STATE OF CONNECTICUT *v.* DUANE BANKS (AC 17786)

Schaller, Hennessy and Mihalakos, Js.

Argued January 27—officially released August 1, 2000

Counsel

Harry Weller, senior assistant state's attorney, with whom, on the brief, were *James E. Thomas*, state's attorney, *Warren Maxwell*, senior assistant state's attorney, and *Edward Narus*, assistant state's attorney, for the appellant (state).

Rosemarie Weber, certified legal intern, with whom were *Susan M. Hankins*, assistant public defender, and, on the brief, *Katarzyna Maluszewski*, certified legal intern, for the appellee (defendant).

Opinion

SCHALLER, J. The state appeals from the judgment of the trial court, following the defendant's conviction of several crimes,[1] imposing a total effective sentence of imprisonment of twenty-five years to run concurrently with a previous criminal contempt sentence of three months. On appeal, the state claims that the trial court in this case improperly ordered that the defendant's

sentence was to run concurrently with a previously imposed criminal contempt sentence. We affirm the judgment of the trial court.

The following facts are relevant to this appeal. On November 29, 1995, the court, *Espinosa, J.*, summarily found the defendant, Duane Banks, in criminal contempt of court[2] on three separate occasions during a hearing on a motion for modification of bail. The court sentenced the defendant to consecutive prison terms of three months on each contempt finding, for a total effective sentence of nine months. The defendant filed a writ of error challenging the court's three summary judgments of criminal contempt and moved for a stay of sentence.[3] Our Supreme Court affirmed the first contempt judgment and the resulting three month sentence, and reversed the other two contempt judgments. *Banks* v. *Thomas*, 241 Conn. 569, 698 A.2d 268 (1997) (*Banks I*).

Prior to the decision in *Banks I*, the defendant was convicted on the robbery charges, and on November 15, 1996, the court, *Spada, J.*, sentenced the defendant to a total effective sentence of twenty-five years. The court failed, however, to specify whether the sentence was to be concurrent with or consecutive to the contempt sentences previously imposed. On September 19, 1997, pursuant to Practice Book § 43-22 and General Statutes § 53a-37, the state filed a motion to correct an illegal sentence, seeking clarification on whether the sentences were to be concurrent or consecutive.[4] At the hearing, Judge Spada clarified his original sentence, stating: ''A sentence of twenty-five years is more than adequate and, therefore, the sentence imposed by [me] . . . is to run concurrent with the sentence imposed by Judge Espinosa of three months.'' The court thereafter denied the motion to correct the sentence. The present appeal ensued.

The state claims that the court improperly ordered that the defendant serve his criminal contempt sentence and the sentence on the robbery charges concurrently. It is the state's position that criminal contempt is not a criminal offense and, therefore, ''the sentencing power granted [to the trial court under] General Statutes §§ 53a-28 to 53a-47 does not include the authority to affect a sentence of contempt.'' We disagree.

The state raises an issue of first impression for this court when it questions whether a court has the authority, pursuant to § 53a-37,[5] to order that a criminal sentence run concurrently with an earlier criminal contempt sentence that was imposed by a different trial court. Our resolution of this issue is a matter of statutory interpretation over which our review is plenary. *Alvarado* v. *Black*, 248 Conn. 409, 414, 728 A.2d 500 (1999). We conclude that § 53a-37 permits a trial court to run a criminal sentence concurrently with an earlier criminal contempt sentence.

"Under . . . § 53a-37, the trial court is authorized to impose sentences on multiple counts either to run concurrently with each other or to run consecutively to each other. The determination whether to impose concurrent or consecutive sentences is a matter within the sound discretion of the trial court." *State* v. *King*, 249 Conn. 645, 688, 735 A.2d 267 (1999). The state has provided us with no authority, and we are aware of none, that limits the ability of the court to impose a sentence that runs concurrently with a previous sentence for criminal contempt.

The state cites *State* v. *Jackson*, 147 Conn. 167, 170, 158 A.2d 166 (1960), for the proposition that criminal contempt is not a criminal offense.[6] The state argues that pursuant to § 53a-28 (a), "every person convicted of an *offense* shall be sentenced in accordance with this title."[7] (Emphasis added.) The state argues, therefore, that a trial court has no authority under § 53a-37 to run the defendant's criminal contempt sentence concurrently with his sentence for the underlying conviction because criminal contempt is not a § 53a-28 (a) type "offense."[8] The state's argument overlooks the plain language of the statutes. Section 53a-37 provides in relevant part that "when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and to the undischarged term or terms in such manner as the court directs at the time of sentence." In this case, the defendant was subject to an undischarged term of imprisonment (the criminal contempt sentence) and sentenced to an additional term of imprisonment (the term of imprisonment for the robbery conviction). The court had the authority under § 53a-28 to sentence the defendant in accordance with §§ 53a-28 through 53a-47 because the defendant was convicted of an offense.[9] The state fails to provide this court with any authority that indicates that § 53a-37 is applicable only when both sentences stem from criminal offenses.[10]

The judgment is affirmed.

In this opinion the other judges concurred.

[1] After a jury trial, the defendant was convicted of robbery in the first degree in violation of General Statutes §§ 53a-134 (a) (4) and 53a-8, conspiracy to commit robbery in the first degree in violation of General Statutes §§ 53a-134 (a) (4) and 53a-48 (a), and robbery in the third degree in violation of General Statutes §§ 53a-136 and 53a-136a.

[2] General Statutes § 51-33a (a) provides: "Any person who violates the dignity and authority of any court, in its presence or so near thereto as to obstruct the administration of justice, or any officer of any court who misbehaves in the conduct of his official duties shall be guilty of contempt and shall be fined not more than five hundred dollars or imprisoned not more than six months or both."

[3] The stay was granted on January 17, 1996.

[4] To ensure that the issue regarding the defendant's sentence would not become moot, the state on July 25, 1997, filed a motion to maintain the stay of the defendant's contempt sentence. By order dated September 24, 1997,

our Supreme Court granted this motion until twenty days after the trial court's action on the pending motions to correct the illegal sentence.

[5] General Statutes § 53a-37 provides: "Multiple sentences: Concurrent or consecutive, minimum term. When multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and to the undischarged term or terms in such manner as the court directs at the time of sentence. The court shall state whether the respective maxima and minima shall run concurrently or consecutively with respect to each other, and shall state in conclusion the effective sentence imposed. When a person is sentenced for two or more counts each constituting a separate offense, the court may order that the term of imprisonment for the second and subsequent counts be for a fixed number of years each. The court in such cases shall not set any minimum term of imprisonment except under the first count, and the fixed number of years imposed for the second and subsequent counts shall be added to the maximum term imposed by the court on the first count."

[6] In *Wilson* v. *Cohen*, 222 Conn. 591, 598–99, 610 A.2d 1177 (1992), our Supreme Court interpreted, inter alia, *State* v. *Jackson*, supra, 147 Conn. 167, and concluded that in some cases criminal contempt is not a criminal offense. The *Wilson* court stated: "In deciding whether a contemnor summarily sentenced to more than six months imprisonment had a constitutional right to a jury trial, the United States Supreme Court in [*Bloom* v. *Illinois*, 391 U.S. 194, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968)] analogized criminal contempt proceedings to criminal prosecutions. The court referred to criminal contempt as a crime in the ordinary sense and in every fundamental respect, stating that convictions for criminal contempt are indistinguishable from ordinary criminal convictions . . . . Id., 201.

"Similarly, this court long ago concluded that a criminal contempt proceeding should conform as nearly as possible to proceedings in criminal cases. *Welch* v. *Barber*, 52 Conn. 147, 157 (1884); see also *McTigue* v. *New London Education Assn.*, 164 Conn. 348, 356, 321 A.2d 462 (1973). We have nonetheless previously rejected an argument akin to that made by the plaintiff in the present case. In *State* v. *Jackson*, supra [147 Conn. 167], the defendant, an attorney who had been summarily punished for a contempt committed in the presence of the court, claimed to have a right of appeal pursuant to General Statutes (1958 Rev.) § 54-12, which provided that [a]ny person convicted . . . by any municipal court of any offense may . . . appeal from the judgment . . . to the . . . court of common pleas . . . . The defendant argued that contempt of court was an offense within the meaning of § 54-12. This court rejected the defendant's argument, stating: The word offense in § 54-12 . . . must be construed as meaning criminal offense. *When the defendant was fined for a contempt committed in the presence of the court, he was not convicted of a criminal offense within the meaning of § 54-12*. . . . *State* v. *Jackson*, supra, 170. We likewise conclude that a summary criminal contempt proceeding is not a criminal action within the meaning of § 54-82b." (Emphasis in original; internal quotation marks omitted.) *Wilson* v. *Cohen*, supra, 222 Conn. 598–99.

[7] The state also cites *Copeland* v. *Warden*, 225 Conn. 46, 621 A.2d 1311 (1993), for the suggestion that a sentence for criminal contempt is not a criminal sentence under § 53a-37. In *Copeland*, the petitioner claimed that the habeas court improperly concluded that it was within the trial court's inherent sentencing powers to impose a criminal sentence consecutive to his psychiatric commitment. Because we conclude that *Copeland* is not factually analogous to the present case, we find no merit to the state's argument.

[8] The state's argument is flawed by its own reasoning. The state argues that the defendant's sentence should run consecutively and not concurrently. If we were to accept the state's logic that § 53a-37 is inapplicable because § 53a-28 (a) contains the word "offense," the trial court would also lack the authority to run the sentences consecutively.

[9] See footnote 1 of this opinion.

[10] Whether a court has the authority under § 53a-37 to run two separate criminal contempt sentences concurrently is, however, an issue we need not decide.