

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1408-2009
:
vs. :
:
JERMAINE WEEKS, :
Defendant :

OPINION AND ORDER

Before the Court is a Motion to Vacate Order of Contempt that was filed by the Commonwealth on January 7, 2011.

By way of background, during Defendant's trial in October of 2010, the Defendant failed to return following a recess. The trial continued with Defendant absent and the Defendant was found guilty in absentia. A Bench Warrant was issued for the Defendant's arrest.

Prior to the Defendant being apprehended on the Bench Warrant, additional criminal charges were filed against him including solicitation to commit perjury, flight to avoid apprehension and default in required appearance.

On December 30, 2010, the Defendant was brought before the Court for a Bench Warrant hearing. It is believed that at the time of the Bench Warrant hearing, the Commonwealth requested that the Defendant be held in contempt. The Court conducted both a hearing on the Bench Warrant and a contempt hearing. Following the hearing, the Court found the Defendant in both direct and indirect criminal contempt and sentenced the Defendant to a period of incarceration of 60 days.

The Commonwealth in its Motion to Vacate requests that the Court vacate its

December 30, 2010 Order. The Commonwealth argues that the Assistant District Attorney assigned to handle the Bench Warrant hearing inadvertently requested that the Court find the Defendant in contempt. The Commonwealth further argues that “it wishes to avoid any potential double jeopardy claims that the Defendant might have as a result of the Court’s sanction.”

The Defendant counters that the Court should not vacate the Order because the Court lacks authority to do so. Even if the Court does in fact have the authority to vacate the Order, Defendant argues that the Court should not do so because it would be unfair to the Defendant.

The issue before the Court is novel. The Commonwealth requests that the Court take action in order to both remedy an inadvertent mistake and to allow the Defendant to be more properly sanctioned for his conduct, which according to the Commonwealth was not only contemptuous but criminal.

The power of the Court to impose summary punishments for contempt is authorized by statute. 42 Pa. C.S.A. § 4132. Such power is restricted to, among other things, the disobedience of parties to the lawful process of the Court as well as the misbehavior of any person in the presence of the Court, thereby obstructing the administration of justice. 42 Pa. C.S.A. § 4132 (2), (3).

There are two types of contempt: criminal and civil. If the dominant purpose

is to punish the contemnor for disobedience of an Order or some other contemptuous act, the adjudication of contempt is criminal. Garr v. Peter, 773 A.2d 183, 190 (Pa. Super. 2001).

The Court found the Defendant in both indirect and direct criminal contempt. To establish indirect criminal contempt, evidence must sufficient to establish the following: (1) the order in question must be definite, clear, specific and leave no doubt or uncertainty in the mind of the person to whom it was addressed of the conduct prohibited; (2) the contemnor must have had notice of the specific order or decree; (3) the act constituting the violation must have been volitional; and (4) the contemnor must have acted with wrongful intent. Commonwealth v. Ashton, 824 A.2d 1198, 1203 (Pa. Super. 2003), citing Commonwealth v. Baker, 564 Pa. 192, 198, 766 A.2d 328, 331 (Pa. 2001). A charge of indirect criminal contempt consists of a claim that the violation of the Order occurred outside the presence of the Court. Ashton, supra.

On the other hand, a direct contempt is one that occurs in the actual or constructive presence of the Court. Commonwealth v. Fladger, 378 A.2d 440, 442 n.2 (Pa. Super. 1977). “In order to sustain a conviction for direct criminal contempt, there must be proof beyond a reasonable doubt of (1) misconduct; (2) in the presence of the Court; (3) committed with the intent to obstruct justice; and (4) that obstructs the administration of justice.” Himes v. Himes, 833 A.2d 1124, 1125-26 (Pa. Super. 2003).

The Court remains of the opinion that the Defendant’s conduct constituted

both indirect and direct criminal contempt. The Defendant's conduct not only significantly disrupted the administration of justice but also undermined the ability of the Court to properly conduct the proceedings and clearly violated Orders of which the Defendant was aware. The dominant purpose of the Court's sanction/sentence was to vindicate the authority of the Court and to punish the Defendant.

The Pennsylvania Rules of Criminal Procedure permit the Commonwealth to challenge a sentence by filing a Motion to Modify. Pa. R. Cr. P. 721. While styled as a Motion to Vacate, the Court will construe the Commonwealth's Motion as a Motion to Modify. More specifically, the Court construes a request to vacate as being encompassed in a Motion to Modify.

In deciding a Motion to Modify, the Court must exercise its discretion. Commonwealth v. Paul, 925 A.2d 825 (Pa. Super. 2007). While the Court is not convinced that vacating its Order will alleviate any or all double jeopardy concerns of the Commonwealth, and the Court does not necessarily see its role as correcting errors of counsel, under all of the circumstances of this case the Court will exercise its discretion and grant the Commonwealth's Motion.

In the final analysis, the Court must consider what is fair to all parties. While it is likely that the Assistant District Attorney did request a finding of contempt at the Bench Warrant hearing, said Assistant District Attorney was relatively new to the office. During the week that the hearing took place, the District Attorney's office was short staffed, there was nothing on the office file which would have indicated to the Assistant District Attorney that

additional charges were filed against the Defendant, and the Assistant District Attorney was not aware of such. Accordingly, the Assistant District Attorney would not have been aware of any double jeopardy concerns. Moreover, it is not entirely out of the question that the Court simply proceeded to a contempt hearing without the Assistant District Attorney even requesting such.

Moreover, the Defendant should not benefit from the Assistant District Attorney's inadvertent mistake. The Defendant intentionally committed contemptuous and arguably criminal acts. The Defendant should be required to face the full consequences of that intentional conduct.

Finally, the sentence imposed on the Defendant was illegal. More specifically, it did not impose a minimum and a maximum. Commonwealth v. Williams, 753 A.2d 856, 865 (Pa. Super. 2000), appeal denied, 785 A.2d 89 (Pa. 2001).

While the Court does not wish to place itself on the slippery slope of correcting mistakes by counsel, the Court understands the realities associated with practicing law as public servants in both the offices of the District Attorney and the Public Defender. Therefore, the Court is willing to enter appropriate Orders in its discretion that are fair and just under all of the circumstances. The Court finds that this is such a case. Accordingly, the following Order is entered:

ORDER

AND NOW, this 26th day of January 2011 following a hearing and argument, the Court **GRANTS** the Commonwealth's Motion to Vacate Order of Contempt. The Court's December 30, 2010 Order is vacated in part. All references to findings of direct and/or indirect criminal contempt are vacated including any sanctions regarding such.

By The Court,

Marc F. Lovecchio, Judge

cc: Eric R. Linhardt Esquire (DA)
Jeffrey Rowe, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work File