLE, WA 98104 | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |
| <input checked="" type="checkbox"/> CHRISTOPHER RUST<br>711668<br>CLALLAM BAY CORRECTIONS CENTER<br>1830 EAGLE CREST WAY<br>CLALLAM BAY, WA 98326                | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |

**SIGNED** IN SEATTLE, WASHINGTON THIS 28<sup>TH</sup> DAY OF JUNE, 2011.

X \_\_\_\_\_ 

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