

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

**ROBERT DEWAYNE COX,**

**Appellant,**

**vs.**

**THE STATE OF OKLAHOMA,**

**Appellee.**

)  
) **NOT FOR PUBLICATION**

) **No. M-2013-918**

)  
) **FILED**  
) **IN COURT OF CRIMINAL APPEALS**  
) **STATE OF OKLAHOMA**

)  
) **DEC 12 2014**

**SUMMARY OPINION**

**MICHAEL S. RICHIE**  
**CLERK**

**LEWIS, PRESIDING JUDGE:**

Appellant, Robert Dewayne Cox, appeals to this Court from an order of the District Court of Bryan County, entered by the Honorable Mark R. Campbell, District Judge, adjudging Appellant to be in direct contempt of court during proceedings in Case No. CF-2012-522. Appellant was originally sentenced to six months in the Bryan County Jail, but that sentence was subsequently modified to sixty days in jail, with credit for time served.

**FACTS**

Appellant was charged by Information in Case No. CF-2012-522 with Count 1 - Possession of Methamphetamine, AFCF; Count 2 - Possession of Marijuana (misdemeanor); and Count 3 - Public Intoxication (misdemeanor). Appellant posted an appearance bond on the charges. The preliminary hearing was scheduled at 11:00 a.m. on December 12, 2012, and Appellant failed to appear by the last call at 11:12 a.m. Appellant's bond was forfeited and a bench warrant was issued for his arrest. Later that day the District Court entered a minute order resetting the preliminary hearing; denying Appellant's motion for reinstatement of previous bond; and setting new bond in the amount of

\$10,000.00. Appellant filed more motions to reduce bond, and complaints about his counsel, that were considered and denied by the District Court.

On October 1, 2013, the day before trial was scheduled, a hearing was conducted before Judge Campbell at the request of Appellant's counsel because Appellant had fired him over Appellant's dissatisfaction with the bond proceedings. Judge Campbell informed Appellant that the trial would be held the next day and asked Appellant if he wanted to either (1) proceed to trial with his current counsel; (2) enter a blind plea of guilty; or (3) proceed to trial and represent himself. Appellant voiced his displeasure at the choices and continually tried to complain about the bond proceedings that had occurred in his case. Judge Campbell tried to direct Appellant's attention back to the choices he had been given, but Appellant interrupted Judge Campbell numerous times. Judge Campbell finally told Appellant that if he interrupted again, he was going to be held in contempt of court and jailed for six months. Appellant continued to interrupt. Judge Campbell ruled that Appellant was in contempt of court and sentenced him to six months in the county jail. Proceedings were adjourned. At a hearing on December 5, 2013, Judge Campbell briefly revisited the contempt citation and ordered that the sentence of six months in the county jail would be modified to sixty days in the county jail, with credit for time already served. Appellant filed this appeal from the contempt citation and sentence.

#### **PROPOSITION OF ERROR**

On appeal, Appellant raises the following proposition of error:

- I. THE TRIAL COURT ERRED IN FINDING APPELLANT TO BE IN DIRECT CONTEMPT OF COURT WITHOUT PROVIDING HIM AN OPPORTUNITY TO BE HEARD.

### ANALYSIS

Appellant's proposition argues that Judge Campbell erred in finding him to be in direct contempt and that his contempt conviction cannot stand because he was deprived of the opportunity to be heard. The Oklahoma Constitution and statutes provide that no penalty or punishment may be imposed for contempt until an opportunity to be heard is given. Okla. Const. Art. II, § 25; 21 O.S.2011, § 565.1(A) ("If necessary, the trial judge may punish a person cited for contempt after an opportunity to be heard has been given."), § 565.1(D) ("Before imposing any punishment for contempt, the judge shall give the offender notice of the charges and an opportunity to adduce evidence or argument relevant to guilt or punishment."). A judge may cite someone for direct contempt of court who "willfully obstructs judicial proceedings." 21 O.S.2011, § 565.1(A); *see also* Rule 20, *Rules for District Courts of Oklahoma*, 12 O.S.2011, Ch.18, App. Citation or censure for direct contempt may be imposed only if either (1) the offender and/or his acts are willfully contemptuous; or (2) the conduct warranting the sanction is preceded by a clear warning that the conduct is impermissible and that specific sanctions may be imposed for repetition. 21 O.S.2011, § 565.1(B)(1), (2); Rule 20(2); *see also Hogg v. State*, 2008 OK CR 8, ¶¶ 6-9, 181 P.3d 724, 725-26.

Under the facts of this case, Judge Campbell was justified in finding that Appellant's conduct willfully obstructed judicial proceedings, 21 O.S.2011, § 565.1(A); and was willfully contemptuous, 21 O.S.2011, § 565.1(B)(1). Appellant continually interrupted the proceedings on October 1, 2013; and willfully disobeyed Judge Campbell's admonitions. Judge Campbell also gave Appellant at least one clear warning that his conduct was impermissible and that specified

sanctions would be imposed for its repetition, 21 O.S.2011, § 565.1(B)(2). Appellant ignored the warning and continued to interrupt the proceedings. Thus, the record shows that both conditions for citing or censuring Appellant for direct contempt were present, when only one was necessary. 21 O.S.2011, § 565.1(B)(1), (2).

However, Appellant is correct that Judge Campbell did not provide him adequate opportunity to adduce evidence or argument when the punishment of six months in the county jail was imposed, or when the punishment was modified to sixty days in the county jail. Okla. Const. Art. II, § 25; 21 O.S.2011, § 565.1(A), (D); Rule 20, *Rules for District Courts of Oklahoma*, 12 O.S.2011, Ch.18, App. The State argues that this procedural error is harmless and does not require reversal. However, the State cites no relevant authority to support this argument. Appellant has cited authority from this Court holding that when the appellant establishes the denial of an opportunity to be heard, the matter can be remanded for a hearing, *Suter v. State*, 1978 OK CR 133, 588 P.2d 578; or reversed with instructions to purge the contempt. *Sullivan v. State*, 1966 OK CR 146, 419 P.2d 559. We find the better course of action under the circumstances of this case is to reverse and remand the matter to the District Court for further proceedings to provide Appellant an opportunity to adduce evidence or argument relevant to guilt or punishment. *Suter, supra*; Okla. Const. Art. II, § 25; 21 O.S.2011, § 565.1(D); Rule 20, *Rules for District Courts of Oklahoma*, 12 O.S.2011, Ch.18, App.

#### **DECISION**

The order of the District Court of Bryan County, entered during

proceedings in Case No. CF-2012-522 by the Honorable Mark R. Campbell, District Judge, which adjudged Appellant to be in direct contempt of court and sentenced him to a term in the Bryan County Jail is **REVERSED** and **REMANDED** to the District Court for further proceedings to provide Appellant an opportunity to adduce evidence or argument relevant to guilt or punishment. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2014), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF BRYAN COUNTY  
THE HONORABLE MARK R. CAMPBELL, DISTRICT JUDGE

**APPEARANCES IN DISTRICT COURT**

D. MICHAEL HAGGERTY, II  
Haggerty Law Office, PLLC.  
716 West Evergreen Street  
Durant, OK 74701  
COUNSEL FOR APPELLANT

JULIE CUESTA-NAIFEH  
Assistant District Attorney  
Bryan County District Attorney's Office  
117 North Third Street  
Durant, OK 74701  
COUNSEL FOR THE STATE

**OPINION BY:** LEWIS, P.J.  
SMITH, V.P.J.: Dissents  
LUMPKIN, J.: Concurs  
JOHNSON, J.: Concurs

RB/F

**APPEARANCES ON APPEAL**

ROBERT W. JACKSON  
Appellate Defense Counsel  
P. O. Box 926  
Norman, OK 73070  
COUNSEL FOR APPELLANT

E. SCOTT PRUITT  
Attorney General of Oklahoma  
JOSHUA L. LOCKETT  
Assistant Attorney General  
313 N.E. 21<sup>st</sup> Street  
Oklahoma City, OK 73105  
COUNSEL FOR THE STATE

**SMITH, V.P.J., DISSENTING:**

The trial court was correct in warning the appellant, and subsequently finding the appellant in direct contempt. The trial court erred in not affording the appellant an opportunity to be heard. However, I would find this error harmless in light of the fact that the sentence was later modified to 60 days and the appellant was sentenced to 10 years in the case that was the basis of the contempt finding.