

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL EUGENE KLODGINSKI,

Defendant-Appellant.

UNPUBLISHED

March 18, 1997

No. 189190

Jackson Circuit Court

LC No. 95-72552-FH

Before: Taylor, P.J. and McDonald and C. J. Sindt,* JJ.

PER CURIAM.

Defendant pleaded guilty to failure to support a child under the age of seventeen, MCL 750.161(1); MSA 28.358(1),¹ and was sentenced to two to three years in prison. Defendant appeals as of right and we affirm.

Pursuant to a judgment of divorce, defendant was ordered to pay sixty dollars a week in child support in 1982. Over the next thirteen years defendant paid no child support through the Friend of the Court,² even though he was regularly employed and had received \$60,000 tax free in lottery winnings. In 1994, a felony warrant was issued charging defendant with nonsupport. Defendant was arrested in Texas in 1995. After waiving extradition, defendant was returned to Michigan and arraigned on May 30, 1995. On May 31, 1995, defendant appeared before a circuit judge to show cause why he should not be held in contempt for failure to pay child support as ordered in the judgment of divorce. Defendant was found in contempt and ordered to pay \$20,000 or spend thirty days in jail. Defendant was nearly \$40,000 in arrears (not counting the payments made directly to the child's mother) in his child support payments by 1995 and served the thirty days. A preliminary examination was held regarding the criminal charge on June 5, 1995. Defense counsel objected to the criminal charge on the basis of double jeopardy, arguing that defendant had already been sentenced for the same thing for which he was being charged. The district court rejected the objection, finding the contempt proceeding had been civil, not criminal, and defendant was bound over to circuit court. Defendant then pleaded guilty and was sentenced.

* Circuit judge, sitting on the Court of Appeals by assignment.

On appeal, defendant argues that his conviction must be set aside as a violation of his right to be free from double jeopardy because he was previously found in contempt for nonsupport of his child pursuant to the divorce decree. We review double jeopardy claims de novo. *People v Lugo*, 214 Mich App 699, 705; 542 NW2d 921 (1995). We reject defendant's arguments. The contempt proceeding was clearly civil. MCL 552.631; MSA 25.164(3). Defendant was ordered to pay \$20,000 *or* spend thirty days in jail. If defendant had paid the \$20,000, he would not have been required to spend any time in jail as a result of the finding of contempt. Defendant carried the keys to his prison in his own pocket, the hallmark of civil contempt. *Borden v Borden*, 67 Mich App 45, 48; 239 NW2d 757 (1976).

While successive or multiple punishments are prohibited by the Fifth Amendment, a defendant may still be subjected to both criminal and civil sanctions for the same act. *People v Artman*, 218 Mich App 236, 245; 553 NW2d 673 (1996). Nevertheless, under certain circumstances, a civil penalty may constitute "punishment" for the purpose of the Double Jeopardy Clause if the total penalty is disproportionate to the offense committed. *Id.* at 245-246. However, the constitutional prohibition against double jeopardy is not violated when the civil penalty serves a purpose distinct from any punitive purpose. *Id.* The purpose of incarcerating a civil contemnor is coercion, while the purpose of imprisoning a criminal defendant is punishment. *In re Contempt of Rochlin*, 186 Mich App 639, 646-648; 465 NW2d 388 (1990). Here, we are satisfied that the total penalty imposed was not disproportionate and that the civil contempt finding served a different purpose than the judgment of sentence entered as a result of the criminal conviction. *In re Contempt of Dougherty*, 429 Mich 81, 92-97; 413 NW2d 392 (1987).

Affirmed.

/s/ Clifford W. Taylor
/s/ Gary R. McDonald
/s/ Conrad J. Sindt

¹ The judgment of sentence erroneously lists the initial charge of MCL 750.165. However, defendant pleaded guilty to an amended charge under MCL 750.161.

² Defendant apparently made payments of approximately \$3,400 directly to the child's mother over the years.