

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David E. Voelkert,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 1, 2024

Court of Appeals Case No.
23A-CR-1382

Appeal from the St. Joseph
Superior Court

The Honorable Stephanie E.
Steele, Judge

Trial Court Cause No.
71D01-2111-MC-2430

Memorandum Decision by Chief Judge Altice
Judges Weissmann and Kenworthy concur.

Altice, Chief Judge.

Case Summary

- [1] At issue here is whether the trial court abused its discretion when it found David E. Voelkert in indirect contempt and sentenced him to 180 days in jail.
- [2] We affirm.

Facts & Procedural History

- [3] On February 8, 2019, Voelkert was charged under Cause No. 71D01-1902-F1-6 (F1-6) with two counts of child molesting, one as a Level 1 felony and the other as a Level 3 felony. Voelkert was brought into the physical custody of the State of Indiana on August 4, 2021, at which time he was advised of the charges against him and of the no contact order naming A.V., the child victim in F1-6, as the protected person.¹ Thereafter, on September 21, 2021, the trial court received notice that Voelkert had allegedly violated the no contact order. On November 8, 2021, the trial court issued a rule to show cause order. On November 29, 2021, the trial court held a hearing on the rule to show cause, for which Voelkert elected to represent himself.
- [4] At the hearing the trial court took judicial notice of its records and the no contact order under F1-6. The trial court also noted that Voelkert was informed of the no contact order during his arraignment hearing. The State introduced

¹ Voelkert also signed an acknowledgment of the no contact order.

evidence that Voelkert subsequently sent correspondence to A.V.² Voelkert admitted to sending the correspondence to A.V. but explained that he believed he was exempt from the no contact order because he was pro se in the other cause and thus, as the “attorney of record” in that cause he was required to send A.V. any legal correspondence associated therewith because she was a party. *Appellant’s Brief* at 5.

[5] At the conclusion of the hearing, the trial court found Voelkert guilty of indirect contempt and sentenced him to 180 days in the St. Joseph County Jail. The court also appointed a public defender to pursue an appeal of the contempt finding. After being granted permission to file a belated appeal, Voelkert filed the instant appeal.

Discussion & Decision

[6] Contempt of court generally involves disobedience of a court or court order that “undermines the court’s authority, justice, and dignity.” *In re A.S.*, 9 N.E.3d 129, 131 (Ind. 2014) (citing *State v. Heltzel*, 552 N.E.2d 31, 34 (Ind. 1990)). There are two kinds of contempt: direct contempt and indirect contempt. *Id.* Indirect contempt, which is at issue in this case, involves those acts “committed outside the presence of the court ‘which nevertheless tend to interrupt, obstruct, embarrass or prevent the due administration of justice.’” *Id.* at 132 (quoting 6

² The correspondence included several documents and a personal note addressed to A.V. that Voelkert had filed months earlier in a different cause.

Ind. Law Encyc. Contempt § 2 (1958)). It is within the trial court’s discretion to determine whether a party is in contempt, and we review the judgment under an abuse of discretion standard. *Finnegan v. State*, 221 N.E.3d 1232, 1236 (Ind. Ct. App. 2023) (citing *Reynolds v. Reynolds*, 64 N.E.3d 829, 832 (Ind. 2016)). We will reverse a trial court’s finding of contempt only if there is no evidence or inference therefrom to support the finding. *Id.*

[7] Voelkert does not challenge the finding of contempt, but rather, argues that the trial court incorrectly held him in direct contempt and therefore, this matter should be remanded for the court to find him in indirect contempt and resentence him accordingly. As Voelkert points out, at the conclusion of the rule to show cause hearing, the court stated that it found Voelkert guilty of “direct contempt” of the court’s order. *Transcript* at 197. This, however, appears to have been a simple misstatement by the court.

[8] In the rule to show cause order, the trial court references “indirect contempt” in several places and sets out the requirements listed in Ind. Code § 34-47-3-5(b) for indirect contempt proceedings. And, except for its oral statement at the conclusion of the rule to show cause hearing, the court referred to the subject violation as “indirect contempt” during all other relevant proceedings before the court. *See, e.g., Transcript* at 6, 180. Finally, in its written judgment, the court clearly states that it found Voelkert guilty of “indirect contempt of Court” and cites Ind. Code § 34-47-3-1, which defines indirect contempt. *Appellant’s Appendix Vol. 2* at 18.

[9] To the extent Voelkert argues that because the court found him in direct contempt, he was punished more harshly, his argument necessarily fails as we have concluded that the court properly found him in indirect contempt. In any event, direct and indirect contempt carry the same sentencing range of up to 180 days in jail. Indeed, a trial court “may impose the maximum sentence of six months ‘for criminal contempt [] without guilt or innocence being determined by a jury.’” *Gerber v. State*, 167 N.E.3d 792, 799 (Ind. Ct. App. 2021) (quoting *Holly v. State*, 681 N.E.2d 1176, 1177 (Ind. Ct. App. 1997)), *trans. denied*. Punishment for criminal contempt is limited only by reasonableness and is reserved to the sound discretion of the trial court. *Jones v. State*, 847 N.E.2d 190, 199 (Ind. Ct. App. 2006).

[10] Here, Voelkert was charged with two felony child molesting offenses and ordered to have no contact with A.V., an alleged victim. Yet, Voelkert not only contacted A.V., he sent her documents that contained his version of events surrounding the child molesting charges as well as a personal letter to A.V. The court properly found that this was an attempt by Voelkert to share his side of the story and to “to influence the recipient’s testimony.” *Appellant’s Appendix Vol. 2* at 17. The trial court’s imposition of the maximum 180-day sentence was not unreasonable. We find no abuse of discretion.

[11] Judgment affirmed.

Weissmann, J. and Kenworthy, J., concur.