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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-262

Filed 31 December 2024

New Hanover County, No. 23 CRS 2240

STATE OF NORTH CAROLINA

v.

HUNTER CROWDER, Defendant.

Appeal by defendant from order entered 21 August 2023 by Judge Clinton Rowe in New Hanover County Superior Court. Heard in the Court of Appeals 23 October 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Jeanne Washburn, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Sterling Rozear, for defendant-appellant.

THOMPSON, Judge.

Hunter Crowder (defendant) appeals from an order finding him in direct criminal contempt of court for providing untruthful information on an affidavit of indigency defendant filled out and submitted to the court during a probation violation hearing. After careful consideration, we vacate the trial court's order.

I. Factual Background and Procedural History

On 12 July 2022 in New Hanover County Superior Court, defendant was charged by information with breaking and entering, larceny after breaking and entering, and injury to personal property. Defendant pled guilty that same day to breaking and entering and an unrelated charge of financial card fraud. Defendant was determined to be a prior record level VI based on his previous convictions, and the trial court sentenced defendant to a suspended sentence of twenty-four months of supervised probation.

On 14 September 2022, defendant pled guilty to a charge of attempted felony larceny in Pender County District Court and was given a sentence of six to seventeen months in prison; this sentence was also suspended, and defendant was placed on eighteen months of supervised probation.

On 14 August 2023, probation violation reports were filed in both the New Hanover and Pender County cases, for which defendant appeared in New Hanover County Superior Court on 21 August 2023. During the probation violation hearing, after a dialogue with defendant regarding his court-appointed counsel, the trial court suggested that defendant “probably need[ed] to fill out a new affidavit [of indigency] to make sure it[was] truthful and accurate.” Defendant indicated on the affidavit that his total monthly income was \$0, while his total monthly expenses were around \$265, prompting the trial court to question defendant about his income. After determining that defendant performed “odds-and-ends jobs” for “very little” pay, the

trial court alleged that defendant was “trying to defraud” the court, stated that the court would appoint the Public Defender, found defendant in direct criminal contempt, and sentenced defendant to ten days in jail.¹

Defendant gave timely written notice of appeal on 23 August 2023.

II. Discussion

On appeal, defendant contends, and the State concedes, that defendant’s criminal contempt conviction should be vacated. Defendant argues that he “did not commit any contemptuous act, did not act willfully, and did not himself interfere with matters then before the court.” We agree.

A. Standard of review

“In contempt cases, the standard of review 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. Baker*, 260 N.C. App. 237, 241, 817 S.E.2d 907, 910 (2018) (internal quotation marks and citation omitted). “Furthermore, the trial court’s conclusions of law drawn from the findings of fact are reviewable de novo.” *Id.* (internal quotation marks and citation omitted).

B. Direct criminal contempt

According to the direct criminal contempt order in this case, the trial court

¹ We note that the “Direct Criminal Contempt/Summary Proceedings/Findings and Order” (Administrative Office of the Courts Form Number AOC-CR-390) for New Hanover County criminal case number 23 CRS 2240 is dated 21 August 2023 and bears the judge’s printed name, but there is no signature on the form.

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cited N.C. Gen. Stat. §§ 5A-11-14 as its basis for finding defendant in direct criminal contempt but failed to indicate a specific subsection that illustrates what behaviors or conduct defendant exhibited to warrant finding him in direct criminal contempt. Instead, the trial court merely indicated that it held defendant in direct criminal contempt because the defendant tried to defraud the court.

“Criminal contempt is imposed in order to preserve the court’s authority and to punish disobedience of its orders. Criminal contempt is a crime, and constitutional safeguards are triggered accordingly.” *State v. Revels*, 250 N.C. App. 754, 759, 793 S.E.2d 744, 748 (2016) (citation omitted).

N.C. Gen. Stat. § 5A-11(a) provides an exhaustive list of behaviors and/or conduct that would constitute criminal contempt, and each begins with the word ‘willful.’ N.C. Gen. Stat. § 5A-11(a) (2023). N.C. Gen. Stat. § 5A-12(b) states, in relevant part, “imprisonment may not be imposed for criminal contempt, whether direct or indirect, unless: (1) [t]he act or omission was willfully contemptuous; or (2) [t]he act or omission was preceded by a clear warning by the court that the conduct is improper.” N.C. Gen. Stat. § 5A-12(b)(1)-(2). “ ‘Willfulness’ in this statute means an act done deliberately and purposefully in violation of law, and without authority, justification, or excuse.” *State v. Phair*, 193 N.C. App. 591, 594, 668 S.E.2d 110, 112 (2008) (internal quotation marks and citation omitted). Moreover,

[c]riminal contempt is direct criminal contempt when the act: (1) [i]s committed within the sight or hearing of a presiding judicial official; *and* (2) [i]s committed in, or in

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immediate proximity to, the room where proceedings are being held before the court, *and* (3) [i]s likely to interrupt or interfere with matters then before the court.

N.C. Gen. Stat. § 5A-13(a)(1-3) (emphases added).

Here, defendant filled out an affidavit of indigency (indigency form) in which he wrote “\$0” in each box relating to income, assets, and liabilities, and indicated that his monthly expenses were “\$265.” When interrogated about his indigency form at his probation violation hearing, defendant admitted that he did “odds-and-ends jobs” but had very little income. In response to this, the trial court told defendant that defendant would not be getting a court-appointed attorney but instead a public defender, found defendant in direct criminal contempt, and sentenced him to ten days’ imprisonment.

Our Supreme Court in *Gorrell* stated that a contempt order without findings of fact that the conduct of the contemnor was willful is fatally defective. *Gorrell v. Gorrell*, 264 N.C. 403, 141 S.E.2d 794, 795 (1965). Here, there are no findings in the direct criminal contempt order, much less findings that indicate defendant demonstrated willful behavior or conduct warranting criminal contempt. The record is entirely devoid of any evidence that explains how defendant conducted himself in a contemptuous manner or displayed behaviors that warranted defendant being found in contempt. Thus, the contempt order is fatally defective.

Furthermore, defendant did not interrupt the trial court’s proceedings; impair the respect due to the trial court; or willfully disobey, resist, or interfere with the trial

“court’s lawful process, order, directive, or instruction or its execution.” *See* N.C. Gen. Stat. § 5A-11(a)(1)-(3). Defendant timely appeared at his probation violation hearing and there is no evidence in the transcript that defendant caused any disruption or interference in the trial court’s processes or directives. Conversely, the trial court instructed defendant to fill out a new indigency form while the trial court tended to other matters. Defendant complied with this instruction and returned five minutes later with his completed form. Moreover, there is no evidence in the record that defendant filled out the indigency form with the requisite willful intent to constitute direct criminal contempt. On the contrary, the record/transcript indicates that defendant answered the trial court’s questions truthfully and without hesitation. Thus, defendant’s behavior does not amount to a “bad faith disregard for the trial court’s authority[.]” *Phair*, 193 N.C. App. at 594, 668 S.E.2d at 112 (citation omitted).

III. Conclusion

For the foregoing reasons, we conclude that defendant’s acts were not willful, nor did defendant impair, impede, or interrupt the proceedings of the trial court, and, therefore, the trial court entered its order of direct contempt in error. Moreover, the direct criminal contempt order is fatally defective as it does not contain any findings of fact regarding conduct on behalf of defendant/contemnor that were willful such that holding him in direct criminal contempt was warranted. Accordingly, we vacate the conviction for contempt against defendant.

VACATED.

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Judge GORE concurs.

Judge STADING concurs in result only.

Report per Rule 30(e).