

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JASON ROBERT RANDOLPH,	:	
	:	
APPEAL OF: PHILLIP M. MASORTI,	:	
ESQUIRE,	:	
	:	
Appellant	:	No. 1940 MDA 2013

Appeal from the Judgment of Sentence entered on October 23, 2013
in the Court of Common Pleas of Centre County,
Criminal Division, No. CP-14-MD-0002038-2013

BEFORE: LAZARUS, WECHT and MUSMANNNO, JJ.

MEMORANDUM BY MUSMANNNO, J.:

FILED JULY 25, 2014

Phillip M. Masorti, Esquire (“Attorney Masorti”), appeals from the judgment of sentence imposed following his conviction of direct criminal contempt.¹ We reverse the judgment of sentence and discharge Attorney Masorti.

Attorney Masorti and his law firm, Masorti & Donaldson, P.C., were retained by Jason Robert Randolph (“Randolph”) to represent him in connection with criminal proceedings. Attorney Masorti entered his appearance and the appearance of his law firm on Randolph’s behalf.²

¹ See 42 Pa.C.S.A. § 4132(3).

² As the senior partner at his law firm, Attorney Masorti had 23 years’ experience in litigating criminal matters. N.T., 10/23/13, at 3.

Attorney Masorti represented Randolph at his preliminary hearing. Thereafter, Attorney Masorti filed an omnibus pretrial Motion on Randolph's behalf which was prepared by Attorney Masorti and Marc A. Decker, Esquire ("Attorney Decker"), a first year associate at Attorney Masorti's law firm. The omnibus pretrial Motion included a Motion to Suppress evidence. On July 30, 2013, the Honorable Bradley P. Lunsford ("Judge Lunsford") conducted a suppression hearing.³ Attorney Decker attended the suppression hearing on Randolph's behalf. Following the hearing, Judge Lunsford denied Randolph's Motion to Suppress.

Thereafter, Attorney Decker prepared and filed a Motion for Recusal and Motion for Reconsideration.⁴ Judge Lunsford scheduled a hearing on the Motions for October 23, 2013. Attorney Masorti appeared at the hearing to argue the Motions. N.T., 10/23/13, at 2. Attorney Decker did not appear at the hearing. ***Id.*** Upon discovering that Attorney Decker was not present,

³ The July 30, 2013 suppression hearing was transcribed, and a copy of the transcript was filed with the trial court.

⁴ The Motion for Recusal alleged, *inter alia*, that Judge Lunsford's conduct at the suppression hearing created "substantial doubt as to his ability to preside impartially," "rais[ed] an appearance of impropriety," and "departed from the clear line of duty in contravention of the orderly administration of justice." **See** Motion for Recusal, 8/29/13, at ¶ 29.

Judge Lunsford proposed that the hearing be rescheduled, and that Attorney Decker be attached to the Motions.⁵ **Id.**

In response, Attorney Masorti advised Judge Lunsford that (1) Randolph had requested that he attend the hearing and to present the Motions; (2) Randolph had already incurred significant legal expenses because Attorney Masorti spent three hours preparing to present the Motions at his published rate of \$300 per hour; (3) Randolph and his wife had traveled for four hours to attend the hearing; and (4) Randolph had taken time off work and was incurring lost wages to attend the hearing. **Id.** at 2-3. Attorney Masorti further asserted that, because the suppression hearing had been transcribed, Attorney Decker's presence was unnecessary, and that the Motions could easily be argued by Attorney Masorti. **Id.** at 3-4. Finally, Attorney Masorti noted that the case was scheduled for trial in a few weeks before a different judge, and that a prompt ruling on the Motions was necessary.⁶ **Id.**

Nevertheless, Judge Lunsford determined that there was "no way to proceed without [Attorney Decker] since he was the attorney present [at the

⁵ Although Judge Lunsford ruled that Attorney Decker was required to present the Motions, he advised Attorney Masorti that he was "free to be here" at the rescheduled hearing. N.T., 10/23/13, at 2.

⁶ When Attorney Masorti asked when the hearing would be rescheduled, Judge Lunsford responded "when I can fit it in." N.T., 10/23/13, at 4.

suppression hearing] and he is the one who believes that [Judge Lunsford] was unfair to his client.” *Id.* at 4.⁷

Attorney Masorti became very upset, banged his fists on counsel’s table and, in a loud voice, argued that Attorney Decker was not required to attend the hearing, and that Randolph, as the client, was allowed to have Attorney Masorti present the Motions as Randolph’s counsel of choice. *Id.* at 5. Judge Lunsford thereafter found Attorney Masorti in direct criminal contempt of court, and fined him \$250. *Id.* Attorney Masorti filed a timely Notice of Appeal.

On appeal, Attorney Masorti raises the following question for our review: “Whether the trial court erred in finding [Attorney Masorti] guilty of [42] Pa.C.S.[A.] § 4132(3) (Direct Criminal Contempt) because the evidence was insufficient to support such a conviction?” Brief for Appellant at 5 (some capitalization omitted).

On appeal, Attorney Masorti asserts that, under the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Section 9 of the Pennsylvania Constitution, Randolph had a constitutional right to have Attorney Masorti, rather than Attorney Decker, present the Motions, and Judge Lunsford could not demand otherwise. *Id.* at 17. Attorney Masorti further asserts that his actions cannot be characterized as

⁷ Although Attorney Masorti asked Judge Lunsford if he intended to take testimony from Attorney Decker, Judge Lunsford merely indicated that he wanted Attorney Decker to attend the hearing because he was the one who was “involved,” and he had filed the Motions. N.T., 10/23/13, at 5.

“misconduct” because he merely sought to persuasively and pragmatically put forth legal arguments as to why he should be permitted to present and argue the Motions on the scheduled hearing date. ***Id.*** at 18-19. Additionally, Attorney Masorti contends that, because his actions were tantamount to making an objection and/or and preserving the record, they do not constitute disruptive action or an obstruction of justice under Section 4132(3). ***Id.*** at 25. Further, Attorney Masorti asserts that, because his allegedly contemptuous conduct comprised less than half a page of the transcribed proceedings, they cannot be characterized as a significant disruption of the proceedings. ***Id.*** at 26.

Attorney Masorti also contends that the evidence is inadequate to establish that he acted with the requisite intent to obstruct justice. ***Id.*** at 21. Attorney Masorti points out that Judge Lunsford had not issued an order of attachment, and no party had issued any subpoena, such that Attorney Decker’s presence was required at the hearing. ***Id.*** at 22. Moreover, Attorney Masorti asserts, Attorney Decker’s presence was unnecessary because the Motions involved purely legal arguments premised upon an established record. ***Id.*** at 17. Accordingly, Attorney Masorti claims, whereas the record demonstrates that he was attempting to proceed with the hearing, Judge Lunsford and the Commonwealth were trying to delay justice by postponing the hearing. ***Id.*** at 21-22.

In considering an appeal from a contempt order, we place great reliance on the discretion of the trial judge. Each court is

the exclusive judge of contempts against its process, and on appeal its actions will be reversed only when a plain abuse of discretion occurs. In cases of direct criminal contempt, that is, where the contumacious act is committed in the presence of the court and disrupts the administration of justice, an appellate court is confined to an examination of the record to determine if the facts support the trial court's decision.

Commonwealth v. Williams, 753 A.2d 856, 861 (Pa. Super. 2000)

(citations omitted).

In pertinent part, 42 Pa.C.S.A. § 4132 provides as follows:

The power of the several courts of this Commonwealth to issue attachments and to impose summary punishments for contempts of court shall be restricted to the following cases:

* * *

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

42 Pa.C.S.A. § 4132(3).⁸

To sustain a conviction for direct criminal contempt under Section 4132(3), there must be proof beyond reasonable doubt (1) of misconduct; (2) in the presence of the court; (3) committed with the intent to obstruct the proceedings; and (4) that obstructs the administration of justice.

Williams v. Williams, 721 A.2d 1072, 1073 (Pa. 1998).

⁸ Although the October 23, 2013 contempt Order is silent as to which subsection of Section 4132 provides the basis for Attorney Masorti's contempt conviction, Judge Lunsford defended his contempt ruling under subsection (3) in his Pa.R.A.P. 1925(a) Opinion. **See** Trial Court Opinion, 1/2/14, at 2-3. Therefore, we will analyze Attorney Masorti's contempt conviction under this subsection.

The evidence supports a finding that Attorney Masorti engaged in misconduct by raising his voice to Judge Lunsford and pounding his fists on counsel's table. **See Commonwealth v. Falana**, 696 A.2d 126, 129 (Pa. 1997) (stating that contemptuous misconduct is behavior that is inappropriate to the actor). Likewise, with regard to the second element, there is no dispute that the above-described conduct was made in the presence of the trial court. As to the third element, which relates to Attorney Masorti's intent to obstruct the proceedings, the evidence is equivocal. However, our review of the record discloses no evidence to support a finding that there was an actual obstruction of the proceedings.

"To obstruct justice, conduct *must significantly disrupt* proceedings." **Williams**, 721 A.2d at 1074 (emphasis in original) (citation omitted). "Contempt requires actual, imminent prejudice to a fair proceeding or prejudice to the preservation of the court's orderly procedure and authority." **Id.** In order for conduct to be an obstruction of the administration of justice, it must interfere with and disrupt the orderly process of a court. **See Commonwealth v. Cameron**, 462 A.2d 649, 650 (Pa. 1983).

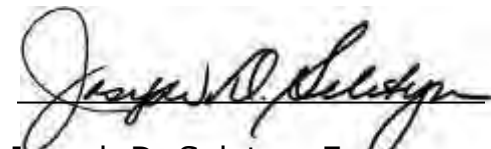
Here, there is no evidence that Attorney Masorti's inappropriate conduct caused significant disruption of the proceedings or obstruction of the administration of justice. While there was a momentary break in the proceedings, the entire incident encompassed just half a page of hearing

transcript. We cannot conclude that this transient delay constituted an obstruction of justice. **See Williams**, 721 A.2d at 1074.

We recognize that “[r]emarks that are injudicious, or even disrespectful, will not, without more, justify a summary conviction for contempt of court.” **In the Matter of Campolongo**, 435 A.2d 581, 584 (Pa. 1981); **see also Williams**, 721 A.2d at 1074 (stating that a “mere affront to the trial judge is not sufficient to sustain a conviction for criminal contempt”). “Attorneys have a right to be persistent, vociferous, contentious, and imposing, even to the point of appearing obnoxious, when acting in their client’s behalf.” **Commonwealth v. Garrison**, 386 A.2d 971, 980 (Pa. 1978) (plurality opinion) (citation omitted). Thus, the evidence was insufficient to support a finding of direct criminal contempt.

Judgment of sentence reversed. Attorney Masorti is discharged. Jurisdiction relinquished.

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: 7/25/2014