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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-323

JANUARY TERM, 2004

State of Vermont v. Steven Deforge	APPEALED FROM: District Court of Vermont, Unit No. 1, Windham Circuit Trial Judge: Karen Carroll

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

Defendant Steven Deforge appeals pro se from the trial court= s summary criminal contempt order and its imposition of a three-day jail sentence. Defendant argues that the court erred by: (1) charging him with contempt; (2) failing to comply with the requirements of V.R.Cr.P. 42(a); and (3) proceeding under Rule 42(a) rather than V.R.Cr.P. 42(b), which would have allowed him to hire an attorney and prepare a defense. We affirm.

Defendant was charged with summary contempt based on his conduct during his son= s arraignment on felony drug charges. The record reveals that during the arraignment, defendant interrupted the court several times. The court reprimanded defendant, and a court clerk told him to sit down. **TR 3.** Court proceedings continued, and within a short time, defendant was again asked to sit down. The following exchange then occurred:

[The Court]: Sir, can you have a seat, please?

[Defendant]: Why?

[The Court]: Because I= m telling you to, sit down.

[Defendant]: (Inaudible) nothing.

[The Court]: Sit down.

[Defendant]: He has no income. Damian, say nothing.

[The Court]: Sir.

[Defendant]: I will leave, because this is a kangaroo court. Like I say, again, I= m leaving. I= m leaving, I said. I don= t care how big you are. (Inaudible) bigger [expletive] than you are.

The latter comment was apparently directed at a court officer who was escorting defendant from the courtroom. Defendant interrupted the court one more time, and left the courtroom. He was then taken into custody. At the conclusion of the arraignment, defendant was brought before the court and he apologized for his behavior. **TR 15.** The court responded:

I asked you number one, to not speak, which you appeared to abide by after a period of time, but then you approached the prosecution table and you were behind it, I asked you to please sit, and at that point, you did not abide by my order,

and that, the Court finds, interferes with the Court=s process, and the Court=s inability to conduct its business at this time. The Court will find you in contempt of Court, that=s summary contempt, in that you committed a contempt of the Court=s order in the Court=s presence by not obeying the Court=s request to resume your seat when requested to do so.

TR 16. The court also found that defendant had used inappropriate language. Based on these facts, the court found defendant in summary contempt under Rule 42(a) and sentenced him to three days in jail. Defendant served his sentence, and this appeal followed.

Defendant argues that the court abused its discretion by summarily finding him guilty of criminal contempt, and erred by failing to follow the procedural requirements of Rule 42(a). He asserts that his behavior was not sufficiently disruptive to warrant the application of Rule 42(a) and to deprive him of the procedural protections provided by Rule 42(b).

We review a trial court= s contempt order for abuse of discretion. State v. Allen, 145 Vt. 593, 600 (1985). Therefore, we will reverse only if defendant demonstrates that the trial court= s discretion A was either totally withheld or exercised on grounds clearly untenable or unreasonable.@ Id.

In Vermont, criminal contempt is A an act committed directly against the authority of the court, tending to impede or interrupt its proceedings, or lessen its dignity.@ Id. (internal quotation marks, emphasis and citation omitted). Vermont Rule of Criminal Procedure 42(a) allows for summary disposition if the court certifies that it saw or heard the conduct constituting the contempt and the contempt was committed in the actual presence of the court. Under Rule 42(a), the court= s order of contempt must recite the facts, be signed by the judge, and entered of record. If the court proceeds under Rule 42(b), it must provide defendant with notice and a hearing before imposing punishment for criminal contempt.

We first address defendant= s argument that the court failed to comply with the procedural requirements of Rule 42(a). The record reveals that the trial court did not issue a signed order of contempt reciting the facts, nor did it enter such order into the record. However, as we held in Allen, this is not a fatal flaw. See Allen, 145 Vt. at 600 n.1. As in Allen, the transcripts of the court proceedings are A an acceptable substitute for the written order required by V.R.Cr.P. 42(a)@ and they adequately disclose A the basis for the court= s action.@ Id. Thus, A [t]he defect is a technical one, rather than substantive, amounting in this case to no more than harmless error.@ Id.

Defendant next argues that the court abused its discretion by proceeding under Rule 42(a), rather than Rule 42(b). We disagree. The express terms of Rule 42(a) allow the court to summarily punish a criminal contempt that occurs in the court= s presence. The record shows that defendant used an obscenity and failed to follow the court= s directions while the court was attempting to conduct an arraignment. The trial court found that defendant= s behavior constituted criminal contempt because it interfered with the court= s process and its ability to conduct its business. The court= s findings are supported by the record and we find no abuse of discretion in its decision to summarily punish defendant under Rule 42(a).

We are not persuaded that the federal case law on which defendant relies requires a different result. See e.g., Harris v. United States, 382 U.S. 162, 164-65 (1965) (witness= s refusal to testify before grand jury not A such an open, serious threat to orderly procedure that instant and summary punishment, as distinguished from due and deliberate procedures, was necessary@) (internal citation omitted); United States v. Wilson, 421 U.S. 309, 319 (1975) (use of summary contempt power is permissible A to discourage witnesses from contumacious refusals to comply with lawful orders essential to prevent a breakdown of the proceedings,@ although if time is not of the essence, A the provisions of [F.R.Cr.P.] 42(b) [now Rule 42(a)] may be more appropriate to deal with contemptuous conduct@). These cases recognize that the trial court must be afforded the discretion to address contemptuous conduct in the courtroom. As the Wilson court stated, A the authority under Rule 42(a) to punish summarily can be abused; the courts of appeals, however, can deal with abuses of discretion without restricting the Rule in contradiction of its express terms, and without unduly limiting the power of the trial judge to act swiftly and firmly to prevent contumacious conduct from disrupting the orderly progress of a criminal trial.@ Wilson, 421 U.S. at 319. This statement is consistent with our holding in Allen, where we explained that A [t]he power to punish for contempt is indispensible to secure both the proper transaction and dispatch of business and the respect and obedience due to the court and necessary for the

administration of justice.@ 145 Vt. at 600 (internal quotations, emphasis and citations omitted). We find no abuse of discretion in the court= s action here.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Paul L. Reiber, Associate Justice