

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY,
FLORIDA

CADENCE PILLOT-LIND
aka DADENCE PILLOT-LIND,

CASE NO. 2014-AP-35-A-O
Lower Case No. 2014-MM-4876-A-O

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

_____ /

Appeal from the County Court
for Orange County, Florida
Wilfredo Martinez, County Court Judge

Robert Wesley, Public Defender
and, Joseph William Engel, Jr. Assistant Public Defender
for Appellant

Jeffrey Ashton, State Attorney
and Benjamin L. Hoffman, Esq., Assistant State Attorney
Attorney for Appellee.

Before TURNER, UNDERWOOD, MYERS, J.J.

PER CURIAM.

FINAL ORDER REVERSING THE TRIAL COURT

Appellant seeks review of the trial court's order finding her in direct criminal contempt. With regard to the procedure followed by the trial court, strict compliance with Florida Rule of Criminal Procedure 3.830 is necessary and failure to follow the procedural requirements constitutes fundamental error. *Searcy v. State*, 971 So. 2d 1008, 1014 (Fla. 3d DCA 2008). Whether the conduct observed by the trial court constitutes

direct contempt is reviewed under an abuse of discretion standard and “since the trial court has witnessed the conduct at issue, the trial court therefore is in the best position to determine whether it is necessary to summarily punish [the offender].” *Thomas v. State*, 752 So. 2d 679, 685 (Fla. 1st DCA 2000).

The State declined to file a brief in this case, stating that it did not participate in the proceedings below and it takes no position in the appeal.

Appellant contends that the trial court erred in failing to advise her of her right to counsel and failed to consider whether counsel should have been appointed. While Florida’s district courts are in conflict on the question of the right to counsel in direct contempt proceedings and the issue is pending before the Florida Supreme Court, *Plank v. State*, 145 So. 3d 827 (Fla. 2014), the Fifth District Court of Appeal holds that procedures under Rule 3.830 do not require the appointment of counsel. *Johnson v. State*, 906 So. 2d 361 (Fla. 5th DCA 2005). Therefore, the trial court did not err in failing to appoint counsel or to make a determination of Appellant’s ability to represent herself.

Appellant also contends that her conduct in the courtroom did not rise to the level of intentional contempt and that the court improperly considered facts which occurred outside of the courtroom. A court may find direct contempt only where it “saw or heard the conduct constituting the contempt committed in the actual presence of the court.” Rule 3.830, Fl.R.Crim.P.; *Hutcheson v. State*, 903 So. 2d 1060, 1061 (Fla. 5th DCA 2005). The conduct must have

hindered or obstructed the court in the administration of justice, or lessened the court's authority or dignity. The power of contempt must be used only rarely and with circumspection. The provocation must never be slight, doubtful or of shifting interpretations. The occasion should be real and necessary, not murky, and not ameliorated in some less formal manner.

McRoy v. State, 31 So. 3d 273, 275 (Fla. 5th DCA 2010) (internal citations omitted). Direct contempt should be found only where “immediate punishment is essential to prevent demoralization of the court's authority before the public.” *Davila v. State*, 100 So. 3d 262, 263 (Fla. 3d DCA 2012).

The trial court’s order found that following occurred in its presence:

The court was conducting arraignments. Persons in the courtroom had been directed to silence their phones and keep them out of sight. Appellant interrupted proceedings by saying something “aloud in a disruptive manner.” She told the court she had coughed but the court “knew she had not coughed.” She was asked to leave the courtroom. “She did not leave quietly.” (The transcript from arraignments indicates that the court had to threaten her with being physically removed before she left on her own). She was advised not to come back until called for her arraignment. She returned to the courtroom before being called. When asked why she had entered, she told the court she was sorry for her behavior. The court accepted her apology and shortly thereafter she entered a plea to the charges pending against her without incident. She left with her paperwork. About 15 minutes later she returned, and walked along the back of the courtroom with her phone to her ear, apparently talking on it. She looked directly at the judge. She went to a bench, picked something up and headed back toward the door, still with the phone to her ear and still looking at the judge. The court told her to sit down and said it would deal with her behavior shortly. She started yelling that she was pregnant, cramping badly, and needed help. She left the courtroom, still being disruptive. The court told the deputies to call 911.

Because of the apparent emergency, the court could not continue with contempt proceedings immediately. The next day, after receiving a report from law enforcement, the court called Appellant before it and conducted a contempt hearing.

The other incidents discussed at the contempt hearing and recited in detail in the order include Appellant being taken to the hospital by paramedics after telling them she was suffering a miscarriage; she allegedly left the hospital without seeking any medical treatment. She also allegedly lied to deputies about her purse being stolen. These incidents did not occur in the presence of the court. The court read a deputy's report on these events at the contempt hearing and questioned Appellant at length about them, suggesting that it was taking these events into account in reaching its decision.

Under an abuse of discretion standard and where the trial court was in the best position to witness Appellant's conduct, this Court cannot find as a matter of law that the disruptive acts personally observed by the trial court did not constitute direct contempt. The trial court described Appellant's behavior as making a mockery of the court system. However, it is impossible to discern from either the hearing transcript or the order whether the trial court would have found Appellant in contempt based on her in-court conduct alone or whether it also incorrectly relied on the deputy's written report concerning Appellant's out-of-court behaviors.

It is therefore necessary to reverse the contempt conviction and remand the matter for further proceedings. The trial court may conduct a new contempt hearing in strict compliance with Rule 3.830. *Bonet v. State*, 937 So. 2d 209, 211 (Fla. 3d DCA 2006). The Rule requires that only conduct occurring in the presence of the court be considered. Further, it requires that the court not merely ask the alleged offender to explain her

conduct; it must inform her of her right to present evidence of excusing or mitigating circumstances and allow her the opportunity to do so. *Garrett v. State*, 876 So. 2d 24, 25 (Fla. 1st DCA 2004); *Searcy v. State*, 971 So. 2d 1008, 1014 (Fla. 3d DCA 2008).

IT IS THEREFORE **ORDERED AND ADJUDGED** that the decision of the trial court is **REVERSED** and **REMANDED**.

DONE AND ORDERED in Orlando, Orange County, Florida this 27th day of April, 2015.

/S/

THOMAS W. TURNER
Presiding Circuit Judge

UNDERWOOD and MYERS, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **the Honorable Wilfredo Martinez**, Orange County Courthouse, 425 North Orange Avenue, Orlando, Florida 32801; **Joseph W. Engel, Jr.**, Assistant Public Defender, 415 N. Orange Avenue, Orlando, Florida 32802-1673; and **Benjamin L. Hoffman**, Assistant State Attorney, 435 N Orange Avenue, Orlando, Florida 32801-1526 this 27th day of April, 2015.

/S/

Judicial Assistant