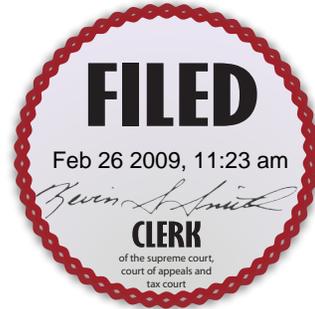


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF CARLTON JENKINS,)
WITNESS FOR THE STATE OF INDIANA)
IN STATE V. JASON CLARK AND)
CANTRELL BYRD,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 49A05-0810-CR-610

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0808-MC-195682

February 26, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Carlton Jenkins (“Jenkins”) was found to be in direct contempt of the Marion Superior Court and was sentenced to ninety days incarceration. Jenkins appeals and argues that the trial court abused its discretion in finding him in contempt and that the trial court erred in sentencing him to ninety days incarceration as a result. We affirm.

Facts and Procedural History

Jenkins is the cousin of Cantrell Byrd. He also grew up with Jason Clark, Arthur Miles, and Willie Lawrence. Clark and Byrd were later charged with shooting Lawrence and shooting and killing Dwight Lasley. Jenkins and Miles were with Clark and Byrd the night that Lawrence and Lasley were shot. Miles apparently told the police that he had seen Byrd shoot a gun but did not know if he had actually shot anyone. Jenkins told the police that he had seen Byrd with a gun, but did not see Byrd shoot. Jenkins indicated that he did not want to testify against his friend Clark and cousin Byrd.

At the ensuing trial of Clark and Byrd, the State indicated that it would call Jenkins as a witness. The trial court held a hearing outside the presence of the jury to address this issue. The trial court was concerned about the prospect of putting Jenkins in front of the jury only to have him refuse to testify. When questioned outside the presence of the jury, Jenkins did indeed refuse to testify. The State then requested that the trial court grant Jenkins use immunity for any testimony he gave. The trial court granted Jenkins use immunity, but Jenkins still flatly refused to testify, telling the trial court repeatedly, “I ain’t got nothing to say.” Tr. p. 21. At that point, the trial court found Jenkins in direct contempt of court and sentenced him to ninety days in jail. Jenkins now appeals.

Discussion and Decision

Jenkins first claims that the trial court abused its discretion in finding him in direct contempt of court. The determination of whether a party is in contempt of court is a matter within the sound discretion of the trial court. Jones v. State, 847 N.E.2d 190, 199 (Ind. Ct. App. 2006), trans. denied. We will reverse the trial court's determination only if the court has abused its discretion, and the trial court abuses its discretion only when its decision is against the logic and effect of the facts and circumstances before the court or is contrary to law. Id.

Contempt proceedings may be generally categorized as civil or criminal. Id. Civil contempt consists of a violation of a court order resulting in a proceeding for the benefit of the aggrieved party, and any penalty in a civil contempt proceeding must be coercive or remedial in nature; by contrast, criminal contempt consists of an act directed against the dignity and authority of the court that obstructs the administration of justice and tends to bring the court into disrepute. Id. Therefore, a criminal contempt sanction is punitive in nature because its purpose is to vindicate the authority of the court, and it benefits the State rather than the aggrieved party. Id. Contempt also may be direct or indirect: direct contempt involves actions in the presence of the court, such that the court has personal knowledge of them, whereas indirect contempt undermines the orders or activities of the court but involves actions outside the trial court's personal knowledge. Id.

Jenkins now claims that his testimony was not terribly relevant because he claimed not to see the actual shooting. Therefore, Jenkins claims, his refusal to testify did not harm the State's case, and he should not have been found in contempt for refusing to

testify. However, the fact remains that Jenkins did tell the police that he had seen his cousin Byrd with a gun on the night of the shooting. At the very least, evidence that a defendant had access to a weapon of the type used in the crime is relevant. Pickens v. State, 764 N.E.2d 295, 299 (Ind. Ct. App. 2002), trans. denied.

Under these facts and circumstances, Jenkins's refusal to testify was therefore an act of direct, criminal contempt. It was committed in the presence of the court and was an act directed against the dignity and authority of the court that obstructed the administration of justice. The trial court did not abuse its discretion in finding Jenkins in contempt. See In re Steelman, 648 N.E.2d 366, 368 (Ind. Ct. App. 1995) (act of refusal to testify after being granted use immunity was direct contempt of court).

Jenkins further claims that the trial court erred in sentencing him to ninety days as a result of his direct, criminal contempt of court. Review of sentences imposed after a finding of contempt was discussed in Jones:

Initially we note that before its repeal in 1987, Indiana Code Section 34-4-7-6 limited punishment for contempt to a fine of \$500.00 and/or imprisonment of no more than three months. We have recognized, in the absence of the statute, the power to punish contempt is limited by reasonableness. [O]ur Supreme Court noted that punishment for contempt is generally a matter left to the sound discretion of the trial court and then applied the manifestly unreasonable standard. Under the manifestly unreasonable standard, a reviewing court did not revise a sentence authorized by statute unless it determined that no reasonable person could find the sentence appropriate given the particular offense and character of the offender. Now, however, we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender. However, both the old and the new standards for revising sentences apply to sentences authorized by statute. Because there is no longer a statute setting out the punishment for contempt, it is unclear

whether Appellate Rule 7(B) should apply in reviewing contempt sentences.

Jones, 847 N.E.2d at 201-02 (citations and internal quotations omitted). As in Jones, we need not decide which test should apply, because “under an inappropriateness, manifestly unreasonable, or simply reasonableness test,” Jenkins’s sentence of ninety days “passes muster.” See id. at 202. In fact, Jenkins’s sentence is relatively lenient compared to those that we have approved before.

In Gardner v. State, 713 N.E.2d 346, 347 (Ind. Ct. App. 1999), the defendant was granted use immunity to testify at a deposition regarding the drug dealing activities of a fellow inmate. The defendant nevertheless refused to testify. The trial court therefore found him in contempt of court and imposed an eleven and one-half year sentence. On appeal, the court compared the defendant’s refusal to testify to the crimes of perjury and obstruction of justice, both Class D felonies for which the maximum possible sentence is three years. Id. at 348. The court therefore concluded that the defendant’s eleven and one-half year sentence was manifestly unreasonable. Id. The court instead concluded that “a sentence of three years is proportioned to the nature of the offense of criminal contempt in this case.” Id.

In Jones, the defendant was the only eyewitness who could identify her relative as the shooter in a murder case. When the defendant refused to testify at a pre-trial deposition after having been subpoenaed to do so, the trial court found her in contempt and sentenced her to 200 days. On appeal, the court held that her sentence “passe[d]

muster” under an “inappropriateness, manifestly unreasonable, or simple reasonableness test.” 847 N.E.2d at 202.

Here, Jenkins was a witness in a murder case. Even if Jenkins did not witness the actual shooting, he was with the parties involved on the night in question and saw his cousin, Byrd, with a gun. Jenkins flatly refused to testify even after having been granted use immunity. Under these facts and circumstances, we cannot say that Jenkins’s relatively lenient sentence of ninety days is in any way inappropriate or unreasonable. See Jones, 847 N.E.2d at 202; Gardner, 713 N.E.2d at 348.

Conclusion

The trial court did not abuse its discretion in finding Jenkins in direct, criminal contempt of court. Jenkins’s ninety-day sentence is not unreasonable or inappropriate.

Affirmed.

BAILEY, J., and BARNES, J., concur.