

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEONTE LASHAWN BAKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55177

FILED

SEP 29 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingosou*
DEPUTY CLERK


ORDER OF REVERSAL AND REMAND

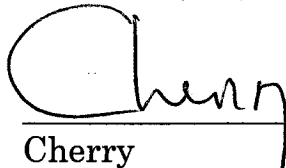
This is an appeal from an order of the district court revoking appellant Deonte Lashawn Baker's probation and amending his judgment of conviction. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

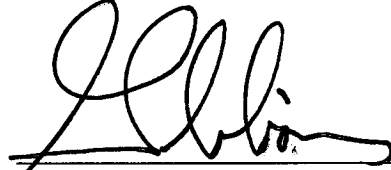
Baker contends that the district court's examination of the State's witness during the revocation hearing deprived him of his due process rights and a fair proceeding free from judicial partiality. Due process requires that a probationer's revocation hearing be held before a "neutral and detached" hearing 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 examination of the State's witness and asked questions that were prosecutorial in nature and had the effect of relieving the State of its burden to prove the probation violation. We conclude that the judge abandoned his judicial role when he conducted the direct examination of the State's witness, 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 Baker 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.¹


_____, J.
Saitta


_____, J.
Cherry


_____, J.
Gibbons

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

¹Because we conclude that the order revoking probation must be reversed and the matter remanded for a new probation revocation hearing, we need not reach Baker's remaining contention.