

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0936**

State of Minnesota,
Respondent,

vs.

Larry Duane Lucas, Jr.,
Appellant.

**Filed April 11, 2022
Affirmed
Larkin, Judge**

Crow Wing County District Court
File No. 18-CR-20-3983

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

Donald F. Ryan, Crow Wing County Attorney, Janine L. LePage, Quinn Hoffman,
Assistant County Attorneys, Brainerd, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Ross,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

A jury found appellant guilty of stalking and making threats of violence. Prior to the start of trial, the district court found appellant in contempt of court and imposed a 90-day sentence. On appeal, appellant seeks a new trial, arguing that the district court abused

its discretion by refusing to grant a continuance so he could represent himself at trial. He also argues that the district court erred in imposing the contempt sanction. We affirm.

FACTS

Appellant Larry Duane Lucas, Jr. began a romantic relationship with A.J.A. in 2020. The state charged Lucas with three counts of assault and one count of making threats of violence, based on allegations that he assaulted A.J.A. on August 1, 2020.

Approximately one week after the alleged assaults, A.J.A. obtained an order for protection (OFP), which prohibited Lucas from contacting her and from going to her residence. On August 24, Lucas appeared at A.J.A.'s apartment. She agreed to drive him to another location. After A.J.A. dropped Lucas off, he left her threatening voicemails. For example, he said, "I'm coming for you. I swear to God I'm f-cking hurting you." Lucas also sent A.J.A. threatening text messages. Lucas then returned to A.J.A.'s apartment. Her children were present, and she called 911.

The state charged Lucas with felony counts of stalking and threats of violence based on his conduct following the issuance of the OFP. The state sought an aggravated sentence because some of the conduct occurred in the presence of children.

A public defender was assigned to represent Lucas on all of the pending charges. On January 14, 2021, a jury found Lucas guilty of the charges stemming from the August 1 offenses.¹ On February 26, 2021, the district court sentenced Lucas to consecutive, executed 114-month and 21-month prison terms for the August 1 offenses.

¹ Lucas has challenged the resulting convictions in a separate appeal.

Lucas's jury trial on the remaining stalking and threats-of-violence charges was scheduled to begin on March 1, 2021, before a different district court judge. That day, before jury selection began, Lucas informed the district court that he wanted to discharge his attorney, asserting that his attorney had failed to regularly communicate with him. Lucas's attorney denied that assertion.

The district court advised Lucas that if he discharged his public defender the court would not appoint another attorney and that he would have to proceed pro se. Lucas replied, "That would be fine." The district court then stated that it would not grant a continuance and that the trial would occur that day. Lucas told the court: "Well, then I guess I'm going to get a contempt because I'm not going to go on the trial today."

After further discussion, this exchange occurred:

THE COURT: I'm going to take your request under advisement. I want to go review the rules and the law. If I do allow you to discharge your public defender, as I indicated, we're going to trial today.

LUCAS: Well, then -- like I said, contempt. That's what I'm going to do.

THE COURT: We're having a trial today whether you're in contempt or --

LUCAS: That's fine. I'll sit right here and put on a whole sh-t show.

THE COURT: No, you won't. No, you won't because if you disrupt these proceedings, you'll sit in jail and we'll have this trial without you.

LUCAS: Okay. Well, then let's go then.

THE COURT: All right. At this point you can take him back down to the jail. I'm going to determine whether or not he'll be allowed to --

LUCAS: F-ck you.

THE COURT: You are in contempt right now, sir. I am adding 90 days for direct contempt of [c]ourt.
(Defendant exited the courtroom.)

THE COURT: That will be consecutive to whatever he's already been sentenced.

The district court recessed the proceedings and later reconvened in Lucas's absence. The district court explained that Lucas reportedly had refused to change out of his jail clothes and to return to the courtroom. The district court stated that it had found Lucas in "direct contempt" because he "dropped the F bomb" and appeared to have directed that remark toward the presiding judge. The district court explained that it ordered Lucas to "serve a consecutive 90 days in jail," even though it had planned to "allow him an opportunity to purge that contempt by not disrupting further proceedings." The district court noted that Lucas was "not present to even discuss any of these issues."

The district court asked the attorneys how they wanted to proceed. Lucas's counsel requested a continuance "of at least a week" and indicated that Lucas would be willing to waive his speedy-trial demand. Lucas's counsel indicated that Lucas was not "emotionally ready to proceed." The district court continued the trial to the next day and informed the attorneys that "if [Lucas] continues to absent himself from these proceedings, as of tomorrow morning we will plan to proceed with selecting a jury and trying [the] case." Before adjourning for the day, the district court directed the bailiff to ascertain whether Lucas would be willing to return to the courtroom. Lucas reportedly was unwilling to do so.

The next morning, Lucas refused to attend the trial and indicated that he wanted to discharge his attorney and proceed pro se. The district court found that Lucas had waived his right to be present for trial and ruled that the trial would proceed despite Lucas's

absence. The district court stated that it would “reinstate” Lucas’s right to be present for trial if he gave assurances that he would behave appropriately. Lucas was informed of the court’s decision and told a bailiff that he did not want to appear for trial.

The district court arranged for Lucas to appear from jail remotely via Zoom. Lucas told the court that he wanted to discharge his attorney and had “pro se paperwork.” Lucas also told the district court that he did not want to appear and did not understand how the trial could go on with counsel he was “trying to fire.” The district court indicated that if it granted the petition for Lucas to proceed pro se, it would not grant a continuance. Lucas then walked off camera. Thus, the district court did not discharge Lucas’s attorney. The district court found that Lucas’s behavior was “designed as a delay tactic” and observed that Lucas was unhappy with his sentences for the August 1 offenses. The district court held the trial in Lucas’s absence, and Lucas’s public defender represented him at trial.

The jury found Lucas guilty of stalking and threats of violence. It also found that the offenses were committed in the presence of a child. At sentencing, the district court revisited its contempt finding and stated that it had found Lucas in direct contempt pursuant to Minn. Stat. § 588.20, subd. 2(1) (2020). The district court sentenced Lucas to a 36-month prison term for stalking, consecutive to the sentences previously imposed for the August 1 offenses. The district court ordered that the 90-day contempt sanction be served consecutive to the sentences for the August 1 offenses and before the executed 36-month prison term for stalking.

Lucas appeals.

DECISION

I.

Lucas contends that the district court abused its discretion by not continuing the trial. We review a district court's denial of a continuance request for an abuse of discretion. *State v. Courtney*, 696 N.W.2d 73, 81 (Minn. 2005). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

In determining whether to grant a continuance request, the district court must consider the facts and circumstances surrounding the request. *State v. Fagerstrom*, 176 N.W.2d 261, 264 (Minn. 1970); *State v. Worthy*, 583 N.W.2d 270, 278 (Minn. 1998). In his brief to this court, Lucas claims that he requested a continuance to "prepare to represent himself." But the record indicates that his request was not quite so clear.

When Lucas informed the district court that he wanted to represent himself at trial, he did not expressly request a continuance. The district court responded that it needed to "review the matter" and informed Lucas that if it allowed him to discharge his attorney, it would not grant a continuance and the trial would occur that day. Lucas responded that he would not go to trial that day, he could not "do it," it was not "possible," and he could not "deal another week with the prosecutor talking sh-t." Lucas stated that he would rather "get a contempt" and left the courtroom.

After Lucas left the courtroom, his attorney requested a continuance of "at least a week," because Lucas was not "emotionally ready to proceed with the trial." Defense counsel informed the court that Lucas was willing to waive his speedy-trial demand. The

district court continued the matter to the next day, noting that it was impossible to make “definitive rulings” because Lucas was not present.

Lucas’s contention that the district court erred by refusing to further continue the trial is partly based on his assertion that he had “an absolute right” to exercise his right to self-representation “because jury voir dire had not begun.” The right of self-representation has been described as “virtually absolute, subject only to the conditions necessary to a waiver of the right to assistance of counsel.” *State v. Christian*, 657 N.W.2d 186, 191 (Minn. 2003). A defendant’s request for self-representation should be granted if it is “clear, unequivocal, and timely” and the defendant “knowingly and intelligently waives his right to counsel.” *State v. Richards*, 456 N.W.2d 260, 263 (Minn. 1990). “[S]elf-representation motions made after the beginning of trial are addressed to the discretion of the district court” and “trial begins, for this purpose, when the jury selection process begins.” *Christian*, 657 N.W.2d at 193-94.

Although Lucas’s request for self-representation may have been timely, he did not provide a waiver of counsel. The Minnesota Rules of Criminal Procedure require the district court to ensure that a defendant charged with a felony who wishes to represent himself “enter on the record a voluntary and intelligent written waiver of the right to counsel” and that if the defendant refuses to sign “the written waiver form,” the waiver must be on the record. Minn. R. Crim. P. 5.04, subd. 1(4). Before accepting a waiver of the right to counsel, the district court must advise the defendant of the following:

- (a) nature of the charges;
- (b) all offenses included within the charges;
- (c) range of allowable punishments;

- (d) there may be defenses;
- (e) mitigating circumstances may exist; and
- (f) all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel.

Id. Lucas’s attorney informed the district court that he had “offered to go over a pro se petition” with Lucas and had “tailored one specifically for his case,” but Lucas was unwilling to review the petition. Because Lucas never provided a waiver of counsel, he was not entitled to represent himself at trial. A continuance to prepare for self-representation was therefore unnecessary.

Moreover, a defendant may not obtain a continuance by discharging his attorney or seeking to represent himself for the purpose of delaying the proceedings. *Christian*, 657 N.W.2d at 191; *Courtney*, 696 N.W.2d at 81-82. Here, the district court found that Lucas’s conduct constituted a delay tactic, and the record supports that finding. Given the circumstances, the district court did not abuse its discretion by refusing to further delay the start of trial.

Even if the district court had erred, Lucas must show prejudice to obtain a reversal. *See Courtney*, 696 N.W.2d at 81. Prejudice exists when the failure to grant a continuance denies the defendant a meaningful opportunity to prepare for trial. *In re Welfare of T.D.F.*, 258 N.W.2d 774, 775 (Minn. 1977). Lucas’s assertion of prejudice is tied to his request for self-representation. Lucas notes that a violation of a defendant’s right to self-representation requires a reversal without a showing of prejudice. *See Richards*, 456 N.W.2d at 263. He argues that “the district court’s refusal to grant a continuance

effectively denied [him] his right to self-representation by denying him any meaningful opportunity to prepare for representing himself at trial.” He asserts that he should “be granted a new trial at which he can exercise his constitutional right to represent himself.” However, Luca does not assign error to the district court’s refusal to grant his request for self-representation. Such an assignment of error would be futile given Lucas’s refusal to cooperate with the procedures necessary to ensure that his decision to waive his right to counsel was knowing and intelligent.

We appreciate that Lucas may have been upset about the outcome of the case involving his August 1 offenses. But his emotional state does not excuse his refusal to participate in the procedures required to perfect a waiver of counsel. Absent a knowing and intelligent waiver of counsel, Lucas was not entitled to represent himself at trial. Thus, Lucas was not prejudiced by the district court’s refusal to further delay the trial for that purpose.

Finally, Lucas points to the “moratorium on criminal jury trials” stemming from the COVID-19 pandemic as a basis for finding error on appeal. *See Order Governing the Continuing Operations of the Minnesota Judicial Branch*, No. ADM20-8001 (Minn. Jan. 21, 2021) (prohibiting district courts from starting new jury trials before March 15, 2021, except under certain exceptions). He argues that trials were limited to those necessitated by a speedy-trial demand and notes that he was willing to waive his right to a speedy trial. But Lucas does not provide any authority or argument indicating that a violation of the relevant supreme court order constitutes prejudicial error justifying a new trial. “An assignment of error based on mere assertion and not supported by legal authority or

argument is waived unless prejudicial error is obvious on mere inspection.” *Brooks v. State*, 897 N.W.2d 811, 818 (Minn. App. 2017), *rev. denied* (Minn. Aug. 8, 2017). Again, Lucas has not shown prejudicial error justifying relief from this court.

II.

Lucas contends that the district court erred in imposing the 90-day contempt sanction.

“Contempt historically has been regarded as part of the court’s inherent power to punish summarily offenses committed in its presence.” *In re Welfare of R.L.W.*, 245 N.W.2d 204, 205 (Minn. 1976). Although Minnesota statutes address the subject of contempt, the judiciary’s contempt powers exist independent of those statutes. *Id.*; *State v. Tatum*, 556 N.W.2d 541, 547 (Minn. 1996); *see also* Minn. Stat. §§ 588.01-.21 (2020) (governing contempt of court). The Minnesota Supreme Court has explained:

The judiciary retains inherent authority to punish direct contempt whether or not statutory authorization exists. . . . This power is intended to be punitive in order to preserve the dignity of the courtroom proceedings. While chapter 588 declares the court’s power, that contempt power exists independent of the statute. The power is essential to the effectiveness of all other court powers. This inherent authority can be derived from the creation of the judiciary in article III, section 1 of the Minnesota Constitution, and the necessity of its preservation in our tripartite system of government.

Tatum, 556 N.W.2d at 547 (quotation and citation omitted).

There are two types of contempt: remedial and punitive. *Id.* at 544. Remedial contempt vindicates “the rights of a party by imposing a sanction that will be removed

upon compliance with a court order that has been defied.” *Id.* Punitive contempt vindicates “the court’s authority by punishing the contemnor for past behavior.” *Id.*

In addition, contempt may be direct or constructive. *Id.* Direct contempt is disruptive conduct that occurs in the presence of the court, whereas constructive contempt involves “a variety of conduct” committed outside the presence of the court, “of which the court has no personal knowledge.” *Id.* at 544-45; *see also* Minn. Stat. § 588.01 (defining direct and constructive contempt). Direct contempt may be punished summarily. *Tatum*, 556 N.W.2d at 545.

Finally, “[t]here are two kinds of criminal contempt in chapter 588: one encompassed by sections 588.01-.15 that is punishable at the discretion of the judiciary, and the other in section 588.20 that is prosecutable by the state like any other crime.” *State v. Jones*, 869 N.W.2d 24, 27 (Minn. 2015) (quotation omitted); *see also Tatum*, 556 N.W.2d at 546 (discussing section 588.20).

“The district court’s decision to invoke its contempt powers is subject to reversal for abuse of discretion.” *In re Welfare of Child. of J.B.*, 782 N.W.2d 535, 538 (Minn. 2010). We review a punitive contempt order to ensure that it is not arbitrary, capricious, or oppressive. *Tatum*, 556 N.W.2d at 547.

Lucas argues that the district court’s contempt sanction was remedial, and not punitive, because the district court mentioned providing Lucas “an opportunity to purge that contempt by not disrupting further proceedings.” Lucas further argues that the district court failed to follow the proper procedures for imposing a remedial sanction. For the reasons that follow, we disagree that the district court imposed a remedial sanction.

The district court summarily imposed a 90-day contempt sentence because Lucas made a profane statement while the presiding judge explained what would happen next in the proceeding. Although the district court later indicated that it had planned to give Lucas an “opportunity to purge that contempt,” it did not provide Lucas an opportunity to do so. We do not view those circumstances as an erroneous imposition of a remedial contempt sanction. Instead, we view those circumstances as a deliberate choice to impose a punitive contempt sanction, despite an initial willingness to use a remedial sanction. The summary sanction was clearly punitive. *See id.* at 545 (“The purpose of the district court’s summarily imposed 6-month sentence was punitive because Tatum’s sentence was fixed and because he had no opportunity to purge the penalty.”).

Lucas also argues that his conduct did not warrant a punitive sanction because it did not interrupt the judicial proceedings. *See* Minn. Stat. § 588.01, subd. 2 (defining direct contempt as “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 “a breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the business of the court”). As support, Lucas notes that “the court had ordered [him] removed before he made the remark.” Regardless, the record shows that Lucas interrupted the district court judge midsentence, stating, “F-ck you,” as the judge attempted to explain what would happen next in the proceeding. Lucas’s comment was insolent and undeniably interrupted the proceeding.

Lucas correctly observes that the district court erred in citing Minn. Stat. § 588.20, subd. 2(1), as the basis for its contempt sanction. “[T]he misdemeanor penalty in section

588.20 cannot apply to summarily punished direct contempts.” *Tatum*, 556 N.W.2d at 546. Nonetheless, the district court acted within its inherent and statutory authority. Section 588.03 states that “[a] direct contempt may be punished summarily” and requires an order “reciting the facts as occurring in the immediate view and presence of the court” and “adjudging the person proceeded against to be guilty of a contempt, and that the person be punished as therein specified.” The district court complied with those requirements. It stated on the record that Lucas was in “direct contempt” because he “dropped the F bomb” and appeared to have directed that obscenity toward the presiding judge. The district court specifically imposed a 90-day sentence as a sanction. On this record, the district court did not abuse its discretion in holding Lucas in direct contempt of court.

Affirmed.