

# DIRECT *MINOR* CRIMINAL CONTEMPT



**Judge Bob Miller**

# WHAT IS CONTEMPT

- It is a long standing rule in Illinois that acts which constitute contempt of court are those which are calculated to embarrass, hinder or obstruct a court in its administration of justice or to derogate from its authority or dignity, or bring the administration of law into disrepute.
- People v. Haas, 100 Ill. App. 3d 1143, 1146, 427 N.E.2d 853, 856 (1981)

# WHAT IS DIRECT CONTEMPT?

- Direct criminal contempt is conduct committed in the presence of the judge, in court, which he/she observes and has personal knowledge of.

- People v. Jashunsky, 51 Ill. 2d 220, 226, 282 N.E.2d 1, 4 (1972)

# TWO TYPES OF DIRECT CRIMINAL CONTEMPT

- There are two types of Direct Criminal Contempt:
  1. *Minor* Direct Criminal Contempt
  2. *Serious* Direct Criminal Contempt

# MINOR DIRECT CRIMINAL CONTEMPT

- Minor Direct Criminal Contempt is characterized by a sanction that includes:
  1. A sentence that does **NOT** exceed six months incarceration
  2. And/or a maximum fine of **\$500**

# **SERIOUS DIRECT CRIMINAL CONTEMPT**

Serious Direct Criminal Contempt is defined as conduct which may subject the contemnor to a sentence in excess of six months incarceration and/or a fine in excess of \$500.

# SERIOUS DIRECT CRIMINAL CONTEMPT

- At the trial of a charge of Serious Direct Criminal Contempt, the defendant is entitled to:
- Counsel, including appointed counsel if indigent.
- The right to be present at trial
- A public jury trial
- Proven to have acted contemptuously beyond a reasonable doubt

# MINOR DIRECT CRIMINAL CONTEMPT

- A person who is sanctioned for Minor Direct Criminal Contempt has the right to:
  - 1. Notice of the contemptuous acts for which the sanction is applied.**
  - 2. Make a statement in allocution before the sanction is imposed.**
  - 3. Be provided with as written order of the Direct Criminal Contempt.**
  - 4. Appeal the finding of contempt and the sanction**



# DEFENDANT'S RIGHTS

- For Minor Direct Criminal Contempt, the defendant does NOT have a right to:

1. An attorney
2. Trial by Jury
3. Substitution of Judge

- *McAdams v. Smith*, 25 Ill. App. 2d 237, 166 N.E.2d 446, (Ill. App. Ct. 1960)

# RECUSAL OF JUDGE

- The judge should recuse himself/herself if the trial judge becomes so personally embroiled in the controversy with the contemnor that his or her judgment can reasonably be questioned.
- *People v. Winchell*, 45 Ill. App. 3d 752, 359 N.E.2d 487 (1977)

# A WRITTEN ORDER OF CONTEMPT SHOULD BE ENTERED

- If the defendant is found to be in contempt, the accused has a right of appeal, and it is, therefore, necessary for the court to enter a written order setting forth fully and clearly the facts out of which the contempt arose so that the reviewing court may determine if the committing court had jurisdiction to enter the order.
- People v. Jashunsky, 51 Ill. 2d 220, 226, 282
- N.E.2 d 1, 4 (1972)

# SENTENCING FACTORS

- The Supreme court has applied the following factors recognized in *United States v. United Mine Workers of America*, 330 U.S. 258, 302-03 (1947), that a circuit court may consider when determining an appropriate sentence for criminal contempt:
  - "(1) the extent of the willful and deliberate defiance of the court's order,
  - (2) the seriousness of the consequences of the contumacious behavior,
  - (3) the necessity of effectively terminating the defendant's defiance as required by the public interest, and
  - (4) the importance of deterring such acts in the future."

# CONTENTS OF WRITTEN ORDER

- All the essential facts must be fully set forth and no part thereof can be supplied by presumptions or inferences. People v. Tavernier, 384 Ill. 388, 51N.E.2d 528.
- No facts which did not occur in the presence of the court should be taken into consideration by the court in adjudging guilt or in fixing the punishment. People v. Jashunsky, 51 Ill. 2d 220, 226, 282 N.E.2d 1, 5 (1972)

# WRITTEN ORDER VS. TRANSCRIPT

- Appellate courts have held that the court on review of a direct contempt proceeding may look to the report of proceedings in addition to the contempt order to determine whether the contempt order was correct
- Appellate Courts have further held that since the report of the proceedings reflects what actually occurred in open court, the findings in the order of contempt, if in conflict with the report of the proceedings, do not control; and that it is only where there is no report of proceedings that the reviewing court will not go behind the order but is bound to assume that the findings are correct.

People v. Jashunsky, 51 Ill. 2d 220, 226-27, 282 N.E.2d 1, (1972)

# APPELLATE REVIEW

- The Appellate Court reviews a sentence imposed for direct criminal contempt under the abuse of discretion standard.
- "A sentence will be deemed an abuse of discretion where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense."

*People v. Geiger*, 2012 IL 113181, 978 N.E.2d 1061

# WHAT THE APPELLATE COURT CONSIDERS

- Since no sentencing guidelines apply for contempt cases, reviewing courts bear a "special responsibility for determining that the contempt power is not abused, to be exercised if necessary by revising themselves the sentences imposed.
- People v. Geiger, 2012 IL 113181, 978 N.E.2d 1061
- Michael C. v. Amber B., 2019 IL App (4th) 180659-U