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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0711**

State of Minnesota,
Respondent,

vs.

Nicholas James Link,
Appellant.

**Filed March 2, 2020
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge**

Olmsted County District Court
File No. 55-CR-18-6328

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Jesson, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

In this direct appeal from final judgment, appellant Nicholas James Link argues that the three direct contempt determinations summarily made by the district court must be

reversed because his conduct did not constitute criminal contempt. Alternatively, he challenges the contempt sentences, arguing that (1) two of the three 30-day contempt sentences must be vacated because his conduct constituted a single behavioral incident, (2) any contempt sentences must be served concurrently with the sentence imposed for his underlying offense of violating an order for protection (OFP), and (3) the 90-day cumulative contempt sentence exaggerates the criminality of his conduct. Because we hold that the record supports the first contempt finding but does not support the second and third contempt findings, we affirm the first finding but reverse the second and third. As to the sentences, only the first 30-day sentence remains, and we hold that the district court did not err by ordering that it be served consecutively with the sentence for Link's violation-of-an-order-for-protection offense. Accordingly, we affirm in part, reverse in part, and remand to correct the warrant of commitment.

FACTS

On September 26, 2018, Link pleaded guilty to violating an OFP under Minn. Stat. § 518B.01, subd. 14(d)(1) (2018). The state agreed to recommend a sentence of 30 months' imprisonment, which is in the middle of the sentencing guidelines range, and to support Link's request to be released without monetary bail pending sentencing. The district court accepted Link's guilty plea and released him pending sentencing, with instructions to comply with a presentence investigation (PSI) and make all future court appearances. Sentencing was scheduled for December 3. On November 26, 2018, Link's assigned PSI agent filed a notice with the district court stating that Link had failed to comply with the

PSI and detailing her efforts to contact him. On November 28, the district court issued a warrant for Link's arrest.

Link was arrested on December 3 and appeared for a hearing on December 4. A judge who had not presided over the previous proceedings in Link's case presided over the December 4 hearing. Link was assisted by a public defender who had not represented him in the previous proceedings. The hearing began with the district court incorrectly stating, based on an error in the arrest warrant, that the warrant had issued because Link had failed to appear for a rule 8 hearing in the case.¹ See Minn. R. Crim. P. 8. Link then asked what the rule 8 hearing was for and explained that he had pleaded guilty and was released until sentencing. Link's public defender stated, "I think he missed sentencing, Your Honor." The district court examined the case file and found that the warrant had actually issued due to Link's failure to comply with the PSI.

The district court then attempted to begin rescheduling sentencing, but Link interjected that he was "actually thinking of maybe withdrawing [his] plea." The public defender seemed surprised and asked Link if he had discussed a plea withdrawal with the attorney who had represented him at the previous proceedings; Link replied that he had. The district court and the clerk of court had a brief exchange about Link needing to complete a PSI before sentencing, and Link again interjected that he wanted to get his

¹ The warrant incorrectly states that Link failed to appear for a rule 8 hearing on September 26, 2018, which is the date on which he appeared and pleaded guilty. But the warrant correctly marks "Fail to appear for PSI" as the reason for its issuance.

desire to withdraw his plea on the record. At this point, the following exchange occurred between Link and the district court:

THE COURT: Mr. Link, how about if you not talk for a minute here? How's that sound?

LINK: Well, I'd just like to get it on the record that I'd like to withdraw my plea from the last appearance.

THE COURT: Okay, Mr. Link, when I say don't talk, I mean don't talk. You have a lawyer who's representing you there at counsel table. Your communications with the court—

LINK: I asked for no lawyer today.

THE COURT: Mr. Link, if you talk one more time when I haven't asked you a question, I'm going to hold you in contempt of court.

LINK: I'm already in contempt of court.

THE COURT: Mr. Link, maybe this isn't registering with you. If you do that again, I'm going to hold you in contempt of court and you'll do jail time whatever happens with regard to the—

LINK: I'm going to prison, Your Honor.

THE COURT: Yeah, and I can add more time to that, Mr. Link. And, in fact, I find you in contempt of court, and I'm adding 30 days to whatever prison sentence you get.

LINK: I would like it on the record that I will be withdrawing my guilty plea from September 26th. That's all I'm saying.

THE COURT: And now it's 60 days. Would you like to go for 90?

LINK: Thank you. That's all I wanted to say.

THE COURT: Yeah. Now it's 90.

LINK: I was talking to my lawyer. I'm sorry.

THE COURT: Okay, but now you weren't. It's 90 days.

The district court then rescheduled Link's sentencing hearing.

Link appeared for sentencing on February 8, 2019. The judge who originally presided over Link's plea hearing presided over Link's sentencing hearing, and Link was represented by the public defender who assisted him at the plea hearing. The district court denied Link's motion to withdraw his guilty plea and imposed the presumptive sentence of

30 months' imprisonment for the OFP violation. It then addressed the contempt findings and sentences from the December 4 hearing, stating that the judge at that hearing "indicated that he was giving you 90 days for contempt of court. I will be adding that contempt of court language to the sentencing order . . . generate[d] out of today's hearing." The district court explained to Link that, once he had served his prison sentence for the OFP violation, he would return to the jail to serve the cumulative 90-day contempt sentence. Link then interrupted the district court to point out that the judge who imposed the contempt sentences never stated whether the sentences were consecutive or concurrent, and the district court replied, "It's a 90 day sentence . . . I'm ordering that because [the other judge] ordered it, it's going on this record today and there is nothing to indicate to me that he intended that to be concurrent. Contempt sentences are generally consecutive and that's what I'm ordering here today."

This appeal follows.

DECISION

I. The record supports the first contempt finding but does not support the second and third.

Appellate courts review a district court's contempt order for an abuse of discretion. *See Erickson v. Erickson*, 385 N.W.2d 301, 304 (Minn. 1986); *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). Specifically, a contempt order is reviewed "for arbitrariness, capriciousness, and oppressiveness." *State v. Schloegl*, 915 N.W.2d 14, 20 (Minn. App. 2018) (quoting *State v. Tatum*, 556 N.W.2d 541, 547 (Minn. 1996)), *review denied* (Minn. July 17, 2018).

Minnesota Statutes specify “two kinds” of contempts of court: “direct and constructive.” Minn. Stat. § 588.01, subd. 1 (2018). Direct contempts are those that occur in the “immediate view and presence of the court” and arise either from “disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course of a trial or other judicial proceedings” or from “a breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the business of the court.” *Id.*, subd. 2 (2018). Direct contempts “may be punished summarily, for which an order shall be made reciting the facts as occurring in the immediate view and presence of the court or officer, and adjudging the person proceeded against to be guilty of a contempt, and that the person be punished as therein specified.”² Minn. Stat. § 588.03. Constructive contempts, on the other hand, are those “not committed in the immediate presence of the court, and of which it has no personal knowledge” and arise from any one of eleven statutorily specified “acts or omissions.” Minn. Stat. § 588.01, subd. 3 (2018). Constructive contempts may not be punished summarily by the court. *Tatum*, 556 N.W.2d at 545.

Minnesota caselaw further categorizes contempts as either criminal or civil. *See id.* at 544. This distinction is based on the purpose of the contempt order. A contempt order is civil in nature if it “impos[es] a sanction that will be removed upon compliance with a court order that has been defied.” *Id.* A civil contempt order is intended to be “remedial rather than punitive because its purpose is to coerce compliance with [a court] order, not to

² Link does not argue that the district court abused its discretion by failing to issue an order consistent with the provisions of Minn. Stat. § 588.03 (2018), so we do not reach that issue here.

vindicate the authority of the court.” *Mower Cty. Human Servs. v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996). A contempt order is criminal in nature if it “punish[es] the contemnor for past behavior.” *Tatum*, 556 N.W.2d at 544. “Criminal contempt is to preserve the authority of the court by punishing past misconduct.” *In re Welfare of E.J.B.*, 466 N.W.2d 768, 770 (Minn. App. 1991) (quoting *In re Welfare of A.W.*, 399 N.W.2d 223, 225 (Minn. App. 1987)).

The parties agree that this case involves direct, criminal contempt. This agreement is supported by the record, as Link’s underlying conduct occurred in the presence of the court and the contempt order was punitive, rather than remedial, in nature.

Link argues that the district court abused its discretion by finding him in direct contempt of court based on his statements at the December 4 hearing because he did not make any statements contumaciously, in bad faith, and out of disrespect for the judicial process and because the district court acted capriciously.

Link asserts that the legal standard for contempt was not satisfied because contempt requires not only disobedience to the court but also bad faith and disrespect for the judicial process. For support, he cites *Minn. State Bar Ass’n v. Divorce Assistance Ass’n, Inc.*, which states that “[o]ne limitation on the [district] court’s admittedly broad discretion to impose a contempt sanction is that such sanction is appropriate only where the alleged contemnor has acted contumaciously, in bad faith, *and* out of disrespect for the judicial process.” 248 N.W.2d 733, 740 (Minn. 1976) (emphasis added); *see also Erickson*, 385 N.W.2d at 304 (stating that a district court may utilize its contempt power “only where the contemnor has acted contumaciously, in bad faith, and out of disrespect for the judicial

process” (quotation omitted)). Link argues that his statements, especially when viewed in the context of the hearing as a whole, were not made disrespectfully or in bad faith, as he was attempting to speak on his own behalf when everyone else in the courtroom—including his attorney—was unfamiliar with his case. He argues that he was merely making a legitimate legal request to withdraw his guilty plea.

The state responds that the contempt inquiry turns only on whether the defendant’s behavior interrupted the proceedings and hindered the administration of justice and that the defendant’s purpose for the behavior is irrelevant. The state cites no supporting authority, but its assertion seems to reference Minn. Stat. § 588.01, subd. 2, which defines direct contempts as arising from acts that include “disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course of a trial or other judicial proceedings.” But the state’s position reads out the first part of the definition and ignores the caselaw appropriately cited by Link. Furthermore, to the extent that the state’s argument implies that the statute supersedes the caselaw, this argument fails because the statutory definition of direct contempt cited above, found in Minn. Stat. § 588.01, subd. 2, dates back to 1905 and was thus in place well before the cited caselaw. *See* 1905 Minn. Laws ch. 91, § 4637, at 989.

We turn, then, to whether the record supports the district court’s determination that Link acted contumaciously, in bad faith, and out of disrespect for the judicial process. *See Minn. State Bar Ass’n*, 248 N.W.2d at 740. Here, the conduct found to be contemptuous consisted of speaking directly to the district court after instruction from the district court to remain silent. Link’s statements were brief and non-profane, and the record does not

indicate that he was raising his voice. As Link points out, this case is distinguishable from others where the contemnors engaged in behavior such as shouting obscenities directed at the district court or throwing objects in the courtroom. *See, e.g., Schloegl*, 915 N.W.2d at 20.

The sequence of the exchange leading to the first contempt finding was that (1) the district court instructed Link to speak only to his attorney, (2) Link interrupted and stated that he did not want an attorney at the hearing, (3) the district court threatened him with contempt of court, (4) Link stated that he was already in contempt, (5) the district court began explaining that it could add jail time for Link, (6) Link interrupted again to state he was already going to prison, and (7) the district court found Link in contempt and added 30 days to his sentence. The second and third contempt findings rapidly followed, as Link spoke again to say that all he wanted was for the record to reflect that he would be withdrawing his guilty plea, and the district court responded, “And now it’s 60 days. Would you like to go for 90?” Link replied, “Thank you. That’s all I wanted to say,” to which the district court responded, “Yeah. Now it’s 90.” When Link then stated that he had only been speaking to his attorney in the prior statement, the district court replied, “Okay, but now you weren’t. It’s 90 days.”

With respect to the first contempt finding, the district court repeatedly instructed Link to remain quiet, and Link repeatedly disobeyed that instruction. In doing so, he acted contumaciously, in bad faith, and out of disrespect for the judicial process. The district court did not act capriciously by punishing this behavior. We conclude that the record supports the first contempt finding.

We cannot, however, uphold the second and third contempt findings on this record. The statement by Link that gave rise to the second contempt finding merely relayed Link’s legal position. Importantly, Link was speaking on his own behalf, albeit out of turn, in the context of a hearing at which everyone else in the courtroom was unfamiliar with his case and at which he had had to correct misunderstandings about his case. Although the act of speaking out of turn may be characterized as disrespectful, the content of the statement was not disrespectful to the court or the judicial process. Neither was the content of his statement that prompted the third contempt finding—that finding ended up being based on Link’s response to the district court explaining that he had been talking to his lawyer. Moreover, it is troubling that the third contempt finding was preceded by a question from the district court that appeared to invite Link into a power struggle (“Would you like to go for 90?”). The court’s power to summarily punish direct contempts is “an arbitrary power, born of necessity, which must be exercised with great prudence.” *State ex rel. Russell v. Dist. Court, Fourteenth Judicial Dist., Polk Cty.*, 62 N.W. 831, 832 (Minn. 1895). On this record, the second and third contempt determinations, imposed for Link’s brief, non-profane statements relaying his legal position, did not meet this standard. We reverse the second and third contempt findings and remand for correction of the warrant of commitment.³

³ We note that, even if all three contempt findings were supported by the record, the sentences for the second and third contempts would have to be vacated because all three contempts occurred as part of a single behavioral incident. “To protect people convicted of multiple offenses from having the criminality of their conduct exaggerated, Minn. Stat. § 609.035 . . . prohibits multiple sentences for offenses that were committed as part of a single behavioral incident.” *State v. Hawkins*, 511 N.W.2d 9, 13 (Minn. 1994). This rule

II. The district court did not err by ordering that Link's contempt sentence be served consecutively with his OFP-violation sentence.

Link next argues that because the district court judge at the December 4 hearing did not explicitly state that Link's contempt sentences were to be served consecutively with

applies to contempt sentences. *See State v. Lingwall*, 637 N.W.2d 311 (Minn. App. 2001). In *Lingwall*, this court reviewed an exchange between a defendant and the district court that was structurally similar to the one in this case. 637 N.W.2d at 312-13. There, after the district court reinstated a bail bond and set a trial date, the defendant stated, "This is f--king stupid," and the following exchange ensued:

THE COURT: That's contempt, sir, and that is six months.

THE DEFENDANT: I ain't did anything.

THE COURT: You are done.

THE DEFENDANT: My f--king a-s.

THE COURT: That's another six months.

THE DEFENDANT: Suck my d--k, too.

THE COURT: That's another six months. He's up to a year and a half. Take him to the workhouse.

Id. On appeal, *Lingwall* argued that, because his contumacious conduct occurred as part of a single behavioral incident, the district court erred by imposing three separate sentences. *Id.* at 314. This court agreed and vacated two of the three sentences. *Id.* at 315. We reasoned that *Lingwall's* statements occurred "in the same courtroom, at very nearly the same time," and "all appeared to have the same objective of flaunting *Lingwall's* disrespect for the court." *Id.* at 314. Similarly here, Link's statements occurred at nearly the same time and in the same proceeding, and all appeared to have the same purpose of informing the court that he intended to withdraw his guilty plea. We would accordingly vacate the second two contempt sentences.

We note also that we need not reach Link's argument that a 90-day cumulative contempt sentence exaggerates the criminality of his conduct because we reverse the second two contempt determinations. Additionally, Link has not shown that one 30-day sentence is disproportionate to his offense. *See State v. Smallwood*, 594 N.W.2d 144, 157 (Minn. 1999) (stating that an appellate court "will not interfere with a [district] court's discretion in sentencing unless the sentence is disproportionate to the offense").

his OFP-violation sentence, the district court judge at the February 8 hearing was without authority to order that the sentences be served consecutively.

In Minnesota, multiple sentences are presumed to run concurrently unless the court specifies that they are to run consecutively. Minn. Stat. § 609.15, subd. 1 (2018). At the time that the sentence is imposed, the district court must precisely state on the record the terms of the sentence—including whether multiple sentences are to run concurrently or consecutively. *State v. Rasinski*, 527 N.W.2d 593, 594-95 (Minn. App. 1995) (citing Minn. R. Crim. P. 27.03, subd. 4(A)). The power to summarily sentence contempt is limited to the judge in whose presence the contempt occurred, so the inquiry is whether the judge at the December 4 hearing—not the judge at the February 8 hearing—precisely stated on the record that Link’s contempt sentence was to run consecutively with his OFP-violation sentence. *See In re Contempt of Armentrout*, 480 N.W.2d 685, 688 (Minn. App. 1992).

When the district court made the first contempt finding at the December 4 hearing, it stated that it was “*adding 30 days* to whatever prison sentence” Link received for the OFP violation. (Emphasis added.) Link argues that this “adding” language is insufficient to precisely state on the record whether the sentences are to run concurrently or consecutively. He argues that this was an “informal comment,” which cannot transform a presumptively concurrent sentence into a consecutive one, and cites *Rasinski* for support. *See* 527 N.W.2d at 595. *Rasinski* is distinguishable, though. In *Rasinski*, we rejected the argument that the district court had made a precise declaration of consecutive sentences based entirely on off-the-record statements by the district court. *See id.* Here, the district court stated on the record that it was adding the contempt sentence to the sentence for the

OFP-violation conviction. The district court's statement was sufficiently precise to state the consecutive nature of the contempt sentence.

In sum, we affirm the first contempt finding and its corresponding sentence of 30 days in jail to be served consecutively with Link's sentence for his OFP offense. We reverse the second and third contempt findings and remand to the district court for correction of the warrant of commitment.

Affirmed in part, reversed in part, and remanded.