

STATE OF TENNESSEE,)
)
 Plaintiff/Appellant,)
)
 VS.)
)
 JUSTIN JONES, D/O/B 01-26-84)
 A MINOR,)
)
 Defendant/Appellee.)

Appeal No.
01-A-01-9610-JV-00493

Sumner Juvenile
No. 51-141

FILED

April 16, 1997

Cecil W. Crowson
Appellate Court Clerk

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEALED FROM THE JUVENILE COURT OF SUMNER COUNTY
AT GALLATIN, TENNESSEE

THE HONORABLE BARRY BROWN, JUDGE

CHARLES W. BURSON
Attorney General & Reporter

DIANNE STAMEY DYCUS
Senior Counsel
426 Fifth Avenue North
2nd Floor, Cordell Hull Building
Nashville, Tennessee 37243-0499
Attorney for Appellants Tennessee Department of Children's Services,
Mid-Cumberland Community Health Agency ACCT
and Sharon Massey

MARILEE M. McWILLIAMS
105 Hazel Path Mansion
Hendersonville, Tennessee 37075
Attorney and Guardian Ad Litem for Appellee

REVERSED AND REMANDED

BEN H. CANTRELL, JUDGE

CONCUR:
TODD, P.J., M.S.
LEWIS, J.

OPINION

The Juvenile Court of Sumner County held the Mid-Cumberland Community Health Agency Assessment and Care Coordination Team (ACCT) and its director, Sharon Massey, in criminal contempt and ordered Sharon Massey to perform eight hours of public service. We reverse (1) because the show cause order did not comply with Rule 42, Tenn. R. Crim. Proc. and (2) because the punishment is beyond the scope of the court's power.

I.

Being concerned about the placement of a juvenile who had come into state custody, the Juvenile Court of Sumner County ordered the Department of Human Services and ACCT to report to the court on July 5, 1996 that the child had been properly placed. Apparently the child's placement had not been changed by July 5 because on that date the court issued the following order:

You are hereby commanded to appear before this Court on the 8th day of July, 1996, at 9:30 a.m. and show cause why, if any reason you have, why you should not be held in contempt of this Court for failing to follow the order of this Court regarding JUSTIN JONES and to show cause why, if any reason you have, the present placement of said child is appropriate.

After a hearing on the 8th of July the Juvenile Court entered the following order:

This cause came on to be heard on the 8th day of July, 1996, before the Honorable Barry R. Brown, Judge, upon the Order to Show Cause issued by this Court and upon testimony presented and review of the record as a whole, the Court finds the Mid-Cumberland Community Health Agency ACCT to be in contempt of this Court and holds Sharon Massey of MCCHA ACCT responsible for failing to properly place JUSTIN RONALD JONES and for failing to comply with the order of this Court.

IT IS THEREFORE ORDERED: The Mid-Cumberland Community Health Agency and its representative, Sharon Massey, are hereby found to be in contempt of this Court and Sharon Massey of MCCHA ACCT shall satisfactorily complete eight (8) hours community service work no later than July 29, 1996.

II.

The punishment in this case was clearly for criminal contempt. The critical factor in the sentence is that the respondent must serve it regardless of whether she complies with the Court's order in the future. *See Robinson v. Gaines*, 725 S.W.2d 692 (Tenn. Crim. App. 1986). In other words, she does not hold the keys to the jail in her own pocket. *State ex rel. Anderson v. Daugherty*, 137 Tenn. 125, 191 S.W. 974 (1917).

Criminal contempts are treated as any other crime. *Strunk v. Lewis Coal Co.*, 547 S.W.2d 252 (Tenn. Crim. App. 1976). Therefore, the accused is entitled to the constitutional protection accorded any criminal defendant. *Thigpen v. Thigpen*, 874 S.W.2d 51 (Tenn. App. 1993). One of the requirements of due process is notice to the accused that he/she is facing punishment as a criminal. *Gompers v. Buck's Stove and Range Company*, 221 U.S. 418, 31 S.Ct. 492, 55 L.Ed. 797 (1911). Thus, in cases involving indirect criminal contempt, Rule 42(b), Tenn. R. Crim. Proc. provides that notice shall be given to the accused stating the essential facts constituting the criminal contempt and describe it as such. The failure to comply with Rule 42(b) will result in the reversal of a criminal contempt conviction. *Storey v. Storey*, 835 S.W.2d 593 (Tenn. App. 1992). The show cause order in this case failed to notify Sharon Massey that she was facing a criminal charge; therefore, the finding of criminal contempt must be reversed.

III.

We are also of the opinion that the sentence imposed exceeded the court's jurisdiction. In Tennessee the court's power to punish for contempt has been

limited and defined by statute. *Black v. Blount*, 938 S.W.2d 394 (Tenn. 1996). Tenn. Code Ann. § 29-9-103 provides the following for the wilful disobedience of a court order (Tenn. Code Ann. § 29-9-102):

(a) The punishment for contempt may be by fine or by imprisonment, or both.

(b) Where not otherwise specially provided, the circuit, chancery, and appellate courts are limited to a fine of fifty dollars (\$50.00), and imprisonment not exceeding ten (10) days, and, except as provided in § 29-9-108, all other courts are limited to a fine of ten dollars (\$10.00).

The power to punish for contempt may be exercised only within the fixed rules of law. *Loy v. Loy*, 222 S.W.2d 873 (Tenn. App. 1949). Public service is not one of the options a court may select in imposing punishment for criminal contempt. Thus, for this additional reason we reverse the judgment of contempt imposed by the juvenile court.

The judgment of the lower court is reversed and the cause is remanded to the Juvenile Court of Sumner County for any further proceedings that may become necessary. Tax the costs on appeal to the state.

BEN H. CANTRELL, JUDGE

CONCUR:

HENRY F. TODD, PRESIDING JUDGE
MIDDLE SECTION

SAMUEL L. LEWIS, JUDGE