

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GEORGE MICHAEL KOHAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72374

FILED

MAR 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

George Michael Kohan appeals from a judgment of conviction entered pursuant to a guilty plea of failure to register as a sex offender. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Kohan argues Judge Sattler was biased against him because Judge Sattler had previously prosecuted him in a different case. Kohan asserts Judge Sattler prosecuted him in 1994, and for that reason, was biased against him and should have been disqualified from acting as the district judge in this matter.

Kohan agreed to enter a guilty plea to failure to register as a sex offender and both parties agreed to recommend the district court sentence him to serve a term of probation with nine months in jail as a condition. During the sentencing hearing, Judge Sattler declined to follow the recommendation and instead concluded a prison term of 19 to 48 months was the appropriate sentence. Judge Sattler explained a prison term was appropriate because Kohan has "an awful prior criminal history," including crimes of violence, sex crimes, and recently committing the same offense as he did in this matter.

After Judge Sattler orally pronounced sentence, Kohan asked if Judge Sattler remembered prosecuting him in 1994. Judge Sattler recalled Kohan raised the issue in a prior case in which Judge Sattler sat as district judge and Kohan waived any conflict. Judge Sattler expressed concern that Kohan waited until after receiving a harsher sentence than anticipated to raise the issue in this matter. Judge Sattler then reviewed the minutes of the conflict waiver from the prior case, stated he had no recollection of the 1994 case, and stated the 1994 case had no bearing upon the sentence in this matter. Judge Sattler concluded Kohan did not timely raise this issue and denied Kohan's request for disqualification.

We conclude Kohan did not timely request disqualification of Judge Sattler. NRS 1.235(1)(a) requires a party seeking to disqualify a district court judge for actual or implied bias to do so at least 20 days prior to a trial or hearing. It is clear from the record Kohan knew of this issue well in advance of the sentencing hearing, yet he waited to raise it until after Judge Sattler imposed a lengthier sentence than Kohan desired. See *Jacobson v. Manfredi*, 100 Nev. 226, 230, 679 P.2d 251, 254 (1984) (discussing a motion for recusal pursuant to NRS 1.235 and stating that “[t]ime limitations are not extended for litigants who knew or who should have known the necessary facts at an earlier date.”); *Brown v. Fed. Sav. & Loan Ins. Corp.*, 105 Nev. 409, 412, 777 P.2d 361, 363 (1989) (“Failure to comply timely with the requirements for seeking recusal provided in NRS 1.235(1) & (2) results in a waiver of the issue”); see also *Valladares v. Second Judicial Dist. Court*, 112 Nev. 79, 81-83, 910 P.2d 256, 258-59 (1996) (discussing and applying time limitations for motion for disqualification from NRS 1.235 to a criminal matter). Given the untimeliness of Kohan's assertion of bias stemming from the 1994 prosecution, we conclude the

district court did not abuse its discretion by denying this claim. See *Jacobson*, 100 Nev. at 229-31, 679 P.2d at 253-54 (reviewing a motion for disqualification of a district court judge for an abuse of discretion).

Further, we conclude under the specific facts of this matter disqualification was not warranted. “[T]he test for whether a judge’s impartiality might reasonably be questioned is objective and presents a question of law [such that] this court will exercise its independent judgment of the undisputed facts.” *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011) (alterations in original, quotation marks and internal citations omitted). Disqualification is required when “a reasonable person, knowing all the facts, would harbor reasonable doubts about [the judge’s] impartiality.” *Id.*; see also *Williams v. Pennsylvania*, 579 U.S. ___, ___, 136 S. Ct. 1899, 1905 (2016) (“The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias.” (internal quotation marks omitted)). We presume a district court judge is impartial, and therefore, Kohan has the burden of demonstrating disqualification was warranted. See *Ybarra*, 127 Nev. at 51, 247 P.3d at 272.


As stated previously, the record demonstrates Judge Sattler noted Kohan had waived the conflict in a prior case and only raised this issue following the district court’s pronouncement of sentence in this matter. Judge Sattler then stated he had no recollection of Kohan’s 1994 case and the 1994 case had no bearing upon the sentence in this matter.

Under the circumstances in this case, we conclude Kohan did not demonstrate, as an objective matter, there was an unconstitutional potential for bias or that the risk of bias by Judge Sattler was too high to be

constitutionally tolerable. *Cf. Williams*, 579 U.S. at ___, 136 S. Ct. at 1905-06 (discussing the objective standard for judicial disqualification due to potential bias and reasoning behind requiring disqualification of a judge from sitting on a case when the judge had previously made critical decisions during the prosecution of that case); *see also Rippo v. Baker*, 580 U.S. ___, ___, 137 S. Ct. 905, 907 (2017) (“Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.” (internal quotation marks omitted)). Given the lengthy period of time from Kohan’s 1994 case, Judge Sattler’s lack of recollection of the 1994 case, and Kohan’s failure to raise the issue until after the imposition of his sentence, we conclude Kohan does not demonstrate a reasonable person would harbor reasonable doubts about Judge Sattler’s impartiality in this matter. *See Ybarra*, 127 Nev. at 51, 247 P.3d at 272. Therefore, we conclude Kohan is not entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Elliott A. Sattler, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk