

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE EDWARD BENSON, II A/K/A  
GEORGE EDWARD BENSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54767

**FILED**

JUN 09 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angerson*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court revoking appellant George Edward Benson's probation and amending his judgment of conviction. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

Benson contends that the district court's examination of the State's witnesses during the revocation hearing "denied [him] due process and a fundamentally fair proceeding free from judicial partiality." Due process requires that a probationer's revocation hearing be held before a "neutral and detached" hearing body. Morrissey v. Brewer, 408 U.S. 471, 489 (1972); Anaya v. State, 96 Nev. 119, 122, 606 P.2d 156, 158 (1980). Here, the district judge conducted the direct examinations of the State's witnesses, did not examine the defense witness, and asked questions that were prosecutorial in nature and had the effect of relieving the State of its burden to prove the probation violations. We conclude that the judge abandoned his judicial role when he conducted the direct examinations of State's witnesses, cf., Duckett v. State, 104 Nev. 6, 12-13, 752 P.2d 752, 755-56 (1988); Azbill v. State, 88 Nev. 240, 249, 495 P.2d 1064, 1070

(1972), and thereby deprived Benson of his due process right to a hearing before a neutral and detached hearing body. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for a new probation revocation hearing before a different district judge.<sup>1</sup>

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. James M. Bixler, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>Because we conclude that the order revoking probation must be reversed and the matter remanded for a new probation revocation hearing, we need not reach Benson's remaining contentions.