

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION ELEVEN

FILED BY CLERK  
K.S. DISTRICT COURT  
THIRD JUDICIAL DIST.  
SPEKA, KS.

2012 APR 16 11 31 AM

STATE OF KANSAS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MILTON GILMORE LEE, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. 10-CR-2087

**MEMORANDUM DECISION AND ORDER**

This matter comes before the Court on the Motion for Judgment of Acquittal filed by the defendant, *pro se*, on March 13, 2012, regarding his having been found in direct criminal contempt of court. After careful consideration, the Court finds and concludes as follows:

**NATURE OF THE CASE**

On February 16, 2011, the defendant, Milton Gilmore Lee, who is currently incarcerated at Lansing Correctional Facility, was held in direct criminal contempt of court due to his behavior while attending a preliminary hearing regarding his underlying charge of criminal threat. The contumacious conduct giving rise to the contempt charge occurred when the Court attempted to warn Lee about his behavior after he had been found mentally competent. Lee responded by rising from his chair to shout curses and threats at the Court, as well as parties and witnesses. Unable to provide any defense or justification for his behavior, Lee was found in direct criminal contempt of court, and to have waived his right to be present at the preliminary hearing, and was removed from the courtroom.

On March 28, 2011, Lee was given two distinct, time-disparate opportunities to purge his contempt and refused to do so; instead, he opted to incur another charge of contempt by engaging in contumacious conduct similar to that of February 16, 2011, without providing justification or defense, and was removed from the courtroom.

When Lee appeared before the Court via two-way video conference on April 13, 2011, and again on May 16, 2011, he refused to purge his contempt, and employed loud, threatening behavior intended to obstruct, disrupt, and interfere with the proceedings. In both instances Lee failed to provide any defense or justification for his behavior, and the Court found him in direct criminal contempt of court and removed him from the courtroom.

On June 16, 2011, Lee purged his contempt by apologizing to the Court for his behavior, and, on August 2, 2011, the Court sentenced him to a term of 120 days in the Shawnee County Department of Corrections. Approximately nine months later, on March 13, 2012, Lee filed the Motion for Judgment of Acquittal that is the subject of this Order.

#### **DISCUSSION AND CONCLUSIONS OF LAW**

In the motion now before the Court, Lee asserts that by accepting his apology and determining that such apology effectively purged the contempt, “[t]he ruling of the court was an exoneration of guilt and amounts to a Judgment of Acquittal in the matter.” *Defendant’s Motion, I*. This assertion and, thereby, the motion itself is not supported by the law.

A court’s contempt powers provide the means by which the court ensures that courtroom decorum is maintained, its judgments are enforced, and proper respect is given to its orders. *In re J.T.R.*, \_\_ Kan. App. 2d \_\_, 271 P.3d 1262 (2012). “Direct criminal contempt,” such as was found by the Court in this case, is conduct occurring in the presence of the judge that disparages the authority and dignity of the court and impedes the judicial process. *In re J.T.R.*, \_\_ Kan. App.

2d \_\_; K.S.A. 20-1202. Where the conduct denounces, insults, and slanders the court, impeding the proceedings, a criminal contempt charge has been deemed appropriate by both the Kansas Supreme Court and the United States Supreme Court. *Mayberry v. Pennsylvania*, 400 U.S. 455, 91 S. Ct. 499, 27 L. Ed. 2d 532 (1971); *State v. Pondexter*, 225 Kan. 425, 429, 590 P.2d 1074 (1979). Finally, our statutes allow for direct contempt to be “punished summarily, without written accusation . . .” so long as the adjudicating court enters a judgment of record, if finding the accused guilty, which specifies the conduct constituting the contempt, any defenses offered, and the sentence imposed. K.S.A. 20-1203.

On no less than four separate occasions the defendant in the case at bar, Milton Gilmore Lee, willfully and intentionally comported himself before the Court in a manner designed to disrupt and impair the proceedings, as well as to express a complete disregard for the Court’s authority, by shouting curses, insults, and threats at the Court, as well as the parties and witnesses. When given the opportunity to purge his contempt – on four separate occasions over a four month period – Lee instead chose to continue his profanity-laden onslaught of insults and threats against the Court. Nevertheless, Lee believes that since the Court accepted his apology, thus ending his ongoing contempt, that it absolved him of the contempt that occurred prior to the apology. The logic in Lee’s argument is flawed. If the Court were to follow Lee’s logic, the underlying purpose of the contempt power as well as its practical effect would be forfeited, as anyone engaging in contumacious conduct during the course of judicial proceedings could escape accountability simply by issuing an apology.

As a matter of procedure, Lee filed a motion for judgment of acquittal as to the Court having adjudged him guilty of contempt. A judgment of acquittal, however, only arises where the evidence presented is insufficient to sustain a conviction for the crime. K.S.A. 22-3419;

Black's Law Dictionary 847 (7th ed. 1999). As noted earlier, our statutes allow courts to summarily punish instances of direct contempt such as that engaged in by Lee. K.S.A. 20-1203. The evidence and circumstances of Lee's direct criminal contempt are well known to the Court since it was the object of that contempt. Lee did not provide any defense or justification for his behavior at the time it occurred, nor has Lee provided any new information that would merit a judgment of acquittal.

### CONCLUSION

Based upon the foregoing reasons, Martin Gilmore Lee's Motion for Judgment of Acquittal is hereby denied. This Memorandum Decision and Order shall constitute the Court's entry of judgment when filed with the Clerk of this Court, and no further journal entry is required.

IT IS SO ORDERED.

Dated this 12<sup>th</sup> day of April, 2012.

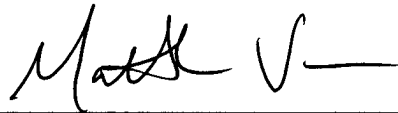
  
Hon. Cheryl R. Kingfisher  
District Judge

**CERTIFICATE OF MAILING**

I hereby certify that a copy of the above and foregoing **MEMORANDUM DECISION AND ORDER** was mailed, hand delivered, or placed in the pick-up bin this 16 day of April, 2012, to the following:

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Matthew Vance  
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