

NO. 40470-2-II

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON,  
Respondent,

v.

MICHAEL A. HOLCOMB,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR GRAYS HARBOR COUNTY

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THE HONORABLE DAVID L. EDWARDS, JUDGE

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BRIEF OF RESPONDENT

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*pm 4-9-11*

*Yes*

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RESPONDENT'S COUNTER STATEMENT OF THE CASE

The State would agree with the appellant's statement of the case with the following additions.

After Mr. Holcomb's outburst in the courtroom and Judge Edwards finding him in contempt on two separate occasions, Mr. Holcomb returned to the courtroom on the afternoon of March 8, 2010:

MR. FARRA: We're we are asking that he be allowed to purge the contempt at this time. He would like to apologize to the court for his outburst.

THE DEFENDANT: I apologize for my outburst in your courtroom, Your Honor.

03-08-2010 RP 9.

On March 9, 2010, Mr. Holcomb again returned to the court and he and his attorney had the following exchange with Judge Edwards:

THE COURT: State versus Michael Holcomb. The matter comes before the court regarding contempt.

The statute requires that the defendant in these kinds of situations be given an opportunity to speak in mitigation. So, this is Mr. Holcomb's opportunity, Mr. Farra.

MR. FARRA: There is two things. We still haven't signed the Judgment and Sentence, plus, the contempt. There hasn't technically been any criminal charges filed, and this isn't a civil process. So, I assume it's under, just to make sure I am adequately representing my client, this is under the contempt authority the court inherently has in -with regard to an action that happened in your presence; am I correct in that?

THE COURT: You are correct. I made a finding of contempt for the behavior that occurred in my presence.

MR. FARRA: That's not different counts or anything else. It's just an act or contempt?

THE COURT: Two acts of contempt, yes.

MR. FARRA: Well, I am making sure that that's --for the record.

Um, as far as purging technically, that's part of the other process, but my client let me speak for him first, if the Court allows me to do so, is that okay, sir?

THE COURT: I am listening.

MR. FARRA: Okay. He had put up bail in regard to this, and he didn't understand, and I didn't explain to him, I apologize to Mr. Holcomb, that obviously, at the time we came into court and you put him in jail or raised the bail, whatever the process was. So he was angry about that, and he regrets that act, of course, and, he didn't know why the court had acted in regard to that. As I said, he just got married and, of course, now he doesn't have an opportunity to say goodbye to his wife, so that was one of the reasons he was angry. Not really in regard to the court, but regard to the process.

Also, he felt that the 16 months in jail was probably all he was looking at. The court did give him 24 months, which is, of course, the authority of the court under the plea bargain. And after reflecting upon that, he knows that.

So, as far as the action here, we are requesting that, of course, that he be allowed to apologize for his outbursts. And we do have a short argument in regard to any penalty in reference to that finding.

THE COURT: In regard to what?

MR. FARRA: To your finding of contempt.

THE COURT: Mr. Holcomb, is there anything you wish to say?

THE DEFENDANT: I apologize to the Court for my outburst.

THE COURT: Mr. Farra, anything else you wish to say?

MR. FARRA: Yes, if there is any punitive statement by the court, that he is going to prison for 24 months, that you make it, in fact, there is two acts, that any jail time be concurrent with that jail time.

He is – I know the court is upset because of his past criminal history. Any penalty – maybe upset is an improper term, Your Honor, but warranting, obviously your 24 months, I think he is going to go to prison.

I think he does have an opportunity to change his behavior. And, of course, only Michael Holcomb will do that.

So, I think it should be concurrent with the 24 months period of time.

Any other thing would be – he has already made the stupid outburst, so I don't think it's going to be reflected to anybody else.

In other words, your curative or punitive action is not – it's not going to set an example for anybody else. So, I am just asking for it concurrently, if the Court would consider that.

03-09-2010 RP 11-14 (emphasis added).

## ARGUMENT

RCW 7.21.010 provides in pertinent part as follows:

(1) "Contempt of court" means intentional:

(a) Disorderly, contemptuous, or isolate behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings.

RCW 7.21.050 (1) allows a judge to summarily punish contempt as defined in RCW 7.21.010 occurring within the courtroom that is seen or heard by the judge:

The judge presiding in an action or proceeding may summarily impose either a remedial or punitive sanction authorized by this chapter upon a person who commits a contempt of court within the courtroom if the judge certifies that he or she saw or heard the contempt. The judge shall impose the sanctions immediately after the contempt of court or at the end of the proceeding and only for the purpose of preserving order in the court and protecting the authority and dignity of the court. The person committing the contempt of court shall be given an opportunity to speak in mitigation of the contempt unless compelling circumstances demand otherwise. The order of contempt shall recite the facts, state the sanctions imposed, and be signed by the judge and entered on the record.

Appellant argues that he was not allowed to speak in mitigation. Appellant was twice given the opportunity to apologize to the court and he did so on the afternoon of March 8, 2010, (03-08-2010 RP 9) and again on March 9, 2010 (03-09-2010 RP 13). In addition, Holcomb's counsel, Mr.

Farra, spoke on his behalf in mitigation (03-09-2010 RP 11-14).

Appellant was not limited as to what he could say. The trial court stated in its Findings of Fact that Mr. Holcomb had the opportunity to speak in mitigation (CP 17) and the appellate court must accept those findings as true. State v. Hobbie, 126 Wn.2d 283, 295-96 (1995); In Re Willis, 94 Wash.180, 183 (1917):

The law is well settled that, in hearing cases upon appeal, for contempt committed in the presence of the court, the facts recited in the order are taken as true, and no other or different facts will be considered.

Willis at 183 citing State v. Buddress, 63 Wash. 26, 114 Pacific 879 (1911).

Although appellant has not assigned error, appellant also argues that the contempt should be vacated because the judge didn't enter the findings and order until the day after the contempt occurred. Jurisdiction vests upon the commission of the contempt and is not lost by the absence of the defendant or a short delay in filing the order. Willis at 185 (delay of one day found to be timely); Buddress at 32 (delay of seven days found to be timely). In Hobbie, supra, the appellant argued that the punishment was not summary. The appellant refused to answer questions posed to him during a jury trial (defendant Dow) despite having been granted transactional immunity. When the appellant refused to testify, the court found him in contempt. It appears that a hearing to determine sanctions

for the contempt was held about a week and a half after the defendant was found to be in contempt. The court found that:

At the time the sentence for contempt was imposed, the proceedings had not ended. Dow's criminal proceedings were not complete until they ended in a judgment and sentence, on December 5, 1991. Imposition of the sentence for contempt one week after the case went to the jury was timely under the statute.

Hobble at 296. It is ludicrous to suggest that the judge should have suspended court when "[t]here were at least 70 cases scheduled for hearing on the docket and the courtroom was crowded" (CP 16) to prepare findings because of the defendant's behavior. In any event, the "proceeding" for which the defendant was before the court, sentencing, had not yet concluded when the Findings and Order were entered. Judge Edwards did impose the sanction immediately upon the commission of the contempt. 03-08-10 RP 7-8. As Commissioner Skerlec noted in her Ruling Denying Stay in this case:

[T]he superior court was not required to interrupt other proceedings to allow immediate allocution by Holcomb, particularly in light of his attitude. Any invitation to address mitigation at that point would have encouraged further contemptuous conduct. He certainly was not prejudiced by the opportunity to calm down before he again addressed the court.

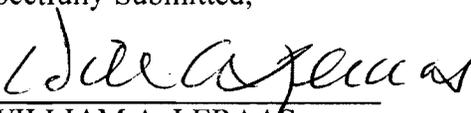
Ruling Denying Stay P. 3.

CONCLUSION

Judge Edwards complied with the statute in finding appellant in contempt. Appellant was allowed to speak in mitigation and the entry of the Findings and Order was timely. For all the foregoing reasons, the trial court should be affirmed and this appeal should be dismissed.

DATED this 7 day of April, 2011.

Respectfully Submitted,

By:   
WILLIAM A. LERAAS  
Deputy Prosecuting Attorney  
WSBA #15489

WAL/lh

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9 STATE OF WASHINGTON,

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11 v.

**DECLARATION OF MAILING**

12 MICHAEL A. HOLCOMB,

13 Appellant.

14  
15 **DECLARATION**

16 I, Barbara Chapman hereby declare as follows:

17 On the 7<sup>th</sup> day of April, 2011, I mailed a copy of the Brief of Respondent to  
18 Peter B. Tiller; Attorney at Law; Post Office Box 58; Centralia, Washington 98531-0058 and  
19 Michael Holcomb, DOC #947089, MCC IMU F-149, WA State Reformatory, P. O. Box 777,  
20 Monroe, WA 98272-0777, by depositing the same in the United States Mail, postage prepaid.

21 I declare under penalty of perjury under the laws of the State of Washington that the  
22 foregoing is true and correct to the best of my knowledge and belief.

23 DATED this 7<sup>th</sup> day of April, 2011, at Montesano, Washington.

24  
25 Barbara Chapman  
26  
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