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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-707

Filed 5 March 2024

Dare County, No. 23 CRS 29

STATE OF NORTH CAROLINA

v.

CHARLES T. CORPENING

Appeal by Defendant from an order entered 28 February 2023 by Judge Jerry R. Tillett in Dare County Superior Court. Heard in the Court of Appeals 7 February 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Jonathan D. Jones, for the State.*

*Richard Croutharmel, for Defendant.*

WOOD, Judge.

Charles T. Corpening (“Defendant”) appeals from an Order finding him in direct criminal contempt during summary proceedings before the court. After careful review of the record and applicable law, we affirm the Order of the trial court.

**I. Factual and Procedural Background**

On 6 February 2023, Defendant had a scheduled first appearance in Dare

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County Superior Court on charges of trafficking in methamphetamines; conspiracy to sell or deliver Schedule II controlled substances; and maintaining a vehicle or dwelling place for use of controlled substances. Attorney Thomas Finch represented Defendant. Prior to Defendant's case being called, Dare County Deputy Brent Doughtie ("Doughtie") observed Defendant asleep in the back row of the courtroom. Doughtie attempted to wake Defendant but had difficulty rousing him. Once awake, Doughtie noticed Defendant had red, glassy eyes. Doughtie suspected Defendant was impaired and informed him that a credible source had reported seeing him at the ABC store in Manteo during the lunch recess. Doughtie did not smell alcohol on Defendant but asked him to submit to an alcohol sensor breath test. Defendant declined.

The trial court was made aware of the officer's belief that Defendant was impaired and addressed Defendant. The following colloquy took place:

THE COURT: I hereby charge you with direct criminal contempt, sir, in that it's been reported that you were impaired and by alcohol, and that that has caused a delay in these proceedings and will. In addition, you were given the opportunity twice to take a portable breath test or breathalyzer for those purposes, and it's my understanding you have refused to do so, is that correct?

THE DEFENDANT: How did I refuse to do so? I don't understand the implications of why I'm being asked to take a breathalyzer, and then like what would be the reasoning? Because I mean, if you can tell me what is happening. I have been present in court all day, I mean, like --

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THE COURT: Well, that is not the information I have received.

THE DEFENDANT: Okay, well --

MR. FINCH: He was here this morning. I met him before the calendar call. He left at the recess and he's been waiting here in court. He's been sitting in the back row.

THE DEFENDANT: I haven't done anything. It's like I am being singled out. So what is the implication of the breathalyzer? So what does it mean for me?

THE COURT: And you are telling me, counsel, you don't -- counsel approach.

(Whereupon an off-the-record discussion was held.)

THE DEFENDANT: Your Honor, may I say something? If I'm impaired then I go to jail and if I'm not impaired then I don't? Is that the implication? I mean, because --

THE COURT: You were given the opportunity to --

THE DEFENDANT: But you are asking me--

THE COURT: Be quiet.

THE DEFENDANT: Yes, sir.

THE COURT: I'll hear from you, Mr. Doughtie. What information do you have about this?

Doughtie was then sworn in and testified to his encounter with Defendant. The trial court provided Defendant's counsel with an opportunity to respond at which

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point defense counsel objected to Defendant being held in contempt. The trial court then asked Defendant if he would submit to a breath test at this point. Defendant again declined to submit to a breath test.

Thereafter, the trial court found Defendant guilty of direct criminal contempt of court and held him in contempt.

THE COURT: I do find beyond a reasonable doubt that you are guilty of direct criminal contempt. It is ordered that he be incarcerated for a term of 30 days in the custody of these proceedings. Court finds that he is -- appeared in an impaired state and also and/or in the alternative, that he has caused a delay in these proceedings.

While being escorted from the courtroom, Defendant repeatedly asked if he could now submit to a breathalyzer test. The Court issued and signed a Direct Criminal Contempt Finding and Order on 6 February 2023. The following morning, 7 February 2023, Defendant returned to court and defense counsel asked the trial court why Defendant had been held in contempt. The trial court stated:

THE COURT: He was held in contempt because it was reported that he was impaired and acting suspiciously. There was a test offered. First asked to take a test and he refused. All of this continuing to take the Court's time away from other duties while this was being done. Then he was directed to take a test and he refused. And then he subsequently took a test but also a drug -- during the course of that colloquy it further delayed the proceedings and the Court became convinced that he was impaired. Thereafter, a drug test revealed the presence of prohibited controlled substances.

Defendant attributed the presence of drugs in his system to a prescription he

had for Adderall but did not offer to produce a valid prescription. The trial court set a trial date for Defendant's criminal charges for which he had originally appeared in court and the matter was adjourned. On 14 February 2023, Defendant filed a notice of appeal of the contempt order. On 28 February 2023, the trial court filed a subsequent Order on Direct Criminal Contempt. The court explained the facts as follows:

Officer Doughtie was sworn and testified that defendant was "sleeping/slumping and/or could not be roused". The defendant appeared "animated, agitated, and argumentative". He was unable to listen to the Court's questions or respond appropriately. He was unable to follow the Court's instructions during the hearing. The Court concluded he was impaired by some substance. The defendant was also on probation. The defendant was charged with trafficking. The defendant subsequently submitted to a portable alcohol test with negative results. However, he tested positive for methamphetamines. He did not produce a valid prescription. The proceedings were delayed, disrupted, and could not be conducted. Upon the Court's inquiry, counsel could not assert defendant was not impaired.

## **II. Jurisdiction**

Rule 4(a) of the North Carolina Rules of Appellate Procedure provides that an appeal from a judgment or order in a criminal case may be taken by either "giving oral notice of appeal at trial" or by filing written notice of appeal within fourteen days after entry of judgment. N.C. R. App. P. 4. Here, the trial court entered a signed, written judgment holding Defendant in direct criminal contempt on 6 February 2023. The record reflects that this judgment was not filed as it does not bear a file stamp

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by the clerk. Defendant filed written notice of appeal of the 6 February 2023 contempt judgment on 14 February 2023. The trial court subsequently filed a different typewritten, signed contempt order on 28 February 2023. Because the judgment from which appeal was taken, the contempt order, had not yet been filed, Defendant's appeal was procedurally premature. Defendant's appeal should not have been entered until after the entry of the 28 February 2023 order, which was necessary to confer appellate jurisdiction on this Court. *State v. Mangum*, 270 N.C. App. 327, 331, 840 S.E.2d 862, 866 (2020).

Since the notice of appeal is untimely, and consequently inadequate, this Court is deprived of jurisdiction and thus precluded from taking any action other than dismissal. N.C. R. App. P. 25. However, Rule 21(a) provides that a "writ of certiorari may be issued in appropriate circumstances . . . to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action." N.C. R. App. P. 21. The authority to grant review by a writ of certiorari is statutory, "[t]he Court of Appeals has jurisdiction . . . to issue . . . certiorari . . . in aid of its own jurisdiction, or to supervise and control the proceedings of any of the trial courts of the General Court of Justice." N.C. Gen. Stat. § 7A-32(c) (2023).

In this case, Defendant's appeal fails, not as a result of fault or neglect, but because of a procedural defect. *See Womble v. Gin Co.*, 194 N.C. 577, 579, 140 S.E. 230, 231 (1927) (noting that certiorari is a discretionary writ that is to be issued only

for good or sufficient cause shown and “[a] party is entitled to a writ of *certiorari* when—and only when—the failure to perfect the appeal is due to some error or act of the court or its officers, and not the fault or neglect of the party or his agent”). We elect “pursuant to N.C. R. App. P. 21(a)(1) to treat the purported appeal as a petition for writ of certiorari and grant it in our discretion.” *Luther v. Seawell*, 191 N.C. App. 139, 142, 662 S.E.2d 1, 3 (2008) (quotation marks omitted).

### III. Analysis

In his sole argument on appeal, Defendant contends the trial court erred by holding him in direct criminal contempt for failure to submit to a portable alcohol sensor test and for interrupting and delaying the proceedings. We disagree.

Defendant first contends the trial court erred by relying on Defendant’s refusal to submit to a portable alcohol sensor test to hold him in direct criminal contempt. He asserts that the alcohol sensor test was not lawfully issued so it may not be the basis on which to find him in direct criminal contempt. Defendant relies on *State v. Ford* for the proposition that alcohol sensor test results are inadmissible in a contempt proceeding unless the results were admitted to show Defendant was impaired by a substance other than alcohol. 164 N.C. App. 566, 572, 596 S.E.2d 846, 850 (2004) (citation omitted). In *Ford*, this court relied on N.C. Gen. Stat. § 20-16.3(d) to reverse the trial court’s admission of the positive test results to show that the defendant was impaired by alcohol and as a result of her impairment, she was held in direct criminal contempt. *Id.* at 572, 596 S.E.2d at 850.

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As a threshold matter, the trial court did not solely rely on Defendant's refusal to submit to a test to hold him in direct criminal contempt. The court found Defendant in criminal contempt also because he delayed and disrupted court proceedings. Further, the court could not have relied on the results of the sensor test because Defendant refused to submit to the test twice. As a result, the holding in *Ford* is not controlling. Here, the court did not rely on the results of an alcohol sensor test to hold Defendant in contempt, and Defendant exhibited willful disorderly behavior that delayed court proceedings irrespective of the test.

Next, Defendant argues the trial court had insufficient evidence to find beyond a reasonable doubt that Defendant willfully and intentionally interrupted or delayed the trial court's proceedings. "In general, our standard of review for contempt cases is whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment." *State v. Wendorf*, 274 N.C. App. 480, 483, 852 S.E.2d 898, 902 (2020) (quotation marks omitted). "Findings of fact are binding on appeal if there is competent evidence to support them, even if there is evidence to the contrary. The trial court's conclusions of law drawn from the findings of fact are reviewable de novo." *Id.*

Direct criminal contempt occurs when the act is committed within the sight or hearing of the judge or in the immediate proximity of where the proceedings are being held. N.C. Gen. Stat. § 5A-13 (2023). The contemptuous act must also likely interrupt or interfere with the court's proceedings. *Id.* The facts must be established beyond a



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reasonable doubt. N.C. Gen. Stat. § 5A-14 (2023). The following grounds are sufficient for criminal contempt:

- (1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.
- (2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.
- (3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.

N.C. Gen. Stat. § 5A-11 (2023).

In the present case, Defendant denies that he was impaired in court and that he delayed the court proceedings. Defendant argues that his behavior of falling asleep in court, refusing a breath alcohol test twice, and being confused on the reasoning for his contempt was not “willful.” Willful has been construed as “done deliberately and purposefully in violation of law, and without authority, justification or excuse.” *State v. Chriscoe*, 85 N.C. App. 155, 158, 354 S.E.2d 289, 291 (1987). Willful disobedience is “disobedience which imports knowledge and a stubborn resistance” and which “imports a bad faith disregard for authority and the law.” *Hancock v. Hancock*, 122 N.C. App. 518, 523, 471 S.E.2d 415, 418 (1996) (quotation marks omitted).

Here, the Record shows Defendant was held in direct criminal contempt because he appeared in an impaired state *and/or in the alternative*, that he has

caused a delay in these proceedings. It is clear from the Record that Defendant exhibited willful and interruptive behavior during the court's proceedings by (1) being impaired by methamphetamines while present in court for his scheduled hearing; (2) twice failing to submit to an alcohol sensor test; (3) sleeping during court proceedings; and (4) appearing in front of the trial court in an agitated state. Further, the trial court determined Defendant was unable to listen to the court's questions without interruption, to respond appropriately, and to follow the court's instructions during the hearing. The trial court gave Defendant yet another opportunity to submit to an alcohol breath test, which Defendant refused. Ultimately, the trial court determined that due to Defendant's impairment it could not conduct Defendant's first appearance as is evidenced by the trial court conducting Defendant's first appearance the following day.

Thus, the court properly held Defendant in direct criminal contempt under § 5A-14. The Defendant exhibited willful disobedience that directly interrupted the court's proceedings.

#### **IV. Conclusion**

For the foregoing reasons, we affirm the trial court's Direct Criminal Contempt Order.

**AFFIRMED.**

Judges COLLINS and GORE concur.

Report per Rule 30(e).