

IN RE: BRENDA DAVIS	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
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APPEAL OF: BRENDA DAVIS	:	
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	:	No. 887 WDA 2022

Appeal from the Judgment of Sentence Entered August 4, 2022  
 In the Court of Common Pleas of Washington County  
 Criminal Division at No(s): CP-63-MD-0000898-2021

BEFORE: PANELLA, P.J., LAZARUS, J., and STABILE, J.

OPINION PER CURIAM: FILED: August 18, 2023

Brenda Davis, Clerk of Courts of Washington County, Pennsylvania, appeals from the decision of the Court of Common Pleas of Washington County, 27<sup>th</sup> Judicial District, which on August 4, 2022, found her guilty of **Direct Criminal Contempt and sentenced her to “pay costs of prosecution and to pay a fine of \$5,000.00” and furthermore, “to be incarcerated in the Washington County correctional Facility for no less than 15 days to no more than six (6) months.”**<sup>1</sup>

The Honorable John F. DiSalle, President Judge of Washington County filed an Opinion pursuant to Pa.R.A.P. 1925(a) on April 6, 2023. Upon careful **examination of the certified record, we conclude that the trial court’s 22-page**

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<sup>1</sup> Order of Court, 11-4-2022. All of our references are to the certified record.

opinion thoroughly and comprehensively addresses all of the Appellant's arguments. Accordingly, we affirm on the basis of the well-reasoned April 6, 2023 opinion of President Judge DiSalle.

In its opinion, the trial court fully and adequately sets forth the relevant facts and procedural history of this case, all of which are supported in the record. Therefore, we have no reason to restate the unpleasant series of events which occurred on November 24, 2021, which often necessarily refers to the outrageous conduct exhibited by Clerk of Court Davis on that day.

Appellant presents<sup>2</sup> the following issues for our review:

1. Whether the Trial Court erred in finding Appellant guilty of Direct Criminal Contempt, pursuant to 42 Pa. C.S. § 4132, as Appellant was never scheduled or notified to appear before President Judge DiSalle on the date in question. Rather the Deputy Sheriffs presented an Order, made their own determination of contempt and manually forced Appellant within earshot of the President Judge. Once within earshot, the Trial Judge would later testify that he was disrupted by noise emanating from Appellant. This is clearly not the spirit or intent of the Criminal Contempt Statute.
2. Whether it was error that President Judge DiSalle found Appellant Guilty of Criminal Contempt, "an ungraded Misdemeanor." Appellant charges error with the finding of Direct Criminal Contempt, further compounded by the Trial Court grading said conviction as an "ungraded misdemeanor." A violation of 42 Pa. C.S. § 4132 is merely a summary offense, punishable by no more than 90 days, with a maximum of fifteen (15) days of incarceration. The Trial Court's sentence is mis-graded and therefore illegal.

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<sup>2</sup> We cite to the Appellant's concise statement of matters complained of on appeal to state the issues before the Superior Court because, in violation of Pa.R.A.P. No. 2111(a)(4), the Appellant's Brief does not contain a statement of the questions involved. In further violation of the appellate rules, the Appellant did not append to her brief the aforesaid statement. See Pa.R.A.P. No. 2111(d).

3. Appellant raises further error with the sentence of President Judge DiSalle, in that Appellant was sentenced to a period of incarceration for no less than fifteen (15) days and no more than six (6) months in the Washington County Correctional Facility. Upon completion of her minimum sentence, Appellant was further ordered to be paroled to the supervision of the Washington County Probation Office to complete the remainder of her sentence. In addition, a fine of \$ 5,000.00 was levied against Appellant. It is Appellant's position that a maximum fine of \$ 100 was applicable to a conviction of 42 Pa. C.S. § 4132, pursuant to 42 Pa. C.S. § 4133.

Concise Statement, 9/8/2022, at 1-2.

Criminal contempt occurs in two ways: direct and indirect. In general, **contempt is "direct when committed in the court's presence and indirect when committed beyond its presence."** *Crozer-Chester Medical Center v. Moran*, 560 A.2d 133, 136 (Pa. 1989). Notwithstanding the inherent power in the courts to maintain order and decorum when in session, our legislature codified direct criminal contempt in 42 Pa.C.S. § 4132, which provides contempt power to the trial court and authorizes the court to penalize:

- (1) The official misconduct of the officers of such courts respectively.

- (1.1) The willful failure of the officers of such courts to disclose a person's complete criminal history record information when requested.

- (2) Disobedience or neglect by officers, parties, jurors or witnesses of or to the lawful process of the court.

- (3) The misbehavior of any person in the presence of the court, thereby obstructing the administration of justice.

42 Pa.C.S. § 4132. With respect to Appellant's first issue, to sustain a conviction for direct criminal contempt under subdivision (3), **"the following elements must be established beyond a reasonable doubt: 1) misconduct; 2) in the presence of the court; 3) committed with the intent to obstruct the proceedings; 4) that obstructs the administration of justice."** *Commonwealth v. Perkins*, 292 A.3d 1144, 1147 (Pa. Super. 2023).

In Pennsylvania, our Supreme court has long upheld a trial court's power to **"maintain courtroom authority"** by the imposition of summary punishment for contempt in appropriate cases. See *Commonwealth v. Moody*, 125 A.3d 1, 8 (Pa. 2015); *Behr v. Behr*, 695 A.2d 776, 778 (Pa. 1997).

[A] summary proceeding to protect the orderly administration of justice is perfectly proper[.] ... The court must be able to control those appearing before it, and must be able to use its power summarily to avoid interference with the principal matter before **the court."** *Commonwealth v. Africa*, 466 Pa. 603, 353 A.2d 855, 865 (1976) (plurality). **"Summary proceedings for contempt of court are those in which the adjudication omits the usual steps of 'the issuance of process, service of complaint and answer, holding hearings, taking evidence, listening to arguments, awaiting briefs, submission of findings, and all that goes with a conventional court trial."** *Commonwealth v. Stevenson*, 482 Pa. 76, 393 A.2d 386, 392 (1978) (quoting *Sacher v. United States*, 343 U.S. 1, 9, 72 S.Ct. 451, 96 L.Ed. 717 (1952)). Thus, **"the summary contempt power has been upheld against due process attacks [.]"** *Id.* (citations omitted). Respecting due process, this Court has candidly acknowledged summary punishment for criminal contempt is a **"drastic departure from our traditional view of due process[.]"** *Commonwealth v. Marcone*, 487 Pa. 572, 410 A.2d 759, 763 (1980). However, *Marcone* highlighted the justification for that departure, which was well articulated by Chief Justice Taft in *Cooke*:

**We think the distinction [between contempt merely "in the presence of the court" and that which takes place "in open**

court” or “in the face of the court,” thereby justifying the departure from the traditional view of due process requirements,] finds its reason not any more in the ability of the judge to see and hear what happens in the open court than in the danger that, unless such an open threat to the orderly procedure of the court and such a flagrant defiance of the person and presence of the judge before the public in the very hallowed place of justice ... is not instantly suppressed and punished, demoralization of the court's authority will follow. Punishment without issue or trial was so contrary to the usual and ordinarily indispensable hearing before judgment constituting due process that the assumption that the court saw everything that went on in open court was required to justify the exception; but the need for immediate penal vindication of the dignity of the court created it.

*Id.* [quoting *Cooke v. United States*, 267 U.S. 517, 534, 536, 45 S.Ct. 390 (1925) (internal quotation marks omitted)].

This Court has noted the inherent authority of courts to impose summary punishment for contempt is a power incidental to the grant of judicial power under Article V of the Pennsylvania Constitution. *See id.* (citations omitted); *see also Commonwealth v. McMullen*, 599 Pa. 435, 961 A.2d 842, 849 (2008) (citation omitted). Additionally, the General Assembly has addressed the power in enacting the Judicial Code. *See, e.g.*, 42 Pa.C.S. § 4132(3) (“The power of the several courts of this Commonwealth ... to impose summary punishments for contempts of court shall be restricted to ... cases ... [where, *inter alia*, t]he misbehavior of any person in the presence of the court ... **obstruct[s] the administration of justice.**”). The Judicial Code provides the summary punishment of commitment for such **contempt is only available where the misbehavior takes place “in open court.”** *Id.*, § 4133.

Further, the power to impose summary punishment for direct criminal contempt is not applicable to minor misconduct, even in **open court, but instead is available only for “ ‘such conduct as created an open threat to the orderly procedure of the court and such flagrant defiance of the person and presence of the judge before the public that, if not instantly suppressed and punished, demoralization of the court's authority will follow.’ ”** *Commonwealth v. Garrison*, 478 Pa. 356, 386 A.2d 971, 976

(1978) (plurality) (quoting *Jessup v. Clark*, 490 F.2d 1068, 1071 (3d Cir.1973)). **"Only in such circumstances may a court subject a contemn[o]r to punishment without the procedural protections otherwise accorded [to] the criminally accused."** *Id.* In sum, courts have inherent power and statutory authority to impose summary punishment for direct criminal contempt for willful misconduct that occurs in the presence of the court and obstructs its fair and orderly process. *See id.*, at 975 (citations omitted); *accord In re Martorano*, 464 Pa. 66, 346 A.2d 22, 27 (1975) (citations omitted).

*Commonwealth v. Moody*, 125 A.3d 1, 8-9 (Pa. 2015)

In this case, the trial court gave the Appellant a full opportunity to be heard and to be represented by counsel. Appellant's overarching issue involves the interpretation of the phrase, **"in the presence of the court."** Appellant's Brief at 11. Appellant argues that the trial court improperly expanded the definition to include her conduct on November 24, 2021, which occurred outside the courtroom. *See id.* **According to Appellant, she was "in an office one floor below the Appellee's courtroom and at the opposite side of the courthouse from the Appellee's Courtroom."** *Id.* at 11-12.<sup>3</sup> She contends that since her conduct was outside the presence of the court, the evidence was insufficient to convict her of direct criminal contempt. *See id.* We disagree and find that the Appellant's argument is belied by the record.

As stated above, we have no desire to revisit Appellant's bizarre conduct on the day in question, but a brief reference to the record is necessary to

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<sup>3</sup> The Appellant inappropriately refers to the trial court as the "Appellee" in her brief.

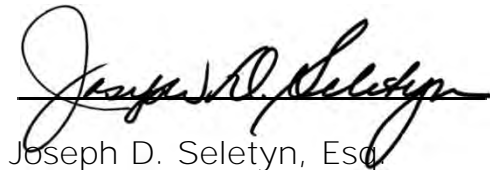
**dispel Appellant's argument. Although the Appellant had been ordered to appear before the trial court, and sheriff deputies had been sent to escort her into the courtroom, and the trial judge had been seated on the bench waiting for the Appellant to appear, she refused to enter the courtroom. The trial judge could hear her screaming outside the courtroom. Transcript, 8-4-2023 at 10. "I could hear her screaming out, along with her associates, out in the hallway, while I was waiting to address her for this contempt." *Id.* at 13.**

Our Supreme Court has recognized that misconduct occurs in the presence of the court if the court itself witnesses the conduct *or* if the conduct occurs outside the courtroom but so near thereto that it obstructs the administration of justice. *See Commonwealth v. Moody*, 125 A.3d 1, 12 (Pa. 2015). Here, the trial court, while waiting for the Appellant to appear, heard the Appellant causing a commotion in the hallway, while at the same **time resisting the trial court's direction to appear**. Under the facts of this case, **there is no question that the Appellant's conduct obstructed the administration of justice, and we need look no further as to whether her belligerent actions satisfied this element of direct criminal contempt. As the trial court's opinion indicates, instead of appropriately utilizing court processes to challenge duly enacted court rules and orders to transfer juvenile delinquency and dependency cases from her office to the Juvenile Probation Office of Washington County, Appellant blazingly took matters into her own hands in defiance of these authorities.**

This Court's standard for reviewing a finding of direct criminal contempt is an abuse of discretion. *See id.* at 12; *Commonwealth v. Robinson*, 166 A.3d 1272, 1277 (Pa. Super. 2017). After a thorough review of the certified record before us on appeal, the briefs of the parties, the applicable law, and the well-reasoned opinion of the trial court, we conclude that the trial court properly and correctly addressed the issues raised by Appellant on appeal. We **therefore adopt the trial court's opinion of April 6, 2023, as our own and incorporate it in this Opinion.**

Accordingly, the **trial court's August 4, 2022 judgment of sentence is affirmed.**

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 8/18/2023