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IN THE
COURT OF APPEALS OF INDIANA

Toni Knowles,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 7, 2023

Court of Appeals Case No. 22A-CR-2133

Appeal from the Noble Circuit Court

The Honorable Michael J. Kramer, Judge

Trial Court Cause No. 57C01-2001-F4-3

Opinion by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] Toni Knowles appeals the Noble Circuit Court's declaration at the close of her sentencing hearing that twenty-eight days she had spent in jail would not be attributable to her seven-year sentence but instead would be counted as days spent in contempt of court. Knowles raises a single issue for our review, namely, whether the trial court committed fundamental error when it found her to be in contempt without notice and an opportunity to be heard and when the court attributed those twenty-eight days to that contempt finding rather than to her sentence. We reverse the court's finding of contempt and remand with instructions for the court to award Knowles the twenty-eight days, along with any good-time credit to which she may be entitled for those days, as credit toward her seven-year sentence.

Facts and Procedural History

[2] In January 2020, the State charged Knowles with five counts. In March 2022, Knowles and the State entered into a plea agreement in which she agreed to plead guilty to Level 4 felony possession of methamphetamine and Class A misdemeanor theft. In exchange, the State agreed to dismiss the remaining counts. The plea agreement left sentencing to the court's discretion, provided that Knowles did not receive more than five years executed.

[3] At a change-of-plea hearing, the court reviewed Knowles's rights and heard her plea of guilty pursuant to the plea agreement. The court then stated as follows:

> Okay I will find . . . that you understand the nature of [the] charges against you to which you've plead[ed] guilty and [that] you understand the possible sentences . . . and [that] there's a

> factual basis[.] I will take your plea under advisement because I have to have a pre-sentence investigation report before . . . I can . . . sentence you[,] so the probation department will be doing that for me and they need your help with it so after we get done you'll need to see this gentleman over in the corner and he'll have some information you need to fill out[. A]fter you get it from him then you need to . . . go down to the probation department on the bottom floor and sign up because they'll need to interview you.

Tr. Vol. 2, p. 36. The trial court set a sentencing date for April 25, 2022.

[4] At the commencement of the April 25 hearing, the State informed the court as follows:

> Judge before you get started . . . we're here for sentencing today and I was looking through the court['s] record[;] it['s] my memory that you ordered or required defendant[] to . . . cooperate with [a] pre-sentence investigation[.] I don't find that as part of the record . . . . [A]s you can see from the PSI report that was filed this defendant failed to cooperate in any way with the pre-sentence investigation.
>
> * * *
>
> And so it's the State's request that she be remanded to custody at this point and we reset sentencing and give the probation department time to . . . generate a pre-sentence investigation report that's meaningful . . . and . . . use the time between now and then as a sanction for her contempt.

Id. at 40.

[5] Knowles's counsel informed the court that Knowles was "prepared to go ahead with sentencing" notwithstanding the incomplete information in the PSI report. *Id.* Instead, the court responded:

> I will reset this matter for sentencing on May 23rd . . . and I will order that [the defendant] be taken into custody pending that so probation can complete the report[. A]nd I think I . . . explicitly sa[id] you have to . . . meet with this person over here in the corner and fill out the report and get it to them and meet with them. And according to what they said[,] you didn't do either.

Id. at 40-41. Knowles responded that she had had "pneumonia" and had been "really sick." *Id.* at 41. The court stated, "Okay[. W]ell you'll need to be in custody so we can get the report done before . . . we go ahead with sentencing." *Id.* The court then concluded the April 25 hearing. Knowles spent the next twenty-eight days in jail.

[6] The court held Knowles's second sentencing hearing on May 23, at which time the court had received the completed PSI report. At that hearing, Knowles argued for mitigating circumstances, and the State argued for the maximum term allowed under the plea agreement. The State did not argue that any portion of Knowles's time served should be attributed to a finding of contempt.

[7] Nonetheless, the court found as follows:

> The mitigating circumstance I'll find is this is the first felony conviction[. A]s far as the aggravating side[,] . . . you do have other convictions and also a pending in the State of Michigan . . . . Also[,] the . . . failure to follow through with the court['s] order as far as cooperating with the probation on the

> pre-sentence investigation report[. A]nd . . . I am going to not allow you to get credit for [the twenty-eight days] that you served while you had to go back to jail for this period of time[. S]o . . . I will consider that as contempt of court for not following through with the order.

Id. at 46-47. The court then sentenced Knowles to seven years, with five years executed and two years suspended to probation. The court awarded Knowles one day of credit time toward that sentence. This appeal ensued.

Discussion and Decision

[8] Knowles appeals the court's declaration that she was in contempt and its failure to credit the twenty-eight days of incarceration against her seven-year sentence. Trial courts maintain considerable discretion in determining whether a party should be found in contempt of court, and we review such decisions for an abuse of that discretion. *In re Paternity of B.Y.*, 159 N.E.3d 575, 577 (Ind. 2020). We will reverse a finding of contempt only "if there is no evidence or inferences drawn therefrom that support it." *Id.*

[9] Here, however, the parties agree that the fundamental-error standard of review applies. An error is fundamental if it made a fair trial impossible or was a clearly blatant violation of basic and elementary principles of due process that presented an undeniable and substantial potential for harm. *Miller v. State*, 188 N.E.3d 871, 874 (Ind. 2022).

[10] Contempt of court generally involves disobedience of a court or court order that "undermines the court's authority, justice, and dignity." *Reynolds v. Reynolds*, 64

N.E.3d 829, 832 (Ind. 2016) (quoting *In re A.S.*, 9 N.E.3d 129, 131 (Ind. 2014)). As our Supreme Court has made clear, "[t]here are two kinds of contempt: direct contempt and indirect contempt." *Id.* "Direct contempt includes those actions occurring near the court, interfering with the business of the court, *of which the judge has personal knowledge*. Courts have inherent power to punish summarily acts of direct contempt." *In re Haigh*, 7 N.E.3d 980, 989 (Ind. 2014) (emphasis added).

[11] Although the State argues otherwise, we have no hesitation concluding that the trial court could not have found Knowles in direct contempt. The alleged act of disobedience—her failure to participate in the completion of the PSI report—was not an act of which the judge had personal knowledge. Therefore, the trial court's finding of contempt is not sustainable under a theory of direct contempt.

[12] Acts of indirect contempt are those that undermine the activities of the court but fail to satisfy direct contempt requirements. *Id.* Indirect contempt proceedings require an array of due process protections, including notice and an opportunity to be heard. *Id.* As our Supreme Court has thoroughly explained:

> Indiana has codified the procedural requirements for finding indirect contempt at Ind. Code section 34-47-3-5, which provides:
>
> > (a) In all cases of indirect contempt, the person charged with indirect contempt is entitled:
> >
> > (1) before answering the charge; or

> (2) being punished for the contempt; to be served with a rule of the court against which the contempt was alleged to have been committed.

(b) The rule to show cause must:

> (1) clearly and distinctly set forth the facts that are alleged to constitute the contempt;
>
> (2) specify the time and place of the facts with reasonable certainty, as to inform the defendant of the nature and circumstances of the charge against the defendant; and
>
> (3) specify a time and place at which the defendant is required to show cause, in the court, why the defendant should not be attached and punished for such contempt.

(c) The court shall, on proper showing, extend the time provided under subsection (b)(3) to give the defendant a reasonable and just opportunity to be purged of the contempt.

(d) A rule provided for under subsection (b) may not issue until the facts alleged to constitute the contempt have been:

> (1) brought to the knowledge of the court by an information; and
>
> (2) duly verified by oath of affirmation of some officers of the court or other responsible person.

> This statute "[e]ssentially . . . fulfills the due process requirement that a contemnor be provided with adequate notice and an opportunity to be heard." *In re Contempt of Wabash Valley Hosp., Inc.*, 827 N.E.2d 50, 62 (Ind. Ct. App. 2005). . . .
>
> Generally, a court's authority to find a person in contempt rests on whether a trial court has strictly complied with the statutory requirements set forth in the rule to show cause statute. *In re Paternity of J.T.I.*, 875 N.E.2d 447, 451 (Ind. Ct. App. 2007). Our courts have found, however, that strict compliance with the statute may be excused if "it is clear the alleged contemnor nevertheless had clear notice of the accusations against him or her . . . ." *Id. See also Lasater v. Lasater*, 809 N.E.2d 380, 386 (Ind. Ct. App. 2004); *In re Contempt of Wabash Valley Hosp., Inc.*, 827 N.E.2d at 63-64. Examples of this "clear notice" exception include when a contemnor receives a copy of an original contempt information that contains detailed factual allegations of contempt or if the contemnor admits the factual basis for a contempt finding. *In re Paternity of J.T.I.*, 875 N.E.2d at 451.

Reynolds, 64 N.E.3d at 832-33 (some citations omitted; internal omissions and alterations original to *Reynolds*).

[13] For two reasons, the trial court's finding of contempt against Knowles is not sustainable under the theory of indirect contempt. First, the trial court did not comply with, or even appear to consider, Indiana Code section 34-47-3-5. Again, that statute codifies the due-process requirements for notice and opportunity to be heard on an indirect-contempt allegation. *Id.* at 833. As there was no compliance, let alone "strict compliance," with that statute, the trial court's finding of indirect contempt was contrary to Knowles's fundamental due-process rights. *See id.*

[14] Second, neither is the court's failure to comply with Indiana Code section 34-47-3-5 excusable under the "clear notice exception." *See id.* (quotation marks omitted). The trial court provided Knowles with no notice whatsoever that she might be found to be in indirect contempt. At the April 25 hearing, the State suggested that contempt might be an avenue the court should consider, but at no point prior to pronouncing Knowles's sentence at the May 23 hearing did the court state or even suggest that it agreed with that proposition, and at no point did the court provide Knowles with any notice that it was considering that proposition. Therefore, the court's finding that Knowles was in indirect contempt was not permitted under the clear-notice exception.

[15] There is no dispute that Knowles spent twenty-eight days in jail between the April 25 hearing and the May 23 sentencing hearing. We agree with Knowles that those twenty-eight days, along with any good-time credit to which she may be entitled for those days, are to be credited toward her seven-year sentence. We therefore reverse the trial court's finding of contempt and remand with instructions for the court to award Knowles the twenty-eight days, along with any earned good-time credit for those days, against her seven-year sentence.

[16] Reversed and remanded with instructions.

May, J., and Bradford, J., concur.