

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

DEJON REDD,
Appellant,
v.
REPUBLIC OF PALAU,
Appellee,

Cite as: 2018 Palau 8
Criminal Appeal No. 18-001
Criminal Case No. 17-164
Small Claim No. 17-020

Decided: July 3, 2018¹

Counsel for Appellant.....Public Defender's Office
Counsel for Appellee.....Attorney General's Office

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

Appeal from the Court of Common Pleas, Honora E. Remengesau Rudimch, Senior Judge, presiding.

OPINION

PER CURIAM:

[¶ 1] The Senior Judge of the Court of Common Pleas found Attorney DeJon Redd guilty of criminal contempt on December 18, 2017, based on his behavior on November 15, 2017 and November 20, 2017. He appeals arguing there were procedural flaws in the proceedings relating to requirements of ROP R. Crim. P. 42. Because summary contempt proceedings are limited to those cases requiring contemporaneous action by the court, the month-long delay between Mr. Redd's conduct and the finding of criminal contempt meant that a summary disposition was not required, and hence was not

¹ We have reviewed the briefs and record and find this case is suitable for resolution without oral argument ROP R. App. P 34(a).

authorized by, ROP R. Crim. P. 42. We therefore reverse and vacate the judgment.

STANDARD OF REVIEW

[¶ 2] “We review a trial court’s findings of fact under the clearly erroneous standard and its exercise of its inherent power to issue either civil or criminal contempt citations under the abuse of discretion standard.” *Dalton v. Heirs of Borja*, 5 ROP Intrm. 95, 98 (1995).

FACTUAL BACKGROUND

[¶ 3] Appellant has not disputed the fact finding by the trial judge in this appeal. The findings were as follows:

With respect to the November 15, 2017, incident on record, while Mr. Redd was representing Ms. Faletam in Criminal Case No. 17-164, the undersigned Judge certifies that Mr. Redd acted in an unprofessional, contemptuous manner before the court by throwing his pen across the table, making faces at the bench, and mocking this Judge.

With respect to the November 20, 2017 incident in the Court’s chamber, the undersigned Judge further certifies that Mr. Redd came to the Judge’s chambers and complained to the Judge’s secretary about his client, MD Jahangir Miah’s case, Small Claims Case No. 17-020, stating the effect that the Judge cannot issue a bench warrant against his client in a civil case. The Judge hearing his complaints, told him to file his complaint in writing so the Court can address it properly. Mr. Redd then went on berating to the Judge that the court staff do not know what they are doing, and that the court was not following the rules. The Judge then told Mr. Redd to kindly leave her office. Later, instead of filing any written objections, Mr. Redd had his client comply with the Court’s order in that case.

ANALYSIS

[¶ 4] We agree with the Senior Judge that, particularly with the November 15 in-court incident, the stated facts show a blatant disrespect for the court and attempt to undermine the court’s integrity and process. However, use of summary contempt power a month after the incident was an abuse of discretion.

[¶ 5] “[I]t is firmly established that the power to punish for contempt is inherent in all courts.” *Cushine v. Oiterong*, 4 ROP Intrm. 216, 219 (1994). Specifically, summary punishment is warranted for contempt in the presence

of the court because of the state's need to maintain the court's dignity as well as public respect for it and its orders. *United States v. Giovannelli*, 897 F. 2d 1227, 1230 (2d Cir. 1990).

[¶ 6] “ROP Rule of Criminal Procedure 42 sets forth the procedure to be followed in instances of criminal contempt, including the notice to be given.” *Cushnie*, 4 ROP Intrm. at 219-220. Regarding summary contempt, Rule 42(a) provides as follows:

- (a) Summary Disposition. A criminal contempt may be punished summarily if the justice or judge certifies that the justice or judge saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the justice or judge and entered of record.

[¶ 7] For criminal contempt proceedings that are not appropriate for summary disposition, Rule 42(b) applies. It provides for the usual requirements for a criminal prosecution.

[¶ 8] Contempt of court has also been codified as a crime. 17 PNC § 4311. This statute highlights the fact that “criminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both.” *Bloom v. Illinois*, 391 U.S. 194, 201, 88 S. Ct. 1477, 1481 (1968). Subsection (a) provides:

- (a) A person commits the offense of criminal contempt of court if:
 - (1) The person recklessly engages in disorderly or contemptuous behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or impair the respect due to its authority

Subsection (c) states:

The court may treat the commission of an offense under subsection (a) as a petty misdemeanor, in which case:

- (1) If the offense was committed in the immediate view and presence of the court, or under such circumstances that the court has knowledge of all of the facts constituting the offense, the court may order summary conviction and disposition; and
- (2) If the offense was not committed in the immediate view and presence of the court, nor under such circumstances that the

court has knowledge of all of the facts constituting the offense, the court shall order the defendant to appear before it to answer a charge of criminal contempt of court; the trial, if any, upon the charge shall be by the court without a jury; and proof of guilt beyond a reasonable doubt shall be required for conviction.

[¶ 9] The Rule and the statute both follow the approach of United States federal courts. "Where misconduct occurs in open court, the affront to the court's dignity is more widely observed, justifying summary vindication." *Pounders v. Watson*, 521 U.S. 982, 988, 117 S. Ct. 2359, 2362 (1997).

[¶ 10] "The term 'summary' does not need to mean 'immediate'." *United States v. Perry*, 116 F.3d 952, 956 (1st Cir. 1997) (quoting *United States v. Vachon*, 869 F.2d 653, 660 (1st Cir. 1989)). See also, *Sacher v. United States*, 343 U.S. 1, 72 S. Ct. 451 (1952)); *Gordon v. United States*, 592 F.2d 1215 (1st Cir. 1979). The court has discretion to delay a summary contempt proceeding hearing when immediate action is deemed by the court inexpedient. *Nakell v. Attorney General of N.C.*, 15 F.3d 319, 324 (4th Cir. 1994) (two day continuance for further hearing after judge specified the contempt charges did not change the summary nature of the hearing).

[¶ 11] There are occasions when an immediate summary finding would be inappropriate. An obvious example would be during a time when a jury is present. However, the finding of criminal contempt must be reasonably contemporaneous with the contempt, as the purpose of the summary contempt process is to put an end the contumacious acts interfering with an on-going proceeding. *Pounders*, 521 U.S. at 988-9, 117 S. Ct. at 2362. If a judge "believes the exigencies of the trial require that [the judge] defer judgment until its completion, [the judge] may do so without extinguishing [the summary contempt] power." *Sacher*, 343 U.S at 11, 72 S. Ct. at 456. In this case no action was begun until an order to show cause was issued on November 27 – seven and twelve days respectively after the incidents.

[¶ 12] Since the acts alleged here were not punished summarily, the criminal contempt action should have been prosecuted pursuant to Rule 42(b). In such cases "[i]f the contempt charged involves disrespect to or criticism of a Justice or Judge, that justice or judge is disqualified from presiding at the trial or hearing except with the defendant's consent."

[¶ 13] In this appeal, we have been reviewing the lower court's finding of criminal contempt, which is a crime. We are not addressing sanctions imposed by a court that are not deemed criminal contempt by the sanctioning

court. A court may impose sanctions upon attorneys or litigants pursuant to a statute, a rule, or by its inherent powers without such sanctions necessarily being classified as “contempt” actions. *United States v. Kouri-Perez*, 187 F.3d 1, 6 (1st Cir. 1999) (collecting cases).

CONCLUSION

[¶ 14] On the facts as stated, Attorney Redd’s acts of November 15, and November 20, 2017 show an intent to taunt and test the court and its authority. However, the court took no contemporaneous action to discipline him. Therefore, the procedures of Rule 42(b) apply. The court’s criminal contempt finding came too late to qualify for summary disposition.

[¶ 15] The criminal contempt finding and the fine imposed are hereby vacated and remanded for proceedings consistent with Rule 42(b).

SO ORDERED, this 3rd day of July, 2018.