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# IN THE COURT OF APPEALS OF INDIANA

Latuwan Anthony Partee,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff.*

March 17, 2022

Court of Appeals Case No. 21A-CR-1529

Appeal from the Marion Superior Court

The Honorable Richard A. Hagenmaier, Commissioner

The Honorable Alicia A. Gooden, Judge

Trial Court Cause No. 49D21-1705-F2-18608

**Tavitas, Judge.**

## Case Summary

[1] Following a jury trial, Latuwan Anthony Partee was convicted of dealing in cocaine, a Level 2 felony, and possession of marijuana, a Class B misdemeanor,

and was also found to be an habitual offender. The trial court sentenced Partee to an aggregate sentence of twenty-seven and one-half years, with five years thereof suspended. Partee appeals and claims that: (1) the trial court committed reversible error by failing to inform him that he could reclaim his constitutional right to be present in the courtroom if he agreed to conduct himself in an appropriate manner; and (2) the trial court's sentencing order erroneously refers to the original charges instead of the amended charges. Concluding that the trial court did not err by failing to inform Partee that he could be brought back into the courtroom but that the sentencing order needs to be corrected, we affirm and remand.

## Issues

I. Whether the trial court committed reversible error when, after removing Partee from the courtroom due to his disruptive behavior, it did not advise Partee that he could return to the courtroom if he behaved in an appropriate manner.

II. Whether the trial court's sentencing order erroneously refers to the original charges instead of the amended charges.

## Facts

[2] On May 19, 2017, the State charged Partee with five counts as follows: (1) dealing in cocaine, a Level 2 felony; (2) possession of cocaine, a Level 4 felony; (3) unlawful possession of a firearm by a serious violent felon ("SVF"), a Level 4 felony; (4) possession of a controlled substance, a Level 6 felony; and (5)

possession of marijuana, a Class B misdemeanor. On September 25, 2017, the State amended Count 1 to change the basis on which it was enhanced to a Level 2 felony.[1] The State subsequently dismissed the SVF charge and the possession of a controlled substance charge, but added an allegation that Partee was an habitual offender.

[3] On August 8, 2018, the State and Partee entered into a plea agreement. Partee failed to appear at the change-of-plea hearing, and the State withdrew the plea offer due to Partee's failure to appear. At a pre-trial conference held on October 23, 2018, Partee informed the trial court that his court-appointed attorney had not filed certain motions he believed should have been filed. Partee's behavior at this hearing, and at several other pre-trial hearings, was not disrespectful or disruptive.

[4] At a pre-trial conference held one week later, Partee for the first time indicated that he wanted to represent himself, stating: "I do not wish to use [the public defender] to represent me. I'm fully competent to handle my own affairs in propria persona sui juris." Tr. Vol. I p. 89. When the trial court asked Partee if he was a so-called "sovereign citizen,"[2] Partee refused to answer. *Id*. at 89.

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[1] The State originally alleged that the dealing charge was a Level 2 felony because: (a) it involved an amount of cocaine between five and ten grams; and (b) Partee had a prior conviction for dealing. When the State discovered that Partee's prior conviction was for possession instead of dealing, it amended Count I to allege that the dealing was a Level 2 felony because: (a) it involved an amount of cocaine between five and ten grams; and (b) Partee was in possession of a firearm at the time he committed the dealing offense.

[2] As explained in *Lewis v. State*, 532 S.W.3d 423, 430-31 (Tex. Ct. App. 2016), there exists a "loosely-formed group of citizens who believe that they are sovereign individuals, beyond the reach of any criminal court."

When the trial court asked Partee why he wanted to represent himself, Partee stated: "U.C.C. 1-308, all rights reserved. I've already asked for [the public defender] to do multiple things like we stated in the last hearing, and I have sat down where everyone stood (indiscernible) agreement or any . . . ." *Id*. Partee then repeatedly talked over the trial court as it explained that it was denying his request to represent himself. Eventually, the trial court was able to explain:

> I think I know what's going on here. It's been a year and a half since this . . . case started. You've been in and out of jail, and now all of a sudden, you've decided two days before trial to cause a delay of this case, and to be obstinate about it.

*Id*. at 91. Partee replied by asking, "Could you show me a written contract of obligation of those terms?" *Id*. at 92. This hearing concluded without much further interruption from Partee.

[5] On the scheduled jury trial date of November 1, 2018, Partee almost immediately began a tirade of semi-coherent claims of not being subject to the trial court's jurisdiction. As he did so, Partee spoke over the judge and was non-responsive to the judge's questions. Partee even accused the judge of

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> These so-called "sovereign citizens" share a common vernacular and courtroom strategy. Courts across the country have encountered their particular brand of obstinacy—not consenting to trial, arguing over the proper format and meaning of their names, raising nonsensical challenges to subject matter jurisdiction, making irrelevant references to the Uniform Commercial Code, and referring to themselves as trustees or security interest holders.

*Id*. (quoted in *Hotep-El v. State*, 113 N.E.3d 795, 808 (Ind. Ct. App. 2018), *trans. denied*); *see also Taylor-Bey v. State*, 53 N.E.3d 1230, 1232 (Ind. Ct. App. 2016) (noting that "sovereign citizen" and similar arguments are baseless and should be "summarily rejected.") (quoting *United States v. Benabe*, 654 F.3d 753, 767 (7th Cir. 2011)).

treason and fraud. *See* Tr. Vol. I pp. 98-101. The trial court then had Partee removed from the courtroom. After this, defense counsel moved for a competency evaluation, which the trial court initially denied. After counsel for both parties discussed various pre-trial matters, the trial court asked defense counsel if Partee was going to change into civilian clothes for the trial. Defense counsel indicated that Partee refused to do so, which was confirmed by the court deputy.

[6] The trial court decided to bring Partee back to the courtroom to warn him to behave in front of the jury. Instead, Partee immediately began to rant about the trial court's alleged lack of authority over him. The judge threatened to tape Partee's mouth shut, but Partee refused to be quiet. *See id*. at 126-30. Partee's obstreperous behavior caused a disturbance in the courtroom that resulted in Partee's brother and girlfriend being removed from the courtroom as well. The trial court indicated its belief that Partee was simply attempting to avoid trial and was not suffering from any mental illness, noting that Partee had behaved well until he became upset with his counsel's representation. Still, the trial court decided to err on the side of caution and ordered that Partee be evaluated for competency by two independent psychologists or psychiatrists.

[7] Things did not fare much better with the psychological evaluations. Partee did not fully cooperate with either of the evaluations. The psychologist's report noted:

> Thought process was coherent and goal-directed. Content of speech focused on his "sovereign" status. Affect was constricted.

> Mood was euthymic. Judgment and insight were fair. Intelligence appeared-to be within normal limits. As Mr. Partee did not wish to participate in the evaluation, I was unable to complete a neurocognitive screening.

Appellant's App. Vol. 2 pp. 207. The psychiatrist's report similarly noted:

> Mr. Partee was informed of the reason for the interview. He refused to participate and said he told the court he would refuse. He said he had refused to speak with the other court-ordered evaluator. When asked why he was refusing, Mr. Partee brusquely stated "I'm a sovereign. You can't trespass on my corporation." He again refused to participate and I therefore ended the interview.

*Id*. at 210. Both the psychologist and the psychiatrist determined that Partee was competent to stand trial and was merely attempting to prolong or frustrate the criminal proceedings. Based on these reports, the trial court made a factual determination that Partee was competent to stand trial.

[8] The trial court then held another pre-trial conference on December 18, 2018, at which Partee immediately continued his disruptive and insolent behavior. When the trial court told Partee that he was in contempt and would be sentenced to 180 days in jail, Partee responded, "I don't care about your 180 days. I'm already in jail." Tr. Vol. I p. 151. Following the December 18, 2018 hearing, Partee filed several pro se letters and notices to the court, all asserting various forms of sovereign citizen claims.

[9] Then, at another pre-trial conference held on February 5, 2019, Partee continued to interrupt the trial court and make baseless sovereign citizen

arguments. *See id*. at 157-59. At a pre-trial hearing held on February 26, 2019, Partee yet again interrupted the trial court, spoke over the judge, and made meritless arguments. An example follows:

> THE COURT: Mr. Partee – Partee is here. Good morning, Mr. Partee.
>
> DEFENDANT: Good morning. Um, I just want to start off by saying I do not consent to a trial with or without my presence.
>
> THE COURT: Well, I think – I think we know that.
>
> DEFENDANT: Um, also that I as a sovereign man is the only one that can claim my presence. It will be fraud if Kelly Shaw, Matthew Keyes or any other corporate agents interfered and claim my presence in the time of my absence. Also, that, um, I do not stand under any contract, coerce or threatened upon me. I have never met the State. I have never met or done any business with the State of Indiana, the plaintiff ever. So, there is not a contract that; that we do not have a contract. Also, that, um, there is no injured party, no injured victim, no damaged property. Also, that, um – um, also that . . .
>
> THE COURT: Well, I guess you did a pretty good record on this in the past. How long is this gonna take?
>
> DEFENDANT: Not that long just a…
>
> THE COURT: Alright. Well, let's finish up.
>
> DEFENDANT: Also, that, um, due to infancy, I do not, um, I disaffirm the – the probated birth certificate contract and the conveyances as I have reached full age, a full age of majority. Um, therefore, um, this – this municipal court does not have jurisdiction over the sovereign man in propria persona in sui juris, nor does it have jurisdiction over the class of the case. Um, and it is not up to the courts to prescribe its jurisdiction. So, um, like I said before, I do not consent to a trial with or without my presence, and I'm not giving Kelly Shaw…
>
> THE COURT: Well, do you plan on attending your trial?
>
> DEFENDANT: What?
>
> THE COURT: Do you plan on attending your trial?

DEFENDANT: I just said I do not consent to a trial with or without my presence.

THE COURT: Alright. You've made your record. Ms. Shaw, we're set for trial next week. Is there any reason why we can't do this . . .

DEFENDANT: I don't consent for Kelly Shaw to interfere or interlope in my personal private affairs.

THE COURT: Alright. I've let you talk. Now, you need to be quiet just a minute, alright? Ms. Shaw?

MS. KELLY SHAW: Judge, I'm ready to go forward with trial. Again, Mr. Partee has told me he doesn't want me to represent him.

DEFENDANT: I do not consent to her at trial.

THE COURT: I know you don't consent.

DEFENDANT: Well, I do not consent for her . . .

THE COURT: Now, let's try to behave a little bit.

DEFENDANT: Yeah, I have been behaving.

THE COURT: Okay.

DEFENDANT: She's in misconduct and constructive –

THE COURT: Alright.

DEFENDANT: - of trust right now – constructive trustee right now.

THE COURT: I've already given you 180 days in jail for contempt.

DEFENDANT: Okay.

THE COURT: If you keep this up -

DEFENDANT: Well, I'm not – you've done that in misconduct also.

THE COURT: - I'm gonna put you in administrative segregation if you keep this up.

DEFENDANT: You've also done it in misconduct.

THE COURT: Alright.

DEFENDANT: So . . .

THE COURT: So, if you want to be in deadlock the next – until trial, keep talking.

DEFENDANT: I do not consent to a trial with or without . . .

THE COURT: Ms. Shaw?

MS. SHAW: Again, we're ready to proceed with trial.

DEFENDANT: I do not consent to a trial -

MS. SHAW: I know that he doesn't want me to represent him.

DEFENDANT: - with or without my presence.

THE COURT: I'll do an order. Mr. Partee is going to be in administrative segregation -

DEFENDANT: I object. I object to.

THE COURT: - or deadlock -

DEFENDANT: I object.

THE COURT: - from now on, okay?

DEFENDANT: I object to your order. I object. I reject your order.

THE COURT: And this is because he refuses to be quiet.

DEFENDANT: I reject your offer to contract.

THE COURT: He's talking over me right now, and he's being disruptive.

DEFENDANT: Your judicial conduct . . .

THE COURT: I previously gave him 180 days in jail. I don't know what else I can do.

*Id*. at 163-66. After Partee was removed from the courtroom, his counsel informed the trial court, "I don't think that he'll probably sit through the trial . . . . [H]e'll probably want to talk." *Id*. at 168.

[10] A jury trial began on March 7, 2019. Partee again refused to change into civilian clothes. When the trial court asked Partee about his refusal, Partee

continued in his truculent defiance, interrupting the judge, being non-responsive to questions, and asserting meritless arguments:

> THE COURT: Mr. Partee, I'm going to ask you to stop talking right now. I'm going to explain some things to you. Do you know how much time you're looking at in this case?
>
> DEFENDANT: Do you, um, can you show me your written delegated authority to administrate the -
>
> THE COURT: No, I asked you. You're answering. I'm asking the questions right now.
>
> DEFENDANT: - L-A-T-U –
>
> THE COURT: Do you know that if you're convicted…
>
> DEFENDANT: - W-A-N P-A-R-T-E-E estate.
>
> THE COURT: You know, Mr. Partee, if you'd actually behave today, I'd probably take you out of deadlock.
>
> DEFENDANT: I asked for your deleg (sic) – written delegated authority to administrate.
>
> THE COURT: Alright. You are looking at 50 years in this case if you're convicted. Do you understand that?
>
> DEFENDANT: I ask for your written delegated authority –
>
> THE COURT: Right now -
>
> DEFENDANT: - to administrate…
>
> THE COURT: - you are sitting here…
>
> DEFENDANT: Raquel Ramirez, I'm asking for your written delegated authority.
>
> THE COURT: Continuing with this -
>
> DEFENDANT: Kelly Shaw, I'm asking for your written delegated authority.
>
> THE COURT: - sovereign citizen stuff. And I want you to know -

DEFFENDANT: Can you show me your proof…

THE COURT: - that you're looking at 50 years.

DEFENDANT: The burden of proof is on the accuser beyond a reasonable doubt. I still have not seen a proof of a contract.

THE COURT: I will say this, if you last that long and you're sitting at the counsel table, I'm telling you right now there is nothing you could do to mis-try this case.

DEFENDANT: I demand – I demand to see the written delegated authority to administrate.

THE COURT: There is nothing that you can do that will mis-try this case, do you understand that?

DEFENDANT: I'm just asking for your written delegated authority honorably.

THE COURT: Do you even wish to be here for your trial?

DEFENDANT: I do not consent to a trial.

THE COURT: Okay.

DEFENDANT: I do not consent to a trial with or without my presence. There is no one that can claim my presence of the sovereign man, but I…

THE COURT: Here's the way it's going to happen, Mr. Partee. We're going to pick a jury and have a trial today. You are going to be quiet and behave.

DEFENDANT: I do not consent to picking a jury unless it is a jury of my peers. You have violated the due process.

THE COURT: Let the record reflect he continues to talk over me. Now, you are going to behave. At the first instance of you – any outbursts by

DEFENDANT: You're in violation of the due process clause.

THE COURT: You will be removed from the court room.

DEFENDANT: And you're well out of – out of the realm of judicial immunity.

> THE COURT: Alright. As far as the motion in limine . . .
>
> DEFENDANT: Raquel Ramirez and the State is well out of – does not have any (indiscernible) immunity.
>
> THE COURT: Alright. Take him back out so we can conduct - I'm going to have him removed from the court room again. He refuses to – to quit talking right now.
>
> DEFENDANT: I demand to see your written delegated authority. You don't want to show it because you don't have it.

*Id*. at 170-75.

[11] After Partee was removed from the courtroom, the trial court and counsel addressed various pre-trial issues. Defense counsel informed the court that she had explained to Partee that the trial could be held without him. Eventually, the trial court had Partee brought back into the courtroom to give him one more chance to behave. Partee's behavior continued unabated. Eventually, the trial court noted:

> THE COURT: - have done everything I can with Mr. Partee. I've given him 180 days in jail for direct contempt. I put him in lockup for 30 days – for 30 days.
>
> DEFENDANT: Out of – out of a misconduct that I objected to.
>
> THE COURT: Nothing seems to faze him.
>
> DEFENDANT: I've gotten, um, -
>
> THE COURT: He will not obey the orders of the court.
>
> DEFENDANT: - out of all – out of misconduct.
>
> THE COURT: Right now, he continues to talk over the court and be obstructionist.
>
> DEFENDANT: The court does not have any jurisdiction.
>
> THE COURT: It is my belief that he will continue to be –

DEFENDANT: I have a non-obligated -

THE COURT: - obstructionist when the jury is brought in -

DEFENDANT: - respect for -

THE COURT: - which would actually –

DEFENDANT: - City and State municipal courts.

THE COURT: - work in his disfavor. I think it would be prejudicial based on what he's saying. At this point, I think I've done everything I can. He has forfeited his right to be here at trial.

DEFENDANT: No one can –

THE COURT: So, he will be removed and held –

DEFENDANT: - speak for me or –

THE COURT: - in the holding cell today -

DEFENDANT: - claim my presence with or without…

THE COURT: - while this trial is going on, and -

DEFENDANT: With or without my consent.

THE COURT: - that's the way I'm going to conduct this trial. Do you have any objections, Ms. Shaw?

*Id*. at 184-88. Defense counsel objected to Partee being removed from the courtroom "for the record," but stated that she understood that the court could not continue with Partee present. *Id*. at 188.

[12] The trial then continued without Partee being present. During voir dire and in final instructions, the trial court informed the jury that it was not to consider Partee's absence from trial in any way. Partee declined to testify on his own behalf, despite being afforded the opportunity to do so. At the conclusion of the guilty phase of trial, the jury found Partee guilty as charged. During the

habitual offender phase of the trial, Partee refused to be fingerprinted. The jury found Partee to be an habitual offender.

[13] A sentencing hearing was held on March 29, 2019. The trial court declined to enter judgment of conviction on the possession of cocaine charge, concluding that it "merged" with the dealing in cocaine conviction. Notably, at the sentencing hearing, Partee did not cause any disruption. *See* Tr. Vol. 3 pp. 36-52. He did, however, refuse to speak to the trial court regarding whether he wished to file an appeal. When pronouncing its sentence, the trial court noted Partee's disruptive behavior but gave it little aggravating weight. The trial court sentenced Partee to the advisory sentence of seventeen and one-half years for the Level 2 felony conviction for dealing in cocaine and a concurrent sentence of 180 days for the Class B misdemeanor possession of marijuana conviction. The trial court then enhanced this sentence by ten years based on the habitual offender finding. The court also suspended five years of the sentence and ordered two years of reporting probation. Partee now appeals.

## Analysis

### *I. Failure to Advise*

[14] Partee makes no claim that the trial court erred by removing him from the courtroom. Instead, Partee argues that the trial court erred by failing to advise him that he could return to the courtroom if he promised to conduct himself in an appropriate manner. The trial court's failure to do so, Partee claims, deprived him of the right to be present at trial under both the state and federal

constitutions. The State argues that Partee forfeited this argument for purposes of appeal. We agree with the State.

[15] "'It is well settled that Indiana's appellate courts look with disfavor upon issues that are raised by a party for the first time on appeal . . . without first raising the issue at the first opportunity in the trial court.'" *Shorter v. State*, 144 N.E.3d 829, 841 (Ind. Ct. App. 2020) (quoting *State v. Peters*, 921 N.E.2d 861, 868 (Ind. Ct. App. 2010)), *trans. denied*. "[A] trial court cannot be found to have erred as to an issue or argument that it never had an opportunity to consider." *Id*. (quoting *Washington v. State*, 808 N.E.2d 617, 625 (Ind. 2004)). Thus, as a general rule, "a party may not present an argument or issue on appeal unless the party raised that argument or issue before the trial court. In such circumstances the argument is waived." *Id*. (quoting *Washington*, 808 N.E.2d at 625); *see also Fin. Ctr. First Credit Union v. Rivera*, 178 N.E.3d 1245, 1247 n.1 (Ind. Ct. App. 2021) ("Generally, issues not considered by the trial court are not properly before us on review.") (citing *Washington*, 808 N.E.2d at 625).

[16] In the present case, after the trial court removed Partee from the courtroom for the second time on the first day of trial, defense counsel objected "for the record," but also stated that she understood why Partee could not be in the courtroom during trial. Tr. Vol. I p. 188. Partee's counsel, however, made no objection based on grounds that the trial court failed to inform Partee that he could return to the courtroom if he promised to behave. Nor did Partee's counsel ever request that the trial court inform Partee that he could return if he promised to behave. Because Partee did not present this issue or argument to

the trial court, we may not consider it on appeal. *See Shorter*, 144 N.E.3d at 841 (holding that defendant waived his arguments regarding the habitual-offender enhancement because he failed to make these arguments to the trial court).

[17] Partee attempts to avoid the forfeiture of his appellate argument by claiming that the trial court's actions constituted fundamental error. The fundamental error doctrine is extremely narrow. *McKinley v. State*, 45 N.E.3d 25, 28 (Ind. Ct. App. 2015) (citing *Isom v. State*, 31 N.E.3d 469, 490 (Ind. 2015), *cert. denied*), *trans. denied*. Fundamental error is error so prejudicial to the rights of a defendant that a fair trial is impossible. *White v. State*, 846 N.E.2d 1026, 1033 (Ind. Ct. App. 2006), *trans. denied*. To prove fundamental error, the appellant must "show that the trial court should have raised the issue *sua sponte* due to a blatant violation of basic and elementary principles, undeniable harm or potential for harm, and prejudice that makes a fair trial impossible." *Harris v. State*, 76 N.E.3d 137, 140 (Ind. 2017). This is a heavy burden that Partee has failed to meet.

[18] The Confrontation Clause of the Sixth Amendment to the United States Constitution, applicable to the states under the Fourteenth Amendment, provides that: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ." One of the most basic of the rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his trial. *Illinois v. Allen*, 397 U.S.

337, 338, 90 S. Ct. 1057, 1058 (1970).[3] A defendant may, however, lose the right to be present at trial by consent or misconduct. *Wells v. State*, 176 N.E.3d 977, 982 (Ind. Ct. App. 2021) (citing *Allen*, 397 U.S. at 342-43, 90 S. Ct. at 1060).

[19] In *Allen*, the United States Supreme Court noted that: "It would degrade our country and our judicial system to permit our courts to be bullied, insulted, and humiliated and their orderly progress thwarted and obstructed by defendants brought before them charged with crimes." *Allen*, 397 U.S. at 346, 90 S. Ct. at 1062. The *Allen* Court elaborated:

> We accept [] the statement of Mr. Justice Cardozo who [] said: "No doubt the privilege (of personally confronting witnesses) may be lost by consent or at times even by misconduct." Although mindful that courts must indulge every reasonable presumption against the loss of constitutional rights, we explicitly hold today that *a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.* Once lost, the right to be present can, of course, be reclaimed as soon as the defendant is willing to conduct himself consistently

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[3] As this Court explained in *Wells*:

> Article 1, Section 13 of the Indiana Constitution affords a defendant in a criminal proceeding the right to be present at all stages of his trial. *Jackson v. State*, 868 N.E.2d 494, 498 (Ind. 2007). A defendant may, however, be tried in absentia where the trial court determines that the defendant knowingly and voluntarily waived that right. *Id.* In *Campbell v. State*, 732 N.E.2d 197, 204 (Ind. Ct. App. 2000), this Court noted that, although the United States Supreme Court in *Allen* addressed only the Sixth Amendment right to be present at trial, "we can perceive of no reason why an identical waiver rule should not also be applicable to Article [1], [S]ection 13 of the Indiana Constitution." *Campbell*, 732 N.E.2d at 205.

*Wells*, 176 N.E.3d at 984. Thus, our discussion encompasses both the Indiana and Federal constitutions.

> with the decorum and respect inherent in the concept of courts and judicial proceedings.
>
> It is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country. The flagrant disregard in the courtroom of elementary standards of proper conduct should not and cannot be tolerated. We believe trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations. We think there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant like Allen: (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) *take him out of the courtroom until he promises to conduct himself properly*.

*Id*. at 342-44, 90 S. Ct. at 1060-61 (emphases added) (internal citations and footnotes omitted) (emphasis added); *accord Wells*, 176 N.E.3d at 983-84.

[20] Focusing on the language in *Allen* that a trial court may remove a disruptive defendant "until he promises to conduct himself properly," 397 U.S. at 344, 90 S. Ct. at 1061, Partee asserts that a defendant must "be advised he may reclaim this constitutional right *and* be afforded the opportunity to return to the courtroom if he promises to behave." Appellant's Br. p. 18.

[21] We recognize that some courts have read the Supreme Court's opinion in *Allen* as requiring trial courts to advise defendants that they may return to the courtroom if they promise to behave. *See Biglari v. State*, 847 A.2d 1239, 1247 (2004) ("[T]he defendant who is removed from the courtroom must be advised

of the opportunity to return upon a promise to behave."). The Court in *Allen*, however, did not explicitly require that a defendant be advised that he may return to the courtroom if he promises to behave; it merely stated that a trial court judge may remove an unruly defendant "until he promises to conduct himself properly." *Allen*, 397 U.S. at 344, 90 S. Ct. at 1061. This does not create a requirement that a trial court advise the defendant that he may return to the courtroom if he promises to behave.

[22] We find support for our conclusion in *Scurr v. Moore*, 647 F.2d 854 (8th Cir. 1981). In that case, the defendant argued that a state trial court judge erred because, at the time the judge removed the defendant from the courtroom for disruptive behavior, it did not specifically advise the defendant that he could return to the courtroom if he behaved properly. The Eighth Circuit held that "such a procedure is desirable, but *Illinois v. Allen* makes no such absolute requirement." *Scurr*, 647 F.2d at 858. Instead, "[t]he *Allen* Court stated only that once the confrontation right is lost it can be reclaimed as soon as the defendant is willing to conform his behavior consistent to the decorum required in judicial proceedings." *Id.*

[23] Here, Partee never indicated that he was willing to conform his behavior to that required in a judicial proceeding. To the contrary, the trial court repeatedly brought Partee back into court and attempted to warn him that he could be excluded from the trial. Nor did the trial court immediately expel Partee from the courtroom due to his behavior. Instead, the trial court attempted less-drastic measures: first warning Partee, then holding him in contempt, then

placing him in administrative segregation. Even then, the trial court twice attempted to bring Partee back into the courtroom for the trial, only to have Partee continue to cause a disturbance. "[I]t boiled down to whether [the defendant], or the [trial court] judge, was going to conduct the trial." *United States v. Nunez*, 877 F.2d 1475, 1478 (10th Cir. 1989). The trial court gave Partee numerous opportunities to behave in a respectful manner. Partee squandered these opportunities and continued in his disruptive conduct. Partee gave the trial court no indication that he was willing to conform his behavior consistent to the decorum required in judicial proceedings.

[24] Accordingly, we conclude that the trial court did not commit error, let alone fundamental error, by failing to explicitly advise Partee that he could return to the courtroom if he promised to behave. We instead commend the trial court for its patience with a defendant as difficult as Partee.

### *II. Sentencing Order*

[25] Partee also claims that the trial court's sentencing order erroneously refers to Count I as originally charged instead of as amended. The sentencing order describes Count I as "35-48-4-1(a)(2)/F2: Dealing in Cocaine Manufacture/ Deliver/Finance – between 5 & 10 grams/*prior*." App. Vol. II p. 28 (emphasis added). As noted above, this is how the State initially charged Partee. The State later amended Count I to charge Partee with dealing in cocaine while possessing a firearm, not dealing cocaine with a prior dealing conviction. The State concedes this error. We, therefore, remand with instructions that the trial court correct this scrivener's error in its sentencing order.

## Conclusion

[26] The trial court did not commit fundamental error by failing to explicitly advise Partee that he could return to the courtroom if he promised to behave in an appropriate manner. The trial court's sentencing order does, however, contain a scrivener's error, and we therefore remand with instructions that the trial court correct this error. We otherwise affirm the judgement of the trial court.

[27] Affirmed and remanded.

Bradford, C.J., and Crone, J., concur.