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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1565**

State of Minnesota,
Respondent,

vs.

Chadwick William Axel,
Appellant.

**Filed October 15, 2013
Affirmed
Kirk, Judge**

Anoka County District Court
File No. 02-CR-12-5797

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael J. Scott, Anoka City Attorney, Hicken, Scott, Howard & Anderson, P.A., Anoka,
Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jennifer Lauermann, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Kalitowski, Judge; and Chutich,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

On appeal from his summary conviction of direct contempt of court, appellant Chadwick William Axel argues that (1) the district court abused its discretion by finding him in direct contempt of court, and (2) the summary conviction violated his right to a jury trial. We affirm.

DECISION

I. The district court did not abuse its discretion by finding appellant in direct contempt of court.

This court reviews a district court's decision to invoke its contempt power under an abuse of discretion standard. *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). We review the district court's factual findings for clear error. *Mower Cnty. Human Servs. v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996).

There are two kinds of contempt of court: direct and constructive. Minn. Stat. § 588.01, subd. 1 (2012). Direct contempt occurs when an individual commits one of the following acts “in the immediate view and presence of the court”: “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.” *Id.*, subd. 2 (2012). An individual who commits such behavior is guilty of a misdemeanor. Minn. Stat. § 588.20, subd. 2(1), (3) (2012). In contrast, constructive

contempt includes behavior that occurs outside of the immediate presence of the district court. Minn. Stat. § 588.01, subd. 3 (2012).

Appellant argues that the district court abused its discretion by finding him in direct contempt of court because his behavior immediately prior to the contempt finding did not disrupt the judicial proceedings. The district court told appellant on the record: “I’m holding you in direct contempt of court for abusive language and conduct towards both of my in court bailiffs.” The record supports the district court’s reasoning. The transcript of the hearing indicates that the district court witnessed two altercations between appellant and a bailiff, although the nature of the altercations is unclear. In addition, appellant swore in the presence of the district court prior to the contempt finding. After the district court found appellant in direct contempt of court, appellant proceeded to argue with both the district court and the bailiff, swearing at them repeatedly. The district court did not base its contempt finding solely on the conduct that occurred immediately after the district court warned appellant that it would find him in contempt of court if he did not apologize; instead the district court’s contempt finding was based on all of the conduct that appellant exhibited in the courtroom. Appellant’s behavior constituted “disorderly, contemptuous, or insolent behavior” that occurred in the immediate view of the district court and interrupted the proceedings. *See* Minn. Stat. § 588.20, subd. 2(1).

Appellant contends that his conduct was less serious than conduct in other cases where Minnesota appellate courts have affirmed a district court’s finding of direct contempt of court. *See In re Welfare of R.L.W.*, 309 Minn. 489, 245 N.W.2d 204 (1976);

State v. Lingwall, 637 N.W.2d 311 (Minn. App. 2001). However, the conduct of the defendants in both of these cases was very similar to appellant's conduct. In *Lingwall*, the district court found the defendant in contempt of court and sentenced him to six months after he swore only once in the courtroom, saying "This is f—king stupid." 637 N.W.2d at 312. The defendant replied, "My f—king ass," and, in response, the district court increased his sentence by six months. *Id.* The defendant retorted, "Suck my d—k, too," and the district court gave him an additional six months. *Id.* at 313. This court determined that the defendant's conduct constituted direct criminal contempt, and affirmed the district court. *Id.* at 314. Like the defendant in *Lingwall*, the district court in this case found appellant in contempt of court after he said one obscenity in the courtroom. In addition, both appellant and the defendant in *Lingwall* continued to yell obscenities at the district court after being found in contempt.

Similarly, in *R.L.W.*, the district court affirmed the referee's direct contempt order when the defendant yelled obscenities at the referee. 309 Minn. at 490-91, 245 N.W.2d at 205. But the supreme court did not consider whether the district court abused its discretion by finding the defendant in contempt of court because the defendant did not challenge his conviction of contempt on appeal. *Id.* at 491, 245 N.W.2d at 205.

Appellant further argues that the district court failed to explain the basis of its contempt finding as required by statute. Under Minn. Stat. § 588.03 (2012):

A direct contempt 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.

Here, as previously discussed, the district court stated on the record that it found appellant in contempt based on his abusive language and conduct towards the bailiffs. The district court then sentenced appellant to 90 days in jail. Section 588.03 does not require the district court to issue a written order. Thus, the district court's verbal order finding that appellant was in contempt based on conduct that occurred within its immediate view and imposing a sentence of 90 days in jail complies with the requirements of the statute.

Accordingly, the district court did not abuse its discretion by finding appellant in direct contempt of court.

II. The district court's summary conviction of appellant did not violate his constitutional right to a jury trial.

It is well established in Minnesota that a district court retains the authority to punish direct contempt summarily under Minnesota law and as part of its inherent power. Minn. Stat. § 588.03; *State v. Tatum*, 556 N.W.2d 541, 547 (Minn. 1996). However, the Minnesota Supreme Court has recognized that there are limitations on the sentence that a district court may impose under this authority. *Tatum*, 556 N.W.2d at 547. Under one of those limitations, “the federal constitution requires that jury trial rights be afforded the contemnor when the sentence to be imposed is longer than 6 months.” *Id.* (citing *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 826-27, 114 S. Ct. 2552, 2556-57 (1994)).

Here, the district court imposed a 90-day sentence after it found appellant in direct criminal contempt of court. Because the sentence the district court imposed was less than six months, appellant did not have a right to a jury trial. Accordingly, the district court's summary conviction of appellant did not violate his constitutional right to a jury trial.

Affirmed.