For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE: MICHAEL L. SHEESLEY, ESQ. Appellant.	)	**S. Ct. Crim. No. 2017-0026** Re: Super. Ct. JD. No. 47/2016 (STT)
PEOPLE OF THE VIRGIN ISLANDS IN THE INTEREST OF:	)	
M.P.J.H., a minor.	)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon. Debra S. Watlington

Considered: April 9, 2019
Filed: May 6, 2019

Cite as: 2019 VI 15

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN,** Associate Justice.

OPINION OF THE COURT

PER CURIAM.

¶ 1 Appellant Michael L. Sheesley, Esq. appeals from the Superior Court's February 15, 2017 order holding him in criminal contempt for his conduct at a January 3, 2017 hearing, and in civil contempt for his failure to appear at a January 20, 2017 show cause hearing. For the reasons that follow, we affirm the contempt sanctions and, further, order this matter referred to the Office of Disciplinary Counsel and the Board on Professional Responsibility for further investigation into Sheesley's conduct that gave rise to those sanctions.

I. BACKGROUND

¶ 2 On December 20, 2016, the People of the Virgin Islands initiated juvenile delinquency cases against two minors charged as co-delinquents, M.P.J.H. and N.R., in the Superior Court of

the Virgin Islands. In orders entered that same day, the Superior Court appointed the Office of the Territorial Public Defender to represent N.R., appointed Sheesley to represent M.P.J.H., and scheduled an initial hearing with respect to both minors for January 3, 2017.

¶ 3 Sheesley filed a motion on December 21, 2016, which he captioned "Motion To Be Relieved of Involuntary Appointment." In his motion, Sheesley, relying on the decision of this Court in *In re Holcombe*, 63 V.I. 800 (V.I. 2015)—which invalidated the Superior Court's general practice of involuntarily conscripting members of the Virgin Islands Bar to serve as appointed counsel for indigent criminal defendants—argued that the December 20, 2016 order was invalid because he did not volunteer to join a private attorney panel as authorized by 5 V.I.C. § 3503(a), and that it would otherwise be a hardship for him to accept the representation.

¶ 4 The Superior Court did not rule on Sheesley's motion before the January 3, 2017 hearing. N.R. appeared at the hearing represented by Simone Vanholten-Turnbull, Esq.—an assistant territorial public defender, while M.P.J.H. and Sheesley also attended. However, shortly after the hearing began, Sheesley orally moved to be relieved of the appointment. The Superior Court stated that the motion "ha[d] been received" and would "be acted on at an appropriate time," and that Sheesley would therefore be "required to proceed with this initial hearing." Nevertheless, Sheesley persisted in arguing that his appointment was invalid pursuant to *Holcombe*. When the Superior Court interrupted his argument and reiterated that it would address the motion at another time and would move forward with the initial hearing, Sheesley announced that he "can't move forward."

¶ 5 Notwithstanding Sheesley's refusal, the Superior Court proceeded with the initial hearing, and heard from both Vanholten-Turnbull and counsel for the People while Sheesley remained silent. Eventually, the Superior Court asked Sheesley if he had an opportunity to review the juvenile complaint with M.P.J.H. and his parents. Sheesley replied that he did not review the

complaint and that he was not entering an appearance in the matter, but that he gave the complaint to M.P.J.H. The Superior Court asked Sheesley if he has "refused to honor the appointment and represent the minor in this matter," to which Sheesley replied "Yes, Your Honor." After further discussion, the Superior Court permitted Sheesley to be seated, and inquired with M.P.J.H.'s mother as to whether Sheesley had showed her the complaint, to which she stated that he did not, but had placed it to her son's side and told him to look at it. At this point, the Superior Court announced that "Sheesley ha[d] failed to perform his duties as Court Appointed Counsel in this matter," that Sheesley's motion would be dealt with at another time, and that it would require Vanholten-Turnbull to represent M.P.J.H. for the limited purpose of entering a plea to the juvenile complaint. Vanholten-Turnbull reviewed the complaint with M.P.J.H. and his parents, and entered a plea of "not delinquent" to all counts. Thereafter, the Superior Court set additional hearing dates and deadlines, established conditions for the minors' release, and adjourned the hearing.

¶ 6 The Superior Court subsequently issued two orders on January 11, 2017. The first order directed Sheesley to appear in person on January 20, 2017, at 11:30 A.M. to "show cause why he should not be held in contempt of court for his failure to represent the minor [M.J.P.H.] at the initial hearing on Tuesday, January 3, 2017." In the second order, the Superior Court denied Sheesley's motion to be relieved of the appointment. In doing so, the Superior Court acknowledged the *Holcombe* decision, but noted that Virgin Islands law did not establish a categorical ban on all involuntary appointments. The Superior Court stated that it had followed the procedure established under former Superior Court Rule 20—which at the time governed appointment of counsel to indigent parties in Superior Court proceedings[1]—by appointing the

[1] Effective March 1, 2016, the Superior Court of the Virgin Islands promulgated Superior Court Rule 20 to address the deficiencies in its indigent appointment process identified in the *Holcombe*

Office of the Territorial Public Defender to represent N.R., but that it concluded that it could not appoint the Territorial Public Defender to represent M.J.P.H. because "it would raise a conflict to appoint the same attorney to represent both minors accused in the same case." The Superior Court further stated that it "examined the family panel of attorneys and determined that an appointment from the limited panel of attorneys who volunteered to represent indigent parties was not possible" because it "consist[ed] of only seven (7) Attorneys for the Division of St. Thomas & St. John" and that "[f]or the period of December 2016 all the attorneys within the Division of St. Thomas and St. John were extended by multiple assigned cases." According to the Superior Court, it then appointed Sheesley from a rotation of all members of the Virgin Islands Bar. While the Superior Court acknowledged that Rule 211.6.2 of the Virgin Islands Rules of Professional Conduct permits an attorney to avoid appointment by a tribunal for good cause, it concluded that the reasons Sheesley proffered in his motion—that he is a solo practitioner, that he has volunteered to accept federal appointments through the CJA Panel for the United States District Court of the Virgin Islands, and that he engages in extensive community service—did not constitute good cause to support relieving him of the appointment.

¶ 7 On January 19, 2017—the day before the scheduled January 20, 2017 show cause hearing—Sheesley filed a document captioned "Notice of Unavailability." In that filing, Sheesley stated that he could not appear at the show cause hearing because at 9:00 AM he would be "participating in [a] 'Kids in the Court' program, held in the District Court of the Virgin Islands,

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decision. However, effective July 1, 2017, this Court promulgated Supreme Court Rule 210, the Rules Governing the Appointment of Counsel to Represent Indigent Parties, which superseded and repealed Superior Court Rule 20. Nevertheless, because former Superior Court Rule 20 was applicable at the time of the December 20, 2016 appointment order and all other pertinent events in the underlying proceeding, we apply that rule on appeal rather than the rule currently in effect.

where he volunteers his time to participate in mock trials for elementary school and high school students in the Virgin Islands and talk with the students about his experiences in life and as a lawyer," and that "[t]he Judge is welcome to come next door to observe the program." He further stated that at 11:30 A.M. he "has a hearing at the Department of Labor for one of his long-term, paying clients; a client that [he] has an ethical, professional, fiduciary and personal responsibility to represent." Sheesley concluded by again invoking the *Holcombe* decision and reiterating that he "has never voluntarily or otherwise accepted an appointment in the above captioned case" and asserted that "[t]he Court's continued attempts to conscript [his] time, and steal money from him, at what amounts to gunpoint with the threat of force, has no legal basis and is morally wrong."

¶ 8 The Superior Court held the show cause hearing as scheduled on January 20, 2017, which was attended by counsel for the People, but continued it when Sheesley failed to appear. In a January 23, 2017 order, the Superior Court noted that Sheesley had filed a "Notice of Unavailability" the day before the hearing, but that the filing was improper because it was not accompanied with any supporting verification. The Superior Court ordered that Sheesley appear on February 9, 2017 at 9:30 A.M. "at a hearing to show cause why he should not be held in contempt for failing to represent the minor [M.J.P.H.], as ordered to do so by his appointment on December 20, 2016."

¶ 9 At approximately 3:00 P.M. on February 8, 2017, Sheesley served a subpoena duces tecum on the General Counsel of the Superior Court of the Virgin Islands, which sought the disclosure of "[c]opies of attorney book making appointments with private counsel (green book); copies of the attorney appointments for the family division of the Superior Court of the VI." The General Counsel did not produce the requested documents, and instead moved the court to quash the subpoena on February 9, 2017, on grounds that it failed to comply with pertinent procedural rules

and was also unreasonable, unduly burdensome, and overbroad. However, the Superior Court did not rule on the motion to quash before the show cause hearing began that day.

¶ 10 Sheesley and counsel for the People appeared at the February 9, 2017 show cause hearing, although the People's counsel did not actively participate. The Superior Court stated that the purpose of the show cause hearing was "to determine whether Attorney Michael Sheesley should be held in contempt of court for his misconduct on January 3, 2017 before this court." When asked if he was ready to proceed, Sheesley said "Sure," but when asked if he was representing himself, Sheesley stated that he "wasn't afforded the opportunity to have counsel" and inquired as to whether "[t]he Court's position is that this is a matter where I need to have counsel." The Superior Court advised Sheesley that it was his choice whether to have counsel, emphasized that he is a member of the Virgin Islands Bar, and that he was afforded notice of the show cause hearing and had ample time to prepare, and that he did not move to continue the hearing.

¶ 11 The Superior Court then administered the witness oath to Sheesley, summarized at length the events that led to the show cause hearing, to wit, his refusal to represent M.P.J.H. at the January 3, 2017 hearing, and then permitted Sheesley to proceed. Sheesley renewed his argument that the December 20, 2016 appointment order was improper under both *Holcombe* and Superior Court Rule 20 because the record contained no evidence that none of the attorneys on the private attorney panel were willing to accept the case. In addition, he argued that the list the Office of the Clerk of the Superior Court uses to appoint members of the Virgin Islands Bar was "an old list" that is not maintained, suffers from many inaccuracies, and deliberately excludes attorneys who do not reside in the Virgin Islands, and that he had subpoenaed those documents to prove that his appointment was improper. When Sheesley began to reiterate his service on the District Court's CJA Panel and volunteer community service, the Superior Court interrupted to state that it had already denied his

motion to be relieved, that the show cause hearing was not for the purpose of renewing that motion but to address his conduct on January 3, 2017, and that if Sheesley was dissatisfied with that ruling he had the right to petition the Supreme Court for a writ of mandamus. Despite these admonitions, Sheesley continued to argue that he had been appointed wrongfully and asserted that all that transpired was the fault of the Superior Court "for wrongfully appointing [him]" and "for not following the rules." When asked about his failure to appear at the January 20, 2017 hearing, Sheesley stated that he had given his notice, that he is "not offering explanations to the Court," and that he "had a prior commitment to a client that retained [him]" and "a professional and personal obligation . . . a fiduciary obligation to appear at a hearing for them that was previously scheduled." Furthermore, Sheesley asserted that "if this court not only wants to point a gun at me and rob me, but then tell me that I could commit misconduct against another client, that's doubly wrong." When the Superior Court asked Sheesley if he had anything else to say with respect to the show cause, he replied that "[i]t's absurd that I am wasting more of my time with this" because "[t]here is a set rule" that "has not been followed."

¶ 12 The Superior Court announced its findings when Sheesley concluded his remarks. First, the Superior Court stated that Sheesley's behavior at the January 3, 2017 hearing disrupted the proceedings, and that if Sheesley did not believe it acted timely on his motion, he could have filed a petition for writ of mandamus with the Supreme Court. The Superior Court further found that his conduct was willful and "intentionally destroyed any potential attorney/client relationship that could have been developed between [Sheesley] and the minor." It further observed that Sheesley had failed to appear at the originally-scheduled January 20, 2017 show cause hearing, and that the "Notice of Unavailability" he had filed was "improper, disrespectful, and obnoxious in content and tone." The Superior Court further found that although it provided Sheesley with another

opportunity to be heard, he still did not provide any explanation for his conduct, or express any apologies for that conduct. The Superior Court then orally held Sheesley in contempt for disobeying the December 20, 2016 appointment order, for disrupting the January 3, 2017 hearing, and failing to appear at the January 20, 2017 hearing, directed that he pay $500 as a sanction for his misconduct and $75 in court costs for his failure to appear, and ordered that he write a letter of apology, all by February 24, 2017. After the Superior Court orally announced its decision and attempted to adjourn the proceeding, Sheesley announced that "the only way Your Honor could find somebody in contempt [is] if there's an actual lawful order issued, and there's not," and that since "there's no lawful order . . . why don't we accelerate that payment date. We can make it due today because I'm not paying."

¶ 13 The Superior Court memorialized its oral decision into a written February 15, 2017 order, which restated all of its findings of fact and conclusions of law. Moreover, the February 15, 2017 order clarified that the Superior Court was holding Sheesley in criminal contempt for his conduct at the January 3, 2017 hearing and willful disobedience of the December 20, 2016 appointment order, but was holding him in civil contempt for his failure to appear at the January 20, 2017 hearing. By separate order, the Superior Court also removed Sheesley as M.J.P.H,'s counsel and appointed a different attorney to the case.

¶ 14 Sheesley timely filed his notice of appeal with this Court on February 24, 2017, *see* V.I. R. APP. P. 5(a)(1), and moved the Superior Court for a stay of the February 15, 2017 order pending appeal. On March 8, 2017, the Superior Court entered an order granting the motion to quash Sheesley's subpoena duces tecum seeking attorney appointment records on numerous grounds, including that the documents sought were unrelated to the purpose of the show cause hearing. The Superior Court subsequently denied Sheesley's motion to stay pending appeal on March 21, 2017.

Sheesley then moved this Court for a stay pending appeal on April 20, 2017, which this Court denied in an order entered the following day.

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶ 15 The Supreme Court of the Virgin Islands may review "all appeals from the [final] decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d); *see also* 4 V.I.C. § 32(a). "[A]n order finding contempt against an attorney who is not a party to the underlying litigation is immediately appealable" as a final judgment. *In re Rogers,* 56 V.I. 325, 334 (V.I. 2012) (collecting cases). Because Sheesley appeals from an order of contempt, and is a non-party to the action below, this Court possesses jurisdiction over this appeal.

¶ 16 The standard of review for this Court's examination of the Superior Court's application of law is plenary, while the trial court's findings of fact are reviewed for clear error. *St. Thomas–St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007). However, the Superior Court's decision to hold an individual in contempt is reviewed only for abuse of discretion. *In re Najawicz*, 52 V.I. 311, 328 (V.I. 2009). The Superior Court abuses its discretion when it makes a decision that "rests upon a clearly erroneous finding of fact, an errant conclusion of law[,] or an improper application of law to fact." *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (V.I. 2012) (quoting *Stevens v. People*, 52 V.I. 294, 304 (V.I. 2009)).

B. Criminal Contempt Sanction

¶ 17 In his appellate brief, Sheesley attacks, on numerous grounds, the Superior Court's order holding him in criminal contempt. Each claim is addressed in turn.

1. Purported Violation of Constitutional Rights

¶ 18 Sheesley maintains that the Superior Court denied him the "full[ ]panoply of constitutional

rights" to which criminal contempt defendants are entitled, "including, but not limited to, a jury trial, . . . notice of the charge(s) against him, the ability to cross-examine witnesses, the ability to call witnesses in his defense, the ability to contest the admissibility of evidence in accord with the rules of evidence and the constitution, and the ability to make an opening and closing argument to the finder of fact." (Appellant's Br. 17-18.) Because Sheesley did not object to the contents of the January 11, 2017 and January 23, 2017 show cause orders, or the procedure employed by the Superior Court at the February 9, 2017 show cause hearing, this Court reviews only for plain error. *See* V.I. R. APP. P. 4(h) ("Only issues and arguments fairly presented to the Superior Court may be presented for review on appeal.").

¶ 19 Here, it is clear that the Superior Court committed no error—let alone a plain error—with respect to any of the procedures it employed. As a threshold matter, the Supreme Court of the United States has expressly held that the right to a jury trial guaranteed by the United States Constitution attaches in a criminal contempt proceeding only "[f]or 'serious' criminal contempts involving imprisonment of more than six months." *International Union, UMWA v. Bagwell*, 512 U.S. 821, 826-27 (1994). Because the Superior Court did not order Sheesley imprisoned in excess of six months—in fact, it did not order any period of imprisonment—it was under absolutely no obligation to provide Sheesley, *sua sponte*, with a jury trial. *See Murrell v. People*, 54 V.I. 338, 355-56 (V.I. 2010) (distinguishing between "serious" and "petty" offenses with respect to the right to a jury trial).

¶ 20 Moreover, the record contains absolutely no indication that the Superior Court withheld any of the procedural safeguards Sheesley identifies in his brief. The Superior Court did, in fact, permit Sheesley to make the equivalent of opening and closing arguments, and permitted Sheesley to make several documents part of the record, such as copies of the orders establishing the private

attorney panels[2] Moreover, the only witness to testify at the hearing was Sheesley himself, and Sheesley made no attempt to call any witnesses in his defense. Additionally, both the January 11, 2017 and January 23, 2017 show cause orders both expressly stated that the purpose of the show cause hearing would be for Sheesley to "show cause why he should not be held in contempt of court" and identify Sheesley's "failure to represent the minor [M.J.P.H.] at the initial hearing on Tuesday, January 3, 2017" as the conduct that was under consideration as the basis for the contempt sanction. Perhaps most significantly, when the Superior Court asked at the start of the February 9, 2017 hearing whether he was "prepared to proceed," Sheesley replied, "Sure, Your Honor." And when the Superior Court asked Sheesley if he was representing himself, it advised him that it was up to him whether he chose to have counsel represent him or represent himself. Consequently, we conclude that the Superior Court did not in any way deprive Sheesley of any rights conferred by the United States Constitution.

2. Judicial Disqualification

¶ 21 In his appellate brief, Sheesley argues that the judge who presided over the January 3, 2017 hearing should have recused herself from presiding over the February 9, 2017 show cause hearing. In doing so, Sheesley relies on Superior Court Rule 139 as interpreted by our decision in *In re M.R.*, 64 V.I. 333 (V.I. 2016), and general observations by courts—outside of the criminal contempt context—that "no man can be a judge in his own case." (Appellant's Br. 21.) However,

[2] While Sheesley was not able to introduce the documents that he subpoenaed from the General Counsel of the Superior Court the afternoon before the February 9, 2017 hearing, at no point did Sheesley ask that the hearing be continued until after a ruling on the motion to quash. And while Sheesley avers in passing in various parts of his appellate brief that the General Counsel should have provided those documents to him, that issue is not properly before this Court because Sheesley never separately appealed from the March 7, 2017 order granting the General Counsel's motion to quash his subpoena. *See Ali v. Hay*, 2019 VI 1 ¶ 14.

unlike in the *M.R.* case, Sheesley never requested that the judge recuse herself, and never invoked Superior Court Rule 139 at any time during the proceeding. Thus, this Court reviews solely for plain error. *See* V.I. R. APP. P. 4(h); *Benjamin v. AIG Ins. Co. of P.R.*, 56 V.I. 558, 568-69 (V.I. 2012).

¶ 22 Superior Court Rule 139 provides that "[e]xcept as provided in Rule 138, if the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the consent of the person charged with contempt." SUPER. CT. R. 139(d). Rule 138, in turn, provides that

> A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court, or in all instances of failure to obey a summons or subpoena of the court if properly served. The order of a contempt shall recite the facts and shall be signed by the judge and entered of record after the defendant is given an opportunity to be heard.

SUPER. CT. R. 138.

¶ 23 Here, the judge committed no error—let alone a plain error—in failing to recuse herself *sua sponte*. Unlike the respondent in *M.R.*, where the purported obstruction of the administration of justice included "personally criticizing a judge in open court," 64 V.I. at 345, the January 11, 2017 and January 23, 2017 show cause orders did not charge Sheesley with criticizing or disrespecting the judge at the January 3, 2017 hearing; rather, the identified conduct that gave rise to the show cause hearing was his refusal to comply with the December 20, 2016 appointment order through his refusal to serve as counsel to M.P.J.H. at the January 3, 2017 hearing. On the contrary, Sheesley himself acknowledges in his brief that he "never used profane language, nor did he insult Judge Watlington," Appellant's Br. 26, and he further noted that, in fact, he had gone to great lengths at the January 3, 2017 hearing to not criticize or disrespect the judge presiding

over the matter, even stating on the record that he believed her "to be an excellent judge."[3] While Sheesley subsequently made many inflammatory and disrespectful comments in his January 19, 2017 "Notice of Unavailability" and at the February 9, 2017 show cause hearing itself, those statements were made only after the Superior Court had already issued the first show cause order, and Sheesley's disrespectful language was not the basis for which he was held in criminal contempt. For this Court to hold that the judge in this matter was required to recuse herself *sua sponte* based solely on inflammatory and disrespectful language made only after a show cause order has issued would be tantamount to permitting Sheesley to further obstruct the administration of justice by manufacturing grounds for recusal. *See United States v. Studley*, 783 F.2d 934, 939-40 (9th Cir. 1986); *United States v. Grismore*, 564 F.2d 929, 933 (10th Cir. 1977). This we decline to do.

3. Legal Standard Employed by the Superior Court

¶ 24 It is well-established that, because it constitutes a criminal offense, every element necessary to sustain a conviction for criminal contempt must be proved beyond a reasonable doubt. *In re Meade*, 63 V.I. 681, 685 (V.I. 2015). According to Sheesley, "there was never a finding" by the Superior Court of "each element [of criminal contempt] beyond a reasonable doubt." (Appellant's Br. 24.) Because Sheesley never raised this argument before the Superior Court, this Court again reviews only for plain error. *See* V.I. R. APP. P. 4(h).

¶ 25 Sheesley's argument in this regard lacks merit. In this case, the criminal contempt

[3] In its February 15, 2017 order, the Superior Court characterized Sheesley's conduct at the January 3, 2017 hearing as "disrespectful and embarrassing to the Court and the legal profession." However, it is well-established that courts are entities separate from the individual judges that serve on them. *Vanterpool v. Gov't of the V.I.*, 63 V.I. 563, 573 (V.I. 2015) (collecting cases). Consequently, we do not construe the Superior Court's characterization of Sheesley's behavior as disrespectful to the Superior Court as a finding that he was disrespectful to the judge personally.

conviction was adjudicated through a bench trial, and not a jury trial. This distinction is important, because judges are learned in the law and presumed to apply the correct legal standard unless there is actual evidence in the record that reflects that the judge applied the incorrect standard. *See, e.g.*, *Dunlop v. People*, S. Ct. Crim. No. 2008-0037, 2009 WL 2984052, at *4 (V.I. Sept. 15, 2009) (unpublished); *United States v. Atkinson*, 990 F.2d 501, 503 (9th Cir. 1993); *State v. Coombs*, 480 N.E.2d 414, 416-17 (Ohio 1985). Here, the record contains absolutely no evidence that the Superior Court applied a legal standard other than beyond a reasonable doubt. On the contrary, as Sheesley himself concedes, the Superior Court specifically stated in its February 15, 2017 order that "Sheesley's conduct was *beyond a reasonable doubt* calculative and willfully done in open Court, in the presence of others, to destroy any chance of a meaningful attorney-client relationship between himself and the minor." (emphasis added). This actual invocation of the beyond a reasonable doubt standard in the February 15, 2017 order, combined with the presumption that a judge presiding over a bench trial knows the law and applies it correctly absent any evidence to the contrary, is more than sufficient to establish that the Superior Court was both aware that the beyond the reasonable doubt standard was applicable and actually applied that standard. *See People v. Howery*, 687 N.E.2d 836, 851 (Ill. 1997) (holding that, in a bench trial, an appellate court will presume that the judge knew the applicable burden of proof and applied it properly, and will disregard that presumption only "when the record contains strong affirmative evidence to the contrary").

4. Sufficiency of the Evidence

¶ 26 Sheesley argues that the evidence is insufficient to justify the imposition of criminal contempt sanctions. The record reflects that the Superior Court held Sheesley in criminal contempt based on two alternate theories: that his conduct at the January 3, 2017 hearing obstructed the

administration of justice, and constituted a willful disobedience of the December 20, 2016 appointment order. *See* 14 V.I.C. § 581(1), (3). Each theory is addressed in turn.

a. Obstruction of the Administration of Justice

¶ 27 "[C]riminal contempt of court that obstructs the administration of justice has generally been defined as any willful misconduct which embarrasses, hinders, or obstructs a court in its administration of justice or derogates the court's authority or dignity, thereby bringing the administration of justice into disrepute." *In re M.R.*, 64 V.I. at 345 (quoting *Black v. Blount*, 938 S.W.2d 394, 399 (Tenn. 1996)). "[O]bstruction of the administration of justice should 'not be confused with obstruction of justice. Justice may be obstructed by mere inaction, but obstruction of the administration of justice requires something more—some act that will interrupt the orderly process of the administration of justice, or thwart the judicial process.'" *In re Kendall*, 712 F.3d 814, 828 (3d Cir. 2013) (quoting *United States v. Warlick*, 742 F.2d 113, 115–16 (4th Cir. 1984)). "Moreover, because criminal contempt is one of the most severe sanctions a court may impose, the effect on the proceeding must be 'serious,' rather than merely 'a momentary disruption.'" *In re M.R.*, 64 V.I. at 348. "An overreaction by a judge to otherwise permissible behavior also will not satisfy the actual obstruction requirement." *Id.* at 347 (citing *State v. Holland*, 681 A.2d 196, 199 (Me. 1997)).

¶ 28 Sheesley contends that his conduct at the January 3, 2017 hearing did not rise to this heightened level. He maintains that his conduct did not disrupt the proceeding, in that he did not use profane or insulting language, but that "all [he] did was contest the legal basis for his appointment, raise this Court's *Holcombe* decision, and assert why . . . his on-going professional obligations justify not appointing him to represent M.P.J.H." (Appellant's Br. 26.) According to Sheesley, the Superior Court essentially held him in criminal contempt for "mak[ing] a good-faith

legal argument that a judge does not approve of." *In re M.R.*, 64 V.I. at 348.

¶ 29 Sheesley's characterization of his own behavior at the January 3, 2017 hearing reflects a fundamental misunderstanding of why the Superior Court ordered him to show cause, and eventually held him in criminal contempt. While Sheesley selectively quotes language from this Court's decision in *M.R.*, he ignores the facts of *M.R.*, in which an attorney had wrongfully been held in criminal contempt for making legal arguments in favor of a family reunification *at a reunification hearing*. As the Superior Court emphasized at the start of the January 3, 2017 hearing, that hearing had not been called for the purposes of addressing Sheesley's motion to be relieved as counsel, but for the minors to enter their pleas to the juvenile complaint. Nothing in *M.R.* or any other decision of this Court could reasonably be read to give an attorney *carte blanche* to make any and all arguments on each and every issue in the case at any time during any hearing. On the contrary, this Court has expressly held "that a judge possesses considerable discretion in how to dispose of the matters on his or her docket." *In re N.A.W.*, 61 V.I. 145, 152 n.5 (V.I. 2014). To characterize Sheesley's conduct—repeatedly demanding that the Superior Court hear arguments on a motion that was not even fully-briefed[4] and not the stated subject of the hearing—as nothing more than "good-faith legal argument" would effectively divest the Superior Court of its discretion to manage its own docket, and transfer that authority to attorneys and their clients.

¶ 30 Additionally, the Superior Court found that Sheesley's behavior went beyond making an

[4] At the time Sheesley filed his motion, the time for a party to respond to a motion was governed by United States District Court of the Virgin Islands Local Rule of Civil Procedure 7.1(e)(1), which was made applicable to proceedings in the Superior Court through then-Superior Court Rule 7. That rule provided that "[a] party shall file a response within fourteen (14) days after service of the motion." LRCi 7.1(e)(1). Therefore, because Sheesley had filed his motion on December 21, 2016, the time for the People, M.J.P.H., or other interested parties to respond to the motion had not yet expired.

impermissible argument and resulted in an actual disruption in the proceeding. In its February 15, 2017 order, the Superior Court correctly noted that Sheesley's complete refusal to provide any representation to M.J.P.H. whatsoever—even the simple matter of reviewing the juvenile complaint for purposes of determining whether to enter a "not delinquent" plea—disrupted and delayed the proceeding, and required the Superior Court to decide between directing Vanholten-Turnbull to represent M.J.P.H. at the hearing, or directing M.J.P.H. and his parents to return to court on another day. Moreover, the Superior Court expressly found that "Sheesley's conduct was beyond a reasonable doubt calculative and willfully done . . . to destroy any chance of a meaningful attorney-client relationship between himself and the minor," and that "Sheesley's misconduct was intentionally designed so that he could be relieved from the Court's appointment." Although these findings are specific, Sheesley makes no argument whatsoever in his brief that they are clearly erroneous or not supported by the record. Therefore, we conclude that the record contains sufficient evidence to support a criminal contempt conviction on an obstruction of the administration of justice theory.

b. Disobedience of a Lawful Order

¶ 31 With respect to the Superior Court's holding that he willfully disobeyed the December 20, 2016 appointment order, Sheesley renews the argument that he has made throughout the underlying proceeding: that the December 20, 2016 appointment order was invalid.

¶ 32 Sheesley is correct that the manner through which he was appointed was not consistent with this Court's holding in *Holcombe* or the provisions of former Superior Court Rule 20. Assuming, without deciding, that a conflict-of-interest prevented the Office of the Territorial

Public Defender from simultaneously representing both minors,[5] the Superior Court's reason for not appointing any of the seven attorneys who volunteered to accept family appointments in the Division of the St. Thomas & St. John is insufficient. Then-applicable Superior Court Rule 20(D)(a) provided that if the Office of the Territorial Public Defender cannot undertake the representation, "the Court shall make appointments from the panel of attorneys who have volunteered to represent parties on a recurring basis." (Emphasis added.) The Superior Court, however, made no such appointments. Instead, it simply stated in its order that "[f]or the period of December 2016 all the attorneys within the Division of St. Thomas and St. John were extended by multiple assigned cases previously given by the Court." But the very nature of a private attorney panel contemplates that attorneys will necessarily receive multiple assignments in a given month. Moreover, the record reflects that the Superior Court again reached this conclusion based on its own beliefs regarding the workloads of those attorneys, and did not actually attempt to appoint any of those volunteer attorneys to represent M.J.P.H. Had it done so, it is possible—perhaps even likely—that one of those volunteer attorneys would have gladly accepted the representation.

¶ 33 None of this, however, is in any way relevant to the issue of whether the Superior Court properly held Sheesley in criminal contempt for his refusal to follow the December 20, 2016

[5] In its January 13, 2017 order, the Superior Court stated that "[o]bviously, it would raise a conflict to appoint the same attorney to represent both minors accused in the same case." However, neither this Court nor the Supreme Court of the United States has ever held that it is per se impermissible for the same law office to jointly represent multiple co-defendants in the same case. On the contrary, the United States Supreme Court has expressly found that such joint representation in criminal cases is "not per se violative of constitutional guarantees of effective assistance of counsel." *Holloway v. Arkansas*, 435 U.S. 475, 482 (1978). In any event, we need not address this issue as part of this proceeding because the legality of the December 20, 2016 appointment order is ultimately irrelevant to the issue of whether Sheesley is guilty of criminal contempt for his refusal to abide by that order.

appointment order. Sheesley is correct that, in *In re Drue*, 57 V.I. 517 (V.I. 2012), this Court vacated an order holding an attorney in civil contempt after invalidating the order that led to that sanction. However, this Court did so pursuant to well-established precedent providing that "a civil contempt sanction cannot stand after an appellate court invalidates the underlying order." *Id.* at 528.

¶ 34 But this same rule does not apply with respect to a criminal contempt sanction. "It is a well-established principle that an order of civil contempt cannot stand if the underlying order on which it is based is invalid. In contrast, the validity of a criminal contempt adjudication resulting from the violation of a court order does not turn on the meritoriousness of that order." *ITT Community Dev. Corp. v. Barton*, 569 F.2d 1351, 1356 (5th Cir. 1978); *see also United States v. United Mine Workers of Am.*, 330 U.S. 258, 294 (1947) ("Violations of an order are punishable as criminal contempt even though the order is set aside on appeal."). This is because "[a] party's disagreement with how a court interpreted the law does not provide license to disobey a court order without consequence," for to hold otherwise would cause our entire system of justice to collapse. *Kettle Butte Trucking LLC v. Kelly*, 910 N.W.2d 882, 886 (N.D. 2018).

¶ 35 Here, Sheesley had numerous obvious avenues—both practical and legal—to obtain review of the December 20, 2016 order and to mitigate its effects that were permissible, yet never used. Sheesley could have filed a motion to continue the previously-scheduled January 3, 2017 hearing along with his December 21, 2016 motion to be relieved of the appointment, or requested in his December 21, 2016 motion that the Superior Court consider his request for relief from the appointment on an expedited or emergency basis. When the Superior Court announced at the January 3, 2017 hearing that it would not consider his motion at that time, Sheesley could have simply performed the very minimal representation being requested of him—reviewing the juvenile

complaint with M.J.P.H. and entering a plea—while stating, on the record, that he continued to object to the appointment and was neither withdrawing his December 21, 2016 motion nor consenting to the appointment. And as the Superior Court itself advised him at the February 9, 2017 hearing, Sheesley could have filed a petition for writ of mandamus with this Court, just as the involuntarily-appointed attorneys had successfully done in *Holcombe*.[6]

¶ 36 What Sheesley could not do was unilaterally refuse to abide by the December 20, 2016 appointment order simply because he believed it was an erroneous application of Virgin Islands law. Yet that is precisely what he did at the January 3, 2017 hearing, when the Superior Court directly asked if he was "refus[ing] to honor the appointment and represent the minor in this matter," to which he replied "Yes, Your Honor." Under these circumstances, the evidence is more than sufficient to sustain the Superior Court's decision to hold Sheesley in criminal contempt for his willful disobedience of the December 20, 2016 appointment order at the January 3, 2017 hearing.

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[6] In his reply brief, Sheesley maintains that he "did exactly what this Court stated was permissible in *In re Holcombe* – be held in contempt and appeal the contempt sanction." (Reply Br. 5.) This, however, is a complete mischaracterization of what the pertinent portion of the *Holcombe* opinion states, and—as with similar citations to decisions of this Court throughout his appellate and reply briefs—consists of selectively citing to or quoting from isolated portions of the opinion divorced from surrounding context.

The *Holcombe* opinion did reference cases from this Court and the Supreme Court of the United States standing for the proposition that a non-party may refuse to comply with an order, be held in contempt, and then appeal from the contempt sanction. 63 V.I. at 817. However, these cases involved civil contempt, rather than criminal contempt, and in none of those opinions did this Court ever say that the act of standing in contempt somehow excused the underlying conduct, or that reversal of the order that was violated would automatically result in the criminal contempt sanction also being set aside. Moreover, immediately after citing to those cases, this Court found that the attorneys in *Holcombe* were <u>not</u> required to stand in contempt as a prerequisite to appealing from their involuntary appointment orders because this Court agreed with the numerous courts that held "that the third collateral order factor will be satisfied when the interest being vindicated on appeal belongs to the attorney rather than the client." *Id.* at 818.

C. Civil Contempt Sanction

¶ 37 Sheesley further asserts numerous grounds in support of reversing the portion of the February 15, 2017 order that found him in civil contempt. Each issue is addressed in turn.

1. Validity of Underlying Order

¶ 38 Sheesley, citing to our decision in *Drue*, correctly recognizes that "a civil contempt sanction cannot stand after an appellate court invalidates the underlying order." 57 V.I. at 528. According to Sheesley, this Court should apply that rule to reverse the civil contempt sanction because the December 20, 2016 appointment order was entered in violation of Virgin Islands law.

¶ 39 Sheesley's argument is wholly lacking in merit. Although the Superior Court had held Sheesley in criminal contempt for his willful disobedience of the December 20, 2016 appointment order, it did not simultaneously hold him in civil contempt for that conduct. Rather, it expressly stated in the February 15, 2017 order that Sheesley was being held in civil contempt "for the costs incurred by the Court for his failure to appear at the show cause hearing on January 20, 2017 and his failure to comply with the Court's rules for requesting a continuance of a case." In other words, the Superior Court did not hold Sheesley in civil contempt for violating the December 20, 2016 appointment order, but for failing to appear at the January 20, 2017 hearing as he was ordered to do pursuant to the January 11, 2017 scheduling order. Therefore, to benefit from the rule announced in *Drue*, Sheesley would need to establish that the Superior Court's January 11, 2017 order was invalid. Because Sheesley has presented no argument that the January 11, 2017 order is somehow invalid or erroneous, we reject this claim.

2. Purpose of Civil Contempt Sanction

¶ 40 This Court has previously held that "[a] civil contempt sanction is 'intended to enforce the rights of private parties [and] to compel obedience to orders and decrees,' whereas the purpose of

a criminal contempt sanction is 'the vindication of the dignity and authority of the court.'" *In re Meade*, 63 V.I. at 685 (quoting *In re Najawicz*, 52 V.I. 311, 326 (V.I. 2009)). According to Sheesley, the Superior Court entering of its civil contempt sanction was not remedial in nature but entered for the improper purpose of punishing him.

¶ 41 Again, Sheesley's argument lacks merit. Sheesley points to absolutely no evidence in the record to support his claim that the Superior Court intended to punish Sheesley. On the contrary, the Superior Court expressly characterized the $75 monetary fine as "court costs," reflecting an intent for those funds to reimburse the Superior Court for the costs associated with the January 20, 2017 hearing. As this Court has previously held, the Superior Court may permissibly impose a non-dischargeable monetary fine assessed in conjunction with a civil contempt sanction if it is for the purpose of compensating itself for the harm it suffered from the contemnor's non-compliance. *In re Meade*, 63 V.I. at 685 (citing *Walters v. Walters*, 56 V.I. 471, 479 (V.I. 2012)). Consequently, Sheesley has failed to establish that the Superior Court used the civil contempt sanction for an impermissible non-remedial purpose.

3. Insufficient Notice

¶ 42 Finally, Sheesley maintains that the Superior Court provided him with insufficient notice that it was considering holding him in civil contempt for his failure to appear at the January 20, 2017 hearing, in that the January 23, 2017 show cause order had only directed him to show cause with respect to his conduct at the January 3, 2017 hearing. As with virtually every other issue asserted as part of this appeal, Sheesley failed to raise this argument at any point during the proceedings before the Superior Court. Therefore, we again review only for plain error. *See* V.I. R. APP. P. 4(h).

¶ 43 As this Court has previously held, an attorney's failure to appear may be addressed through

a summary proceeding for civil contempt if the contemnor's "essential due process rights" are preserved. *In re Rogers*, 56 V.I. at 338. While the January 23, 2017 order did state that Sheesley had failed to appear at the January 20, 2017 hearing and that the "Notice of Unavailability" he filed the day before the hearing was improper, it did not expressly require Sheesley to show cause for his failure to appear. Since the Superior Court had, in the same January 23, 2017 order, advised Sheesley that it was considering holding him in contempt for his conduct at the January 3, 2017 hearing, it unquestionably would have been the better practice for the Superior Court to state expressly in that same order that it was also considering holding Sheesley in civil contempt for his failure to appear at the January 20, 2017 hearing.

¶ 44 Nevertheless, it is not necessary for us to decide whether the Superior Court provided Sheesley with insufficient notice because the error—if any—would justify vacatur of the civil contempt sanction under the plain error standard of review only if it affected his substantial rights. *Webster v. People*, 60 V.I. 666, 672 (V.I. 2014). Although the January 23, 2017 show cause order did not directly require Sheesley to show cause for his failure to appear, at the show cause hearing the Superior Court directly asked Sheesley, "what is your explanation for not appearing on January 20, 2017 after you were properly served with an order to appear for that date for a show cause hearing?" Rather than object to the lack of notice or ask for additional time to prepare a defense, Sheesley provided a substantive and unequivocal answer: "Your Honor, I gave you my notice." And when the Superior Court replied that the notice was improper, Sheesley again provided a substantive explanation: that he "had a prior commitment to a client that retained [him]" for whom he "ha[d] a professional and personal obligation . . . to appear at a hearing for them that was previously scheduled." Moreover, in his appellate brief, Sheesley does not even speculate as to how his defense may have been different if the January 23, 2017 order had expressly directed him

to show cause for his failure to appear. Therefore, we conclude that the error—if any—did not prejudice Sheesley's ability to present a defense or otherwise affect his substantial rights.

D. Referral for Violations of Virgin Islands Rules of Professional Conduct

¶ 45 Although not raised by Sheesley in his appellate brief, the People devote a substantial portion of their appellate brief to arguing that Sheesley violated several provisions of the Virgin Islands Rules of Professional Conduct with respect to his conduct in the underlying matter. Specifically, the People maintain that Sheesley violated Rule 211.3.5(d), which provides that "[a] lawyer shall not . . . engage in conduct intended to disrupt a tribunal," V.I.S.CT.R. 211.3.5(d), as well as Rule 211.1.16, which provides, in pertinent part, that

> A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

V.I.S.CT.R. 211.1.16(c). Moreover, in its February 15, 2017 order, the Superior Court also expressly found that Sheesley's conduct implicated Rule 211.1.16(c). However, there is no indication in the record that the Superior Court referred Sheesley's conduct to the Office of Disciplinary Counsel or the Board on Professional Responsibility.

¶ 46 In his reply brief, Sheesley declines to respond to the contention that he violated the Virgin Islands Rules of Professional Conduct—as is his right, given that this is an appeal from a contempt sanction, and not an attorney discipline proceeding. (Reply Br. 5.) Nevertheless, the Justices of this Court, like all other judicial officers of the Virgin Islands, are bound by the Virgin Islands Code of Judicial Conduct to report conduct by an attorney that is substantially likely to violate the Virgin Islands Rules of Professional Conduct to the Office of Disciplinary Counsel, the Board on Professional Responsibility, or other appropriate authority. *See* V.I.S.CT.R. 213.2.15(B), (D).

¶ 47 Here, there is an extremely high likelihood—if not a certainty—that Sheesley has violated Rule 211.1.16(c), in that he stated, on the record, that he would not represent M.J.P.H. at the January 3, 2017 hearing even though the Superior Court expressly ordered him to do so. Likewise, there is a substantial likelihood that Sheesley's refusal, combined with his highly abusive and inflammatory language,[7] rose to the level of disrupting the proceedings in violation of Rule 211.3.5(d). Moreover, having been convicted of criminal contempt—which both this Court and the Supreme Court of the United States have described as "a crime in the ordinary sense," *see Rogers*, 56 V.I. at 335 (quoting *Bagwell*, 512 U.S. at 826)—Sheesley may also be in violation of Rule 211.8.4(b) ("It is professional misconduct for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."), and depending on how the criminal contempt conviction is characterized may be obligated to self-report the conviction to the Office of Disciplinary Counsel for appropriate action. *See, e.g.*, V.I.S.CT.R. 207.16.

¶ 48 Under these circumstances, we refer this matter to the Office of Disciplinary Counsel and the Board on Professional Responsibility to take suitable action, if appropriate and to the extent it has not already been done. In doing so, we emphasize, as we have done in past cases, that our referral to these disciplinary authorities is not a sanction in and of itself, but simply a finding that Attorney Sheesley's conduct merits further examination by the disciplinary board. *Williams v.*

[7] *See, e.g.*, J.A. 61 ("The Court's continued attempts to conscript Attorney Sheesley's time, and steal money from him, at what amounts to gunpoint with the threat of force, has no legal basis and is morally wrong."); J.A. 86-87 ("To steal from me, Your Honor. That's what this boils down to. The Court has stolen from me with the threat that it has right now. It's stealing from me at gunpoint. . . ."); J.A. 88 ("if this court not only wants to point a gun at me and rob me"); J.A. 95 ("[W]hy don't we accelerate that payment date. We can make it due today because I'm not paying.").

People, 58 V.I. 341, 344-35 (citing *Adkins v. Christie*, 227 Fed. Appx. 804, 806 (11th Cir. 2007)).

III. CONCLUSION

¶ 49 The Superior Court committed no error when it held Sheesley in criminal contempt for his conduct at the January 3, 2017 hearing in refusing to abide by the December 20, 2016 appointment order. The record does not reflect that the Superior Court violated any of Sheesley's constitutional rights, or that it applied the incorrect legal standard. Nor was the judge presiding over the matter under any obligation to *sua sponte* recuse herself. Moreover, the evidence is more than sufficient to sustain the criminal contempt conviction on either a theory of obstruction of the administration of justice or willful disobedience of a lawful order. Importantly, the likelihood that the Superior Court's December 20, 2016 appointment order may have actually been erroneous does not excuse Sheesley's refusal to abide by that order. Likewise, the Superior Court committed no error when it held Sheesley in civil contempt for his failure to appear at the January 20, 2017 show cause hearing. Accordingly, we affirm the February 15, 2017 order in its entirety, and we refer this matter to the Office of Disciplinary Counsel and the Board on Professional Responsibility for further investigation as to whether Sheesley may have violated Rule 211.1.16(c) or Rule 211.3.5(d).

Dated this 6th day of May, 2019.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court