

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRAVERS ARTHUR GREENE,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND, THE HONORABLE
DONALD M. MOSLEY, DISTRICT
JUDGE, THE HONORABLE KATHY A.
HARDCASTLE, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 52519

FILED

MAR 18 2009
TRACIA A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order denying petitioner Travers Arthur Greene's motion to disqualify District Court Judge Donald Mosley from adjudicating his post-conviction petition for a writ of habeas corpus. Greene also contends that then-Chief Judge Kathy Hardcastle erroneously rejected his objection to the denial of his motion to disqualify. Finally, Greene alleges that Judge Mosley has exhibited bias against capital habeas petitioners by denying them an adequate opportunity to litigate their claims. We have considered the petition, the State's answer, and the documents on file herein, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted for the following reasons. See NRS 34.160; NRS 34.320.

First, respecting Greene's claim that Judge Mosley should have been disqualified for violating Eighth Judicial District Court Rule

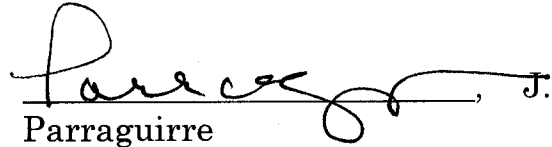
1.60, which requires random reassignment of cases, Greene concedes, based on the State's representations, that Judge Mosley did not improperly assign capital cases to his department.

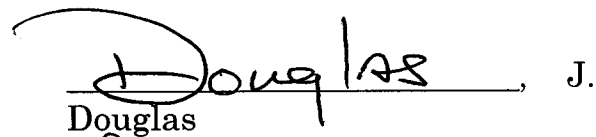
Second, as to Greene's claim that then-Chief Judge Hardcastle erroneously rejected his objection to the denial of his motion to disqualify, there is no record that she ruled on his objection.

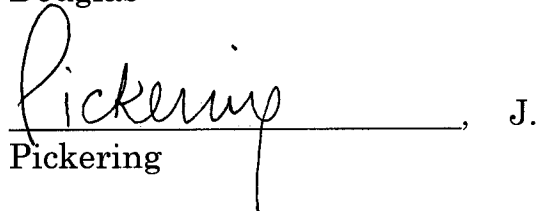
Third, respecting Greene's claim that Judge Mosley created an appearance of bias by routinely denying capital habeas petitioners a fair and adequate opportunity to litigate their claims, Greene failed to raise this claim below in his motion to disqualify. Because the district court had no opportunity to exercise its discretion in this regard, Greene's challenge cannot be a basis for extraordinary relief in this court. Any claim of bias must be pursued in accordance with NRS 1.235.

Accordingly, we

ORDER the petition DENIED.


Parraguirre J.


Douglas J.


Pickering J.

cc: Hon. Donald M. Mosley, District Judge
Hon. Kathy A. Hardcastle, District Judge
Federal Public Defender/Las Vegas
Attorney General Catherine Cortez Masto/Las Vegas
Clark County District Attorney David J. Roger
Eighth District Court Clerk