

IN THE SUPERIOR COURT OF PENNSYLVANIA

Docket No: 887 WDA 2022

IN RE:
BRENDA DAVIS,
CLERK OF COURTS,
APPELLANT.

BRIEF AMICUS CURIAE OF THE COMMONWEALTH OF
PENNSYLVANIA IN SUPPORT OF APPELLEE

APPEAL BY APPELLANT OF AN AUGUST 4, 2022 ORDER FROM
PRESIDENT JUDGE JOHN DISALLE AT 887 WDA 2022.

THE WASHINGTON COUNTY DISTRICT ATTORNEY'S OFFICE WRITES
AS A FRIEND OF THE COURT IN SUPPORT OF THE TRIAL COURT
AND THE APPELLEE'S POSITION

Respectfully Submitted,
The Commonwealth of Pennsylvania

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<p>A. 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 in the spirit or intent of the Criminal Contempt Statute.....</p>	
	8.
<p>B. 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</p>	

"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..... 11.

C. 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 was levied against the 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..... 12.

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STATEMENT OF JURISDICTION

Amicus Curiae adopts the Appellants statement on jurisdiction.

STANDARD AND SCOPE OF REVIEW

Amicus Curiae adopts the Appellants statement on the standard and scope of review.

INTEREST OF AMICUS CURIAE

The Commonwealth of Pennsylvania is responsible for prosecuting state crimes within Washington County, Pennsylvania. Our official duties require us to frequently work with the Clerk of Courts, and that our office is a party to every action filed within the Clerk of Courts, including juvenile files. The issue that gave rise to this contempt order directly impacted our office and its ability to function efficiently.

SUMMARY OF ARGUMENT

Amicus Curiae will outline that the trial court did not err when making a finding for direct criminal contempt. Specifically, by addressing the elements of indirect criminal contempt, and differentiating case law cited by the Appellant that would not be applicable in this case. Furthermore, Amicus Curie will argue that the trial court did not err in grading the direct criminal contempt as an ungraded misdemeanor, and for imposing a fine of \$5000. The trial court was allowed to make such determinations due to the inherent power the judiciary has in contempt proceedings. The Appellant's argument is based on a misinterpretation of the statute, believing that the language of the statute infers that a conviction would result in a summary conviction with a maximum fine of \$100.

ARGUMENT

- A.** 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 in the spirit or intent of the Criminal Contempt Statute.

Appellant contends that her conviction was not an act of direct criminal contempt because it occurred outside the courtroom, on a different floor of the courthouse. We disagree, as the conduct and circumstances surrounding the Appellant's actions would rise to the level of being in the presence of the court. This court has held, "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." *Commonwealth v. Perkins*, 292 A.3d 1144, 1146 (Pa. Super. 2023), To sustain a conviction for direct criminal contempt, the court must find, "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. Meehan*, 235 A. 3d 1284, 1289 (Pa. Super. 2020).

When assessing the elements regarding direct criminal contempt, there was clear misconduct on the part of the Appellant. She openly refused to comply with a signed order by Appellee and caused a ruckus by refusing to enter the Appellee's courtroom to address her noncompliance. Appellee's Brief, herein "AB", pp. 5-6. What appears to be the most crucial issue to this analysis of direct criminal contempt, is whether the misconduct happened in "the presence of the court." Here, Appellant contends that the misconduct occurred on a different floor of the courthouse, and that the Appellant was only within "ear shot" of the Appellee because she was "dragged against her will" by sheriff's deputies. Appellant Brief, herein "AEB", pp. 12. Essentially, the Appellant argues that because she never entered the courtroom, her misconduct cannot be classified as "in the presence of the court" for purposes of direct criminal contempt.

The Supreme Court of Pennsylvania has held, "[m]isconduct 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." *Commonwealth v. Garrison*, 386 A.2d 971, 979 (Pa. 1978). In this case, it is accurate that the misconduct happened outside the courtroom, but was so near the Appellee that he could hear the commotion outside his courtroom. Appellant's counsel even acknowledged

at the contempt hearing that the Appellee would have heard the yelling outside his courtroom at the time of the misconduct. AB, p. 15.

Furthermore, due to the commotion outside the courtroom, it caused the Appellee to leave the bench and talk with sheriff's deputies about the then current situation. AB, p. 6. This delayed the hearing on the matter, and because the Appellant later left the courthouse prior to the proceeding, the hearing had to be continued to have her present. Due to these circumstances, it is clear the Appellant had the intent to obstruct any proceeding against her, and in turn, obstructed the court from administering justice in the matter by having to not only delay, but continue the proceeding due to the Appellant absconding from the courthouse.

In Appellant's brief, they argue that the issue *sub judice* is on point with *Commonwealth v. Perkins*, 292 A.3d 1144, 1146 (Pa. Super. 2023). However, the facts in that case do not align here to make a finding that there was no direct criminal contempt. In *Perkins*, a witness testified at a preliminary hearing. *Id.* at 1146. The hearing concluded ten to fifteen minutes later. When the witness was waiting for the elevator, the appellant approached her and said, "I'm going to get you, you fat lying bitch." *Id.* This led the witness to return to the courtroom and tell the prosecutor what transpired. *Id.* A few days later, a contempt hearing was conducted, and

the appellant was found guilty of direct criminal contempt. *Id.* The court in that case found that there was no direct criminal contempt because “the misconduct at issue did not occur in “the presence of the court.” The court did not hear the threat, as Appellant issued it at the courthouse elevator, outside the courtroom and “some distance away on this floor.”” *Id.* at. 1148.

In this current case, while it is accurate that the misconduct began outside the court’s presence, by time the Appellant was with the sheriff’s deputies outside the Appellee’s courtroom, the Appellee himself could hear the commotion outside while waiting for the Appellant to enter the courtroom. AB, p. 6. This caused a delay in the proceeding, requiring the Appellee to leave the bench and address the situation in the anteroom. *Id.* The important discrepancy with *Perkins* is that the court in that case only became aware of the misconduct because the witness returned to the courtroom to tell the prosecutor. In this case, Appellee stated on the record that he could hear the commotion outside his courtroom while waiting for the Appellant to enter the courtroom. Transcript of Hrg., Nov. 24, 2021, at pp. 9-11. Furthermore, in *Perkins*, the misconduct occurred ten to fifteen minutes after the hearing, in a location outside the court’s presence, which in turn, did not obstruct the court from administering justice. Where in this case, the misconduct by the Appellant occurred at a time when a

proceeding was going to take place, and the misconduct prevented the proceeding from having any final disposition. For those reasons, the trial court did not err in making a finding for direct criminal contempt, and therefore, the conviction should be affirmed.

B. 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.

Appellant's argument that the trial court erred by convicting the Appellant of an ungraded misdemeanor, as opposed to a summary offense, is misguided. Appellant's argument revolves around the language of 42 Pa. C. S. §4132, in that it is titled, "Attachment and **summary** punishment for contempts." Furthermore, language within the statute reads, "The power of the several courts of this Commonwealth to issue attachment and to impose **summary** punishments for contempt of court shall be restricted to the following cases:." The Appellant is incorrect in inferring that the use of the word "summary" in the statute refers to summary offenses. The use of

the word summary in this statute should be interpreted as it “does not relate to the timing of the action but to a procedure which dispenses with the formality and delay that would result from the issuance of process and the holding of hearings[.]” *Appeal. of Levine*, 95 A.2d 222, 225–26 (Pa. 1953). When using this interpretation of the word “summary,” in conjunction with “punishment,” it should be interpreted that the court can punish an individual for direct criminal contempt while avoiding the standard criminal procedure that is warranted for individuals charged with crimes. Therefore, the use of the word “summary” in the statute does not burden the grading of the conviction and would allow the Appellee to convict the Appellant of an ungraded misdemeanor.

Furthermore, even if the statute could be construed that any conviction of direct criminal contempt constitutes a summary offense, it is not the position of the legislature to codify terms of punishment for individuals held in direct criminal contempt. Our Supreme Court has commented on 42 Pa. C.S §4136, stating that the statute is an unconstitutional infringement of the Court’s inherent authority to set forth punishment for indirect criminal contempt. *Commonwealth v. Mullen*, 961 A.2d 842 (Pa. 2008). As stated in the concurring opinion, “the General Assembly cannot dictate to the courts what is adequate punishment to

vindicate a court's authority." *Id.* at 854. While the case before the court today revolves around a different statute, this line of reasoning can easily be applied here. 42 Pa. C.S. §4133 outlines how to punish individuals based on 42 Pa. C.S. §4132 convictions. Similarly to *Mullen*, in this case, §4133 was promulgated by the state legislature, telling the judiciary how they can punish individuals for contempt based on §4132. This in turn, should make §4133 unconstitutional. This was even contemplated in a concurring opinion in *Mullen*, "[o]ne could argue that Section 4133 likewise constitutes an infringement on the court's authority to enforce its own orders. However, the statute is not before us in this case." *Id.* at 855. With that said, the Appellant cites no other authority that would limit the court from imposing an ungraded misdemeanor, and therefore, the grading of the conviction should be upheld.

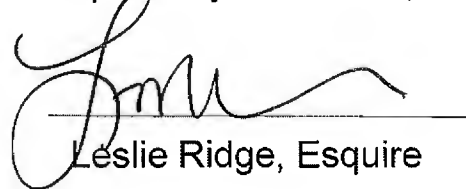
C. Appellant raises further error with the sentence of President Judge DiSalle, in that Appellant was sentenced to a period of incarceration for no less than fifteen (15) days and no more than six (6) months in the Washington County Correctional Facility. Upon completion of her minimum sentence, Appellant 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 was levied against the 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.

Appellant also argues that the trial court erred in imposing a \$5,000 fine, arguing that the maximum fine for this offense is \$100, pursuant to 42 Pa. C.S. §4132, and 42 Pa. C.S. § 4133. This argument is without merit, the statutes cited make no reference to a maximum fine of \$100. In actuality, it is 42 Pa. C.S. § 4136(b) that references a \$100 maximum fine. However, §4136 applies only to indirect criminal contempt. This case revolves around a conviction for a **direct** criminal contempt conviction; therefore, the \$100 maximum fine does not apply here.

CONCLUSION

For the foregoing reasons, as well as those state in Appellee's Brief, we respectfully ask this court to affirm the judgement of the trial court.

Respectfully Submitted,



Leslie Ridge, Esquire

Attorney for the Commonwealth

PROOF OF SERVICE

I hereby certify that I am serving the Amicus Curiae Brief, filed by the Commonwealth of Pennsylvania, upon the following persons in the manner indicated below, which satisfies the requirements of Pa.R.A.P. 121:

Ms. Bobbie Jo Wagner, **VIA U.S. MAIL & PACFILE**
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310 Grant Street, Suite 600
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The Honorable President Judge John DiSalle..... **VIA
HAND DELIVERY & PACFILE**

Robert C. Gallo, Esquire / Charles C. Gallo, Esquire. **VIA US MAIL &
PACFILE**
310 Grant Street, Suite 1120, Pittsburgh, PA 15219

Dated:

6/12/73



Leslie L. Ridge, Esq.,
First Assistant District Attorney,
Washington County

CERTIFICATE OF COMPLIANCE

I certfy that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania, Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

