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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed November 30, 1983

CHARLES O. REESE,

Plaintiff,

vs.

HONORABLE DAVID B. HENDRICKSON and HONORABLE HARLAN W. BAINTER, LEE COUNTY DISTRICT COURT,

Defendants.

3-270
2-69051

Appeal from Lee District Court, David B. Hendrickson, Judge.

Plaintiff prison inmate challenges via certiorari the district court orders finding him in contempt for failure to testify before a grand jury. WRIT ANNULLED.

James Cleary, Des Moines, for plaintiff.

Thomas J. Miller, Attorney General, and Michael K. Jordan, Assistant Attorney General, for defendants.

Heard by Oxberger, C.J., and Snell, and Hayden, JJ.

OXBERGER, C.J.

Plaintiff prison inmate challenges via certiorari the district court orders finding him in contempt for failure to testify before a grand jury, asserting: (1) that the court lacked jurisdiction to find him in contempt when he was not personally served with a rule to show cause; (2) that the evidence was insufficient to support a finding of contempt; (3) that the court should have stated on the record reasons for the sentence imposed; and (4) that the sentence of six months in jail was excessive. The State asserts that plaintiff was brought before the court pursuant to Iowa Code section 665.7, rendering unnecessary personal service of a rule to show cause. We annul the writ.

I. Jurisdiction

Reese argues that the trial court was without jurisdiction to find him in contempt because of a failure to personally serve him with a rule to show cause pursuant to Iowa Code section 665.7 (1981). That section provides:

> Before punishing for contempt, unless the offender is already in the presence of the court, he must be served personally with a rule to show cause against the punishment, and a reasonable time given him therefor; or he may be brought before the court forthwith, or on a given day, by warrant, if necessary. In either case he may, at his option, make a written explanation of his conduct under oath, which must be filed and preserved.

Iowa Code § 665.7 (1981)(emphasis added). Because we find that the statute was satisfied by Reese's personal appearance before the court,the jurisdictional argument must fail. Criswell v. Hendrickson, _____ N.W.2d _____ (Iowa Ct. App. 1983). Furthermore, Reese was not prejudiced by this procedure. Reese appeared before Judge Hendrickson and attempted to show cause. Subsequently, his motion to reopen was sustained and a further evidentiary hearing before Judge Bainter was held where Reese, with counsel, had every opportunity to present a defense. For these reasons, we find the jurisdictional requirements of section 665.7 have been satisfied.

II. Sufficiency of the Evidence

Reese contends the evidence was not sufficient to support the trial court's finding of contempt. In this certiorari action, we do not review the evidence de novo. We need only examine the evidence to assure that proof of contempt is clear and satisfactory. Wilson v. Fenton, 312 N.W.2d 524, 527 (Iowa 1981); Rausch v. Rausch, 314 N.W.2d 172, 174 (Iowa Ct. App. 1981). Reese admitted to disobeying the subpoena and furthermore refused to cure the contempt by testifying. As such, it is his burden to prove some defense to purge himself of contempt. See Foust v. Denato, 175 N.W.2d 403, 405 (Iowa 1970). Reese argues his fear of reprisal was one reason why he refused to appear. First of all, an assertion by Reese that he feared reprisal should he testify before the grand jury is not sufficient, standing alone, to render him immune from contempt proceedings. Criswell at ____. Reese's fear was a general one. He acknowledged his fears in response to leading questions from counsel. Unsubstantiated assertions of fear of reprisal do not provide a defense for a petitioner in a show cause hearing. Criswell at ____.

Reese also contends that an agreement he made with area prosecutors was violated and that he knew nothing of the matters being investigated by the grand jury. Reese may very well have believed that he was only going to appear before the second phase of the grand jury and that he knew nothing of importance about the Tyson case under investigation. However, under these circumstances, that is not sufficient defense to purge himself of contempt. The evidence shows that Mr. Young from the attorney general's office advised Reese's attorney, Mr. Cleary, that it would be very possible that an inmate could be a witness both before the Tyson grand jury and the second grand jury that would be looking into staff misconduct. Furthermore, through a deposition that Reese gave, there was

some indication that Reese had knowledge that the riot at the prison was a pretext to kill Gary Tyson. When information within a witness's knowledge is potentially important to a case, a witness must tell what he knows as it is his social duty to aid in the execution of justice. Gibb v. Hansen, 286 N.W.2d 180, 188 (Iowa 1979). After reviewing all the evidence, we find that the proof of contempt was clear and satisfactory and that Reese did not show sufficient defense to purge himself of contempt. Therefore, we affirm the trial court's order.

III. Sentencing

Reese asserts that the trial court acted illegally by failing to provide reasons on the record for the sentence imposed. Chapter 665 of the Iowa Code which governs contempt proceedings places no burden on the trial court to specify its reasons for imposing any particular sentence. Criswell at _____. Even if such a showing were required the record in this case clearly demonstrates that the maximum sentence was imposed because of Reese's failure to comply with the subpoena and his continuing failure to comply.

For the foregoing reasons, we annul Reese's writ of certiorari.

WRIT ANNULLED.