Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-217

JANUARY TERM, 2002

State of Vermont	}	APPEALED FROM:
v.	}	District Court of Vermont,
Anthony D. Russell	}	Unit No. 3, Franklin Circuit
	}	DOCKET NO. 387-4-01Frcr
	}	Trial Judge: Dean B. Pineles

In the above-entitled cause, the Clerk will enter:

Defendant appeals the district court's order summarily finding him in criminal contempt based upon his profane verbal outburst during proceedings in open court. We affirm.

Defendant was being arraigned in a crowded courtroom during the afternoon of May 7, 2001 on an aggravated assault charge when he interrupted the proceedings. The following exchange took place:

COURT: All right, we'll enter the plea of not guilty.

DEFENDANT: Whoa, whoa, wait a minute, wait a minute. What probable cause do you have? This thing was dismissed over two years ago for the same information that you supposedly found probable cause for? During the probable cause hearing, there was a Motion for Prima Facie that was entered in . . .

DEFENDANT'S ATTORNEY: (Inaudible).

DEFENDANT: Man, shut the fuck up. Sit the fuck down. Now, I have the right to do that.

COURT: Mr. Russell, Mr. Russell, hold on a minute.

DEFENDANT: It was dismissed for prima facie motion.

COURT: Mr. Russell, hold on a minute.

DEFENDANT: The same information that you have right now and you're telling me that you have probable cause to charge me again? No new information?

COURT: I'm finding you, I am finding you in criminal contempt of Court . . .

DEFENDANT: Big fucking deal, I've been doing the last four fucking years contempt of Court, asswipe.

COURT: Then I'm sentencing you . . .

DEFENDANT: You ain't got fucking probable cause for jack shit. I didn't see jack shit, motherfucker.

COURT: In addition to the time you're now serving, I am sentencing you to . . .

DEFENDANT: Fucking bitch. [Referring to court personnel].

COURT: . . . 180 days consecutive . . .

DEFENDANT: Yes, sir . . .

COURT: For criminal contempt of Court.

Defendant spat in the direction of the court as he was being removed from the courtroom. The next day, the court issued an order sentencing defendant to 180 days for criminal contempt, stating that defendant had acted in a manner inconsistent with the orderly administration of justice by repeatedly and loudly using profanity toward the court, his attorney, and court staff, and by spitting in the direction of the court.

On appeal, defendant argues that the district court abused its discretion by sentencing him to 180 days for events that occurred after the court found him in contempt. Defendant reasons as follows: When the defendant directed profane remarks at his counsel, he was placed in contempt. Then, and only then, did he engage in profane and disruptive conduct towards the court and court staff. Yet, as indicated by the court's contempt order, he was punished for his profane personal attack on the court, which should have been handled under the notice-and-hearing contempt procedures contained in V.R.Cr.P. 42(b).

Defendant's arguments are unavailing. First, we conclude that the district court acted correctly in treating defendant's verbal outburst as one contemptuous incident. Defendant's verbal assault on his attorney, the court, and court personnel occurred during a single brief exchange and thus should not be parsed into separate offenses. See Williams v. State, 599 So. 2d 255, 256 (Fla. Dist. Ct. App. 1992) (single adjudication of contempt is appropriate when multiple contumacious comments can be viewed as single outburst); Butler v. State, 330 So. 2d 244, 245 (Fla. Dist. Ct. App. 1976) (upholding one of six contempt adjudications when defendant's outburst was interrupted only by court interjecting itself long enough to inform defendant that he had committed another act of contempt); cf. State v. Van Laarhoven, 279 N.W.2d 488, 490 (Wis. Ct. App. 1979) (second summary adjudication of contempt, which was imposed after defendant had already been arrested for contempt and was being led out of courtroom, was not necessary to preserve order or protect court's authority).

Second, we conclude that the district court did not abuse its discretion in summarily finding defendant in contempt rather than submitting the matter for prosecution in a nonsummary proceeding pursuant to V.R.A.P. 42(b). Under V.R.A.P. 42(a), "criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court." Contempt orders are discretionary acts. Id. at 600. "[R]eversal is appropriate only if the appellant shows that the trial court's discretion was totally withheld or exercised on grounds clearly untenable or unreasonable." Id. The trial court's decision to enter summary contempt rather than submit the matter for a nonsummary proceeding under V.R.Cr.P. 42(b) is also reviewed under an abuse-of-discretion standard. See United States v. Griffin, 84 F.3d 820, 829-30 (7th Cir. 1996); In re Ellenbogen, 72 F.3d 153, 157 (D.C. Cir. 1995).

"In Vermont, criminal contempt is an act 'committed directly against the authority of the court, tending to impede or interrupt its proceedings, or lessen its dignity.'" State v. Allen, 145 Vt. 593, 600 (1985) (quoting In re Morse, 98 Vt. 85, 90 (1924) (emphasis in original)). Summary contempt must be available to allow the judge to act swiftly and firmly in response to profanity uttered before the public and the court in a manner that disrupts ongoing proceedings. Id. at 602. Indeed, this Court has specifically rejected the position that contemptuous conduct involving personal insults directed at the trial judge must always be reviewed by a different judge at a later time under procedures established in V.R.A.P. 42(b). Allen, 145 Vt. at 601. "Where a single remark insults both the individual judge and the sovereign authority that the judge represents, the personal aspect does not require use of the delayed procedure of V.R.Cr.P. 42(b)." Id. A

nonsummary contempt proceeding is mandated "only in the unusual case where the effect of the contemnor's conduct on the judge against whom the contemptuous conduct was levied is such as to indicate that the judge's impartiality or objectivity reasonably may be called into question." Banks v. Thomas, 698 A.2d 268, 284 (Conn. 1997).

Here, the district court immediately placed defendant in criminal contempt for contumacious conduct that was disrupting the proceedings and assaulting the dignity and authority of the court. See United States v. Meyers, 462 F.2d 827, 843 (D.C. Cir. 1972) (summary conviction for criminal contempt is appropriate, even if judge was personally attacked, as long as judge acted promptly to preserve order in courtroom and to protect court's authority). Nothing in the record suggests that the court became personally embroiled in the dispute with defendant; to the contrary, the record reveals that the court acted promptly, without engaging defendant, in dealing with defendant's outburst. Compare Ellenbogen, 72 F.3d at 156 (record does not demonstrate that judge was personally embroiled in dispute with defendant, so there was no need to consider referring matter to another judge), with Sandstrom v. Butterworth, 738 F.2d 1200, 1213 (11th Cir. 1984) (record is replete with evidence that trial judge disliked petitioner and became embroiled in personal dispute with him). We find no abuse of discretion.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice