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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-948**

State of Minnesota,
Respondent,

vs.

Christopher Michael Clark,
Appellant.

**Filed June 18, 2012
Reversed and remanded
Kalitowski, Judge**

Anoka County District Court
File No. 02-CR-11-3040

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

Anthony C. Palumbo, Anoka County Attorney, Kathryn M. Timm, Assistant County
Attorney, Anoka, Minnesota (for respondent)

Christopher Michael Clark, Minneapolis, Minnesota (pro se appellant)

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Christopher Michael Clark challenges his misdemeanor conviction of
direct contempt of court, which the district court imposed after it received an
unconfirmed report that appellant had tested positive for controlled substances during his

pretrial proceedings on an underlying charge in which appellant appeared pro se. Appellant argues that: (1) neither the unconfirmed positive test result nor his in-court behavior supports a direct contempt conviction; and (2) his right to a speedy trial on the underlying charge was violated. Because the evidence was insufficient to support a direct contempt conviction, we reverse the contempt conviction and remand for further proceedings.

D E C I S I O N

Although not raised by appellant, as a preliminary matter, the district court stated on the record that it was convicting appellant of misdemeanor contempt under Minn. Stat. § 588.20, subd. 2 (2010), and cited language from that provision defining contempt as “disorderly, contemptuous, or insolent behavior, committed during the sitting of the court, in its immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.” Minn. Stat. § 588.20, subd. 2(1). The order of conviction cites the same statutory provision.

We note that the Minnesota Supreme Court has clarified that section 588.20 defines the “*crime of contempt*,” a form of contempt separate and distinct from “*judicial contempt*,” which is derived from the court’s inherent authority. *State v. Tatum*, 556 N.W.2d 541, 546 (Minn. 1996). In describing the distinction, the court explained, “The judiciary retains inherent authority to punish direct contempt whether or not statutory authorization exists.” *Id.* at 547. The misdemeanor crime of contempt, on the other hand, “is an independent declaration, philosophically segregated from the rest of the contempts statute. It selects certain conduct—not precisely parallel to the conduct

described in section 588.01—and establishes a crime with a misdemeanor penalty.” *Id.* at 546. And most significantly here, the supreme court noted that the crime of contempt is “prosecutable by the state like any other crime.” *Id.* Thus, under Minn. Stat. § 588.20, a defendant is entitled to a full criminal trial. As such, section 588.20 does not apply “to direct contempt, summarily sentenced, for punitive purposes.” *Id.* at 545.

But in its findings on the record, the district court also repeatedly stated that it was finding appellant guilty of “direct” contempt of court. And the definition cited by the district court is similar to the definition of direct contempt under Minn. Stat. § 588.01, subd. 2 (2010). Because we conclude that the district court intended to summarily punish appellant to vindicate its authority, we will construe the conviction as a direct contempt under section 588.01, subd. 2(1). *See Tatum*, 556 N.W.2d at 547 (stating that direct contempt “is intended to be punitive in order to preserve the dignity of the courtroom proceedings”).

I.

Appellant argues that the district court abused its discretion when it summarily convicted him of direct contempt. Without conceding that his conduct amounted to contempt, appellant asserts that if he committed contempt, the contempt was constructive rather than direct and he could only be convicted after the filing of a written complaint and a trial with the full complement of criminal procedure protections. We will not reverse an order adjudging a criminal contempt “unless the [district] court acted capriciously, oppressively, or arbitrarily.” *In re Jenison*, 265 Minn. 96, 103, 120 N.W.2d 515, 520 (1963), *vacated on other grounds*, 375 U.S. 14, 14, 84 S. Ct. 63, 63 (1963). The

construction of a statute is a question of law subject to de novo review. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996).

There is no dispute that appellant was convicted of criminal, rather than civil, contempt, because the conviction arose from past misconduct and appellant's sentence was fixed at 21 days with no opportunity to be purged. *See In re Welfare of E.J.B.*, 466 N.W.2d 768, 770 (Minn. App. 1991) (holding that contempt was criminal "because it was for a past act (his answers to questions during the trial) and because the sentence imposed was fixed (there was no opportunity for [appellant] to remedy)").

The issue here is whether the contempt was direct or constructive. *See* Minn. Stat. § 588.01, subd. 1 (2010) ("Contempts of court are of two kinds, direct and constructive."). Direct contempt occurs "in the immediate view and presence of the court," and arises 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 "a breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the business of the court." *Id.*, subd. 2. Constructive contempts "are those not committed in the immediate presence of the court, and of which it has no personal knowledge." *Id.*, subd. 3 (2010). Constructive contempts may arise from, among other things, "disobedience of any lawful judgment, order, or process of the court," or "any other unlawful interference with the process or proceedings of a court." *Id.*, subds. 3(3), 3(7).

This distinction is significant here, because only direct criminal contempt may be punished summarily. Minn. Stat. § 588.03 (2010) ("A direct contempt may be punished

summarily . . .”). Constructive criminal contempt requires criminal procedural safeguards, including the filing of a written complaint and the rights to counsel and a jury trial. *In re Welfare of A.W.*, 399 N.W.2d 223, 225 (Minn. App. 1987). That is because

the urgent and immediate necessity of maintaining order in the courtroom which justifies the summary disposition of direct contempts does not apply where the offensive conduct is committed out of the presence of the court. In such cases, formal proceedings are needed in any event to establish the contumacious conduct involved and to give the person accused notice and opportunity to be heard.

Peterson v. Peterson, 278 Minn. 275, 279, 153 N.W.2d 825, 829 (1967).

From April 25-27, 2011, appellant appeared pro se in pretrial proceedings in anticipation of a trial set to begin on the afternoon of April 27 regarding an underlying drug charge. As a condition of his release, the district court ordered appellant to submit to random urinalysis (UA) tests, including one on the afternoon of April 25, to ensure he was competent to represent himself. After jury selection was complete on April 27, the prosecutor received a text message from the testing lab stating, “[Appellant’s] UA. I am told positive for methamphetamine and results are being faxed to you. He did not indicate taking any medication that would cause a false positive.” Based on the prosecutor’s report, the district court released the jury and continued the trial. Because of the delay as a result of the alleged drug use, the district court summarily convicted appellant of direct contempt of court, and sentenced him to 21 days in the Anoka County jail.

Appellant argues that if he ingested controlled substances, he did so “outside the presence of the court” and, absent disruptive behavior in the courtroom, the purported positive test result is insufficient to support a direct contempt conviction. We agree.

There is no question that the district court’s decision to continue the trial and dismiss the jury was appropriate once it had reason to believe that appellant had a controlled substance in his system. The purported positive test result tainted appellant’s pretrial waivers and cast doubt over whether he had been competent to argue pretrial motions and select a jury during the preceding days. And a pro se defendant who causes this kind of disruption and delay by intentionally ingesting controlled substances on the eve of trial may be held to account under this state’s contempt laws. Moreover, if a defendant’s intoxication is manifest to the district court through the defendant’s behavior in court, such that it occurs “in the immediate view and presence of the court,” the contempt is direct and the district court may punish the defendant summarily.

But here, the record indicates that appellant was neither disruptive nor erratic in court, and his behavior did not put the district court or the other parties on notice that appellant had a controlled substance in his system. Several times during pretrial proceedings, the court praised appellant’s behavior and his skill as a pro se litigant. On the first day of pretrial proceedings, appellant’s standby counsel reported to the court that she had no concerns about appellant’s competency, and the district court noted “[t]here is nothing to indicate to me today that [appellant] is under the influence of any controlled substance.”

Even after the prosecutor informed the court of the alleged positive UA, the court complimented appellant, stating that

you have been doing . . . an upstanding job of representing yourself. You have not been disruptive. You have been amenable. You clearly have been researching the evidentiary issues, the trial issues, as well as the underlying substantive issues involving the charges against you.

So, in terms of an individual who is representing [himself], I can't imagine someone doing it better than you have been conducting this trial thus far.

The district court further concluded that appellant had not been so disruptive as to allow the court to order standby counsel to assume appellant's representation. On these facts, we conclude that the district court did not perceive appellant to be under the influence of amphetamine.

Nor are we persuaded by the district court's hindsight observations that appellant "showed up late for court" on April 26 with "a big cup of coffee" and "[wasn't] as typically sharp as [he had] been." The court speculated that these behaviors were "indicative of use of methamphetamine." The state contends this comment demonstrates that appellant's intoxication was manifest to the district court. But the district court made these observations only after it received the message that appellant had tested positive.

In addition we reject the state's argument that the prosecutor brought appellant's alleged drug use into "the immediate view and presence of the court" by relaying the lab worker's text message to the district court. A purported positive UA result is only an allegation of drug use that is subject to confrontation. The district court acknowledged as

much when it labeled the result “an unconfirmed positive” and informed appellant that he had a right to a hearing on whether or not he had violated his release conditions.

Our conclusion here is consistent with caselaw. In *State v. Garcia*, the defendant appeared for a sentencing hearing and lied to the district court about his prospect for joining the armed forces. 481 N.W.2d 133, 134-35 (Minn. App. 1992). The next day, a probation officer discovered from a recruiter that the defendant had been untruthful, and the district court summarily punished the defendant for direct contempt. *Id.* at 135-36. On appeal, this court concluded that even though the defendant’s statement was made to the district court, the contempt “did not occur in the ‘immediate view and presence of the court’” because the district court “did not know the statements were false at the time appellant made them.” *Id.* at 138. And we concluded that “[b]ecause the contempt was not direct, *it must be proved up just like any other crime.*” *Id.*; see also *E.J.B.*, 466 N.W.2d at 770 (holding that perjury constituted constructive contempt because “[p]roof of a perjury requires going beyond what the judge objectively observed in court” and “prevention of perjury is not one of the purposes of the direct contempt statute”).

Also, in *Knajdek v. West*, an attorney was sanctioned with a contempt conviction for failing to secure the court’s approval of a settlement agreement on behalf of his minor client, and for failing to timely appear at a scheduled hearing. 278 Minn. 282, 283-84, 153 N.W.2d 846, 847 (1967). On appeal, the Minnesota Supreme Court held that the contempt was constructive as to both grounds. *Id.* at 285, 153 N.W.2d at 848. The court explained:

Admittedly, both the failure to secure the court's approval of the minor's settlement and the failure to appear on time occurred in the court's presence in the sense that the judge was personally aware of the respective failures and the possible implications. But the mere fact of the failure was in neither instance sufficient in itself to constitute the offense. It was the reasons for the failures which would render them either contemptuous or excusable, and the court could have no firsthand knowledge as to these reasons. Thus the judge did not, as a result of acts occurring in his immediate view and presence, have personal knowledge as to all the operative facts which constituted the offense and were necessary to a proper adjudication of appellant's guilt or innocence of the contempt charges. Both must therefore be held to be constructive in nature.

Id. at 284-85, 153 N.W.2d at 847-48.

In sum, because the district court could not perceive whether appellant had ingested a controlled substance from appellant's behavior or the alleged positive result, we conclude that appellant's alleged drug use occurred outside of "the immediate view and presence of the court." Minn. Stat. § 588.01, subd. 2. Therefore, "formal proceedings are needed . . . to establish the contumacious conduct involved and to give [appellant] notice and opportunity to be heard." *Peterson*, 278 Minn. at 279, 153 N.W.2d at 829. By failing to afford appellant criminal procedural protections, the district court acted "capriciously, oppressively, or arbitrarily." *Jenison*, 265 Minn. at 103, 120 N.W.2d at 520. Accordingly, we reverse appellant's contempt conviction and remand for further proceedings. *See Garcia*, 481 N.W.2d at 138 (reversing and remanding for "further proceedings" consistent with constructive criminal contempt, and ordering that "[i]f the state pursues a charge, appellant has to be offered all constitutional safeguards that exist for criminal defendants").

Appellant advances several reasons that this court should reverse his conviction outright. We disagree. Appellant's contention that the evidence is insufficient to support any contempt conviction is premature because the state has not yet had the opportunity to present a case. Nor can we agree with appellant that he was subjected to an unconstitutional search when he was required to submit a urine sample as a condition of pretrial release. This court upheld the district court's conditions-of-release order against an identical challenge in a separate appeal. *State v. Clark*, No. A11-107, 2012 WL 171380, at *3-4 (Minn. App. Jan. 23, 2012). That decision is now the law of the case. *See State v. LaRose*, 673 N.W. 157, 161 (Minn. App. 2003) ("A court's prior ruling on a controlling legal issue becomes law of the case for subsequent proceedings.").

Finally, the district court was free to pursue a criminal contempt conviction even though it could also have modified appellant's release conditions under Minn. R. Crim. P. 6.03, subd. 3. Because they serve different purposes, nothing in the text of rule 6.03, subdivision 3, or the contempt provisions precludes the application of both remedies. Conditions of release are imposed before trial to ensure public safety and to secure the defendant's appearance at trial. *See* Minn. R. Crim. P. 6.02, subd. 1 (requiring a defendant be released unless the district court determines "that release will endanger the public safety or will not reasonably assure the defendant's appearance"). Criminal contempt, on the other hand, is a punitive remedy intended to "vindicate[e] the court's authority by punishing the contemnor for past behavior." *Tatum*, 556 N.W.2d at 544.

II.

Appellant also argues that the district court violated his right to a speedy trial when it continued his trial on the underlying drug charge to a date more than 60 days after his speedy-trial demand. The state contends that this appeal is an improper vehicle for appellant to raise his speedy-trial claim. We agree.

With exceptions not applicable here, “[a] defendant cannot appeal until the district court enters an adverse final judgment.” Minn. R. Crim. P. 28.02, subd. 2(2). “A final judgment within the meaning of these rules occurs when the district court enters a judgment of conviction and imposes or stays a sentence.” Minn. R. Crim. P. 28.02, subd. 2(1). Appellant took the present appeal from the judgment of conviction of criminal contempt. The alleged speedy-trial violation relates to the underlying drug charge. Because the judgment of conviction before us does not include a judgment of conviction on the underlying drug charge, it is not within the scope of review of this appeal. The proper means to raise this argument is on direct appeal from the drug-charge judgment.

Reversed and remanded.