IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIMOTHY CHARLES BAYOUTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72825

ORDER OF AFFIRMANCE

Timothy Charles Bayouth appeals from a judgment of conviction entered pursuant to a guilty plea of coercion. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

First, Bayouth argues the district court abused its discretion by denying his motion to disqualify Judge Johnson. Bayouth asserts Judge Johnson could not be impartial in this matter because the uncle of Bayouth's ex-wife was interested in this case, knew Judge Johnson, and had previously donated to Judge Johnson's election campaign. Bayouth also asserts Judge Johnson improperly formed the opinion that Bayouth was guilty before the presentation of evidence at a trial.

"[T]he test for whether a judge's impartiality might reasonably be questioned is objective" and disqualification is required when "a reasonable person, knowing all the facts, would harbor reasonable doubts about [the judge's] impartiality." *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011) (alterations in original, quotation marks and internal citations omitted); *see also Rippo v. Baker*, 580 U.S. ___, ___, 137 S. Ct. 905,

18-901001

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)). We presume a district court judge is impartial, and therefore, Bayouth has the burden of demonstrating disqualification was warranted. *See Ybarra*, 127 Nev. at 51, 247 P.3d at 272. We review a district court's decision to grant or deny a motion for disqualification for abuse of discretion. *See Jacobson v. Manfredi*, 100 Nev. 226, 230–31, 679 P.2d 251, 254 (1984) (reviewing a motion seeking disqualification of a district court judge for an abuse of discretion).

After consideration of Bayouth's pleadings and Judge Johnson's affidavit, Chief Judge Barker found the donation to Judge Johnson's campaign occurred prior to her assignment to this case and did not warrant her disqualification from this matter. The chief judge further found Judge Johnson's attenuated ties to Bayouth's ex-wife's uncle did not warrant disqualification. The record supports the district court's decision. *See Ivey v. Eighth Judicial Dist. Court*, 129 Nev. 154, 162, 299 P.3d 354, 359 (2013) ("Campaign contributions made within statutory limits cannot constitute grounds for disqualification of a judge under Nevada law."); *see generally Jacobson*, 100 Nev. at 230, 679 P.2d at 254 ("a judge, especially a judge in a small town, need not disqualify himself merely because he knows one of the parties.").

The chief judge also found Bayouth had not demonstrated Judge Johnson had already formed an opinion regarding his guilt. The chief judge reviewed the transcript of a prior hearing and noted "Judge Johnson

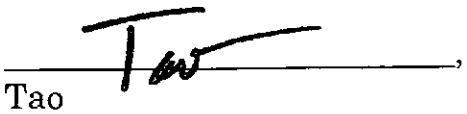
reiterated her belief the district attorney could produce sufficient evidence to demonstrate [Bayouth] is guilty beyond a reasonable doubt and also stated 'I'm not saying he is.'" The chief judge found the transcript of the hearing provided "no indication of bias in favor of or against any party to this action" and denied Bayouth's motion for disqualification. The record supports the chief judge's findings and we conclude that Bayouth fails to demonstrate the district court abused its discretion by denying his motion for disqualification. *See Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998) ("[R]emarks 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").

Second, Bayouth argues his sentence constitutes cruel and unusual punishment. Bayouth asserts he should have received a more lenient sentence given his individual characteristics and because the State recommended probation. Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

Bayouth's sentence of 28 to 72 months is within the parameters provided by the relevant statutes, *see* NRS 207.190(2)(a), and Bayouth does not allege that the statute is unconstitutional. We conclude the sentence imposed was not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
Gregory & Waldo, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk