

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PERRY FERNESE WESLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71560

FILED

SEP 13 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Perry Fernese Wesley appeals from a judgment of conviction entered pursuant to an *Alford*¹ plea of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

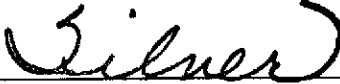
Wesley claims the district judge's statements about his "personal relationship" with Wesley's mother and his "negative views" about Wesley created an appearance of bias and impropriety that requires the reversal of the judgment of conviction and remand for sentencing before a different judge.


"A judge is presumed to be impartial, and the party asserting the challenge carries the burden of establishing sufficient factual grounds warranting disqualification. Disqualification must be based on facts, rather than mere speculation." *Rippo v. State*, 113 Nev. 1239, 1248, 946 P.2d 1017, 1023 (1997) (internal citations omitted). Wesley has failed to meet this burden.

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

The record shows the district judge carefully considered the presentence investigation report, the parties' sentencing arguments, Wesley's allocution, and the victims' impact statements before making his sentencing comments. Our review of the record does not show impermissible bias or prejudice, and we conclude Wesley has not demonstrated the district judge's comments created an appearance of impropriety. See *Cameron v. State*, 114 Nev. 1281, 1282; 968 P.2d 1169, 1170 (1998) ("[The] remarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence."). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. William D. Kephart, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk