

IN THE SUPREME COURT OF THE STATE OF NEVADA

JIMMIE DERELL COOPER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56214

**FILED**

JAN 14 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving and/or being in actual physical control while under the influence of intoxicating liquor. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Appellant Jimmie Cooper contends that the district court erred by failing to recuse itself because Judge Togliatti assisted in the prosecution in one of the prior DUI convictions used as part of the basis to enhance the instant conviction to a felony.<sup>1</sup> See NRS 1.230; NCJC Canon 3E(1) (currently codified as NCJC Rule 2.11(A)). We review the district court's decision not to recuse itself for an abuse of discretion. Rivero v. Rivero, 125 Nev. \_\_\_, \_\_\_, 216 P.3d 213, 233 (2009).

Cooper has failed to demonstrate that disqualification was mandated under any of the pertinent specific circumstances enumerated in NRS 1.230 or NCJC Rule 2.11(A). See id. (the burden to establish a

<sup>1</sup>Cooper filed his affidavit in support of request for recusal subsequent to the entry of his guilty plea.


sufficient factual basis to warrant disqualification rests on the party requesting the disqualification). Further, we conclude that Judge Togliatti's brief involvement in Cooper's prior prosecution does not otherwise give rise to circumstances where her impartiality might reasonably be questioned. See NCJC Rule 2.11(A); Las Vegas Downtown Redev. v. Dist. Ct., 116 Nev. 640, 644, 5 P.3d 1059, 1062 (2000) ("[W]hether a judge's impartiality can reasonably be questioned is an objective question that this court reviews as a question of law using its independent judgment of the undisputed facts."); see also, e.g., Jordon v. State, 626 S.W.2d 947, 948-49 (Ark. 1982) (disqualification not mandated where trial judge previously prosecuted burglary defendant in prior felony prosecutions used to enhance punishment); State v. Zamora, 933 P.2d 106, 107 (Idaho 1997); People v. Storms, 617 N.E.2d 1188, 1190-91 (Ill. 1993); People v. Jones, 532 N.Y.S.2d 586, 588 (App. Div. 1988). But see Crawford v. State, 686 So. 2d 199, 203 (Ala. Crim. App. 1996); People v. Smith, 398 N.Y.S.2d 2, 2-3 (App. Div. 1977). Significantly, the record before this court does not indicate that Cooper challenged the validity of the prior conviction at issue in the district court.<sup>2</sup> See Dishman v. State, 525 N.E.2d 284, 285-86 (Ind. 1988); Com. v. Carter, 701 S.W.2d 409, 410 (Ky. 1985).


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<sup>2</sup>It appears that Cooper challenged the validity of the prior conviction in this court, see Cooper v. State, Docket No. 54207 (Order of Affirmance, January 8, 2010), and informed the district court of this challenge.

Accordingly, we conclude that the district court did not abuse its discretion by declining to recuse itself, and we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Jennifer Togliatti, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk