SPORE V. STATE: A MANIFEST ERROR IN AN *AB INITIO* STANDARD

Katie Berry

FACTS

Attorney Greg Spore appealed to the Mississippi Supreme Court for review of a trial court's order declaring him in direct criminal contempt.[1]

On July 13, 2015, Jeremy Cowards appeared before Judge Jeff Weill, Sr. in the First Judicial District of Hinds County following a violation of a non-adjudicated probation sentence for burglary.[2] Hinds County Public Defender, Greg Spore, appeared on behalf of Cowards.[3] At the hearing, Cowards was found guilty of the burglary charge.[4] Thereafter, Judge Weill asked if the defense had any remarks pertaining to sentencing.[5] Spore asserted numerous arguments to Judge Weill.[6] On four separate occasions Judge Weill asked Spore if he had fully made his argument and even stated that "after I pronounce sentence I'm not going to hear further argument."[7] After Spore stated he had nothing further, Judge Weill sentenced Cowards to ten years in prison.[8] Subsequently, Spore attempted six times to make a statement.[9]

In response, Judge Weill asserted that Spore had adequate opportunity to make his case.[10] During the last attempt, Spore asked, "Your Honor may I please make my record?"[11] Judge Weill declared Spore in direct criminal contempt based on "his failure to

---

1 Spore v. State, 214 So. 3d 223, 226 (Miss. 2017).
2 *Id.* at 224.
3 *Id.*
4 *Id.*
5 *Id.* at 227.
6 *Id.*
7 *Id.*
8 *Id.* at 225.
9 *Id.* at 225-26.
10 *Id.* at 226.
11 *Id.* at 225.

abide by an order of the Court, for willful disruptive interference in court proceedings, and for violating Rule 3.02 of the *Uniform Circuit and County Rules*."[12]

On August 12, 2015, Spore appealed to the Mississippi Supreme Court, wherein the Court reviewed and affirmed the order, applying an *ab initio* standard.[13]

RELATED LAW

The Court provides numerous illustrations of the manner in which criminal contempt appeals are reviewed.[14] *In the Interest of Holmes*, the Court reviewed a criminal contempt order appealed from youth court where the appellant failed to appear before the trial court with the youth.[15] The Supreme Court held that appellant should have been allowed to state her case and stressed that contempt must be proved beyond a reasonable doubt.[16]

Subsequently, in *Purvis v. Purvis*, the Court elaborated on the standard applied to proffered evidence of contempt.[17] The Court noted the distinction between the manifest error rule and *ab initio* review stating, "[t]his Court is not bound by the manifest error rule when the appeal involves a conviction of criminal contempt.[18] Instead, this Court proceeds *ab initio* to determine whether the record proves the appellant guilty of contempt beyond a reasonable doubt."[19] The *ab initio* standard was later applied in *Sanction of Knott v. State*, where the Court found a trial court to have exceeded its jurisdiction after appellant sought review of its disciplinary orders.[20] While the Supreme Court emphasized

---

[12] *Id*. at 226

[13] *Id*. at 226, 228.

[14] *See* Brame v. State, 755 So. 2d 1090 (Miss. 2000) (finding an attorney accused of tampering with evidence insufficient to constitute criminal contempt beyond a reasonable doubt); Mingo v. State, 944 So. 2d 18, 33 (Miss. 2006) (finding an attorney's refusal to continue with trial constituting "an action tending to prevent the orderly administration of justice").

[15] In the Interest of Holmes, 355 So. 2d 677, 678 (Miss. 1978).

[16] *Id.* at 679.

[17] Purvis v. Purvis, 657 So. 2d 794, 797 (Miss. 1994), *on reh'g* (Apr. 27, 1995).

[18] *Id.*

[19] *Id.*

[20] Sanction of Knott v. State, 731 So. 2d 573, 576-77 (Miss. 1999) (finding an attorney without any pending matters before the court outside the scope of a contempt order).

disciplinary limitations, it also noted the importance of the tribunal's power to maintain order in the courtroom.[21]

In contrast, in *Mississippi Bar v. Lumumba*, the Court reviewed a contempt order *ab initio* and refused to accept counsel's argument that he was "making a record."[22] Similarly, in *In Re Smith,* the Court affirmed a trial court's order of criminal contempt when the attorney refused to apologize to the judge for inappropriate remarks considered "calculated to … prevent the orderly administration of justice."[23] The Court noted that evidence of a contempt order must "leave no room for doubt."[24]

Additionally, the Mississippi Rules of Professional Conduct proscribe conduct by an attorney "intended to disrupt a tribunal."[25] However, an advocate may "present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness."[26]

THE OPINION

The majority applied the *ab initio* standard enumerated in *Purvis* and declared Spore's actions directly within the trial judge's discretion to find criminal contempt.[27] The Court found the evidence sufficient to deem Spore guilty beyond a reasonable doubt as required in *In the Interest of Holmes*.[28] Further, despite Spore's statements explaining his actions as an attempt to make the record and passionately represent his client, the Court declared these justifications to be without merit much like *Mississippi Bar v. Lumumba*.[29] Additionally, the Court found that Spore's actions violated Mississippi Rule of Professional Conduct 3.5(d) and its bar on "conduct intended to disrupt a tribunal."[30]

---

[21] *Id.* at 576.

[22] Mississippi Bar v. Lumumba, 912 So. 2d 871, 877 (Miss. 2005) (affirming the trial court's contempt sanction because disrespectful statements made to the judge did not pertain to the client).

[23] In re Smith, 926 So.2d 878, 888 (Miss. 2006).

[24] *Id.* at 890.

[25] Miss. R. Prof'l Conduct 3.5(d).

[26] Miss. R. Prof'l Conduct 3.5(d) cmt.

[27] Spore v. State, 214 So.3d 223, 226, 228 (Miss. 2017).

[28] *Id.* at 228.

[29] *Id* at 227.

[30] *Id*.

In his dissent, Justice Kitchens declined to find Spore's actions as evidence of criminal contempt beyond a reasonable doubt.[31] The dissent distinguished *Mississippi Bar v. Lumumba* and found that while Spore was persistent, he was never disrespectful.[32] Further, the dissent disagreed that Spore's actions constituted an attempt to "prevent the orderly administration of justice" like that of the attorney in *In re Smith*. Instead, the dissent found that Spore had made a good faith effort to preserve the record for appeal.[33] Finally, the dissenting opinion found Spore's actions to be the epitome of "patient firmness."[34]

DISCUSSION

The distinction between the majority's prior applications of the *ab initio* standard and *Spore* provide a disconcerting application of an unclear standard pertaining to the deference afforded to trial courts in subsequent criminal contempt appeals.

The majority failed to analyze *Spore* in line with the distinction drawn in *Purvis* between the plain error and the *ab initio* standard.[35] Further, the Court failed to adhere to the noted restraints on contempt orders provided in *In re Smith* and *Knott*.[36] The illustrations provided by the majority are indicative of the *ab initio* standard, yet, *Spore* reveals a significant departure from precedent.

The dissent displayed consistency with authority by finding that the appellant should have been allowed to make the record for appeal.[37] To prevent the misapplication of justice, it is crucial for future courts to consider whether the attorney is attempting to make a record for appeal. Were trial courts afforded such full discretion to prevent attorneys from preserving the record, a client's Sixth Amendment rights would be gravely endangered.

---

[31] *Id.* at 228 (Kitchens, J. dissenting).

[32] *Id.* at 230-31.

[33] *Id*. at 231.

[34] *Id.* at 229; see also Miss. R. Prof'l Conduct 3.5(d) cmt.

[35] Purvis v. Purvis, 657 So. 2d 794, 797 (Miss. 1994).

[36] *See* In re Smith, 926 So. 2d 878 (Miss. 2006); *see also* Sanction of Knott v. State, 731 So. 2d 573 (Miss. 1999).

[37] *Spore*, 214 So. 3d at 228-29; s*ee also* In the Interest of Holmes, 355 So. 2d 677, 679 (Miss. 1978); *but see* Mississippi Bar v. Lumumba, 912 So. 2d 871, 878 (Miss. 2005).

The Court's *ab initio* standard is again brought into question based on the majority's analysis of Spore's conduct. The dissent correctly declared Spore's conduct to display "patient firmness".[38] Spore's actions were hardly disrespectful, and pertained solely to his client.[39] This contrary finding by the majority is pivotal, as it establishes an uncompromising illustration of what exceeds the duty of attorneys to vigorously represent their clients.

Additionally, while the plain language of Mississippi Rule of Professional Conduct 3.5(d) is admittedly ambiguous, the majority would have yielded a more consistent *ab initio* standard had it found Spore lacked the intention to disrupt the courtroom. The majority's circumstantial finding of the requisite *mens rea* is inconsistent with a standard that requires careful application.[40] The holding in *Spore* is dangerous for attorneys as this liberal interpretation of the Rule is bound to encapsulate many actions by counsel who seek solely the equal administration of justice.

Finally, while the majority's holding was likely rooted in the truth-seeking function of the court, both the majority and the dissent failed to address the efficiency that is also required of the justice system. If trial judges were afforded a plain error standard on review of contempt cases, the contempt power of the trial court could result in not only an instrument of oppression, but a misuse of invaluable legal resources.

CONCLUSION

Ultimately, *Spore* provides daunting implications for attorneys who choose to argue with resolve. The Supreme Court exhibited an abandonment of the *ab initio* standard and created a realm of uncertainty surrounding the authority possessed by a trial judge to issue contempt orders. Unquestionably, adherence to courtroom order is an imperative element of the legal process. Yet, justice cannot truly be served in a court of law that impedes earnest representation of the parties brought before it.

---

[38] *Spore,* 214 So. 3d at 229.

[39] *Contra Lumumba*, 912 So. 2d. at 886 (finding attorney to have abandoned his client to pursue his own interests).

[40] *See* Knott v. State, 731 So. 2d 573, 576 (Miss. 1999) (noting that the "jurisdiction of a trial court to punish an attorney extends no further than is necessary to control those practices and proceedings before it").