IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JORGENSEN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36829

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of robbery with the use of a firearm, one count each of first-degree kidnapping with the use of a deadly weapon and second-degree kidnapping with the use of a deadly weapon, and four counts of sexual assault. The district court adjudicated appellant William Jorgensen a habitual criminal and sentenced him to serve a term of life in prison without the possibility of parole. Jorgensen was also ordered to pay restitution in the amount of $78.00 singularly, and $437.00 jointly and severally with his codefendant; he was given credit for 287 days time served.

First, Jorgensen contends that the district court's statements at sentencing and subsequent voluntary recusal from the case establish bias sufficient to invalidate the judgment of conviction.[1] We disagree.

At the end of the sentencing hearing, after the State produced certified copies of ten prior felony convictions and the testimony of a prior sexual assault victim of Jorgensen's, the following exchange took place:

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[1]In the order accepting reassignment of Jorgensen's case after Judge Steven R. Kosach's voluntary recusal, District Court Judge Steven P. Elliott stated that he "accepts transferring of this action as this Department has accepted two other cases with this defendant, and it is this Court's policy to have the same department hear all matters concerning a single defendant." Therefore, we will not address this aspect of Jorgensen's argument any further.

> THE COURT: Mr. Jorgensen, do you have anything to say before sentencing?
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> THE DEFENDANT: No, I don't, Your Honor.
>
> THE COURT: Well, I do. Pursuant to Nevada Revised Statute 207.010, I find you to be a habitual criminal. I also find you to be a filthy, cowardly predator. Look at me when I'm talking to you. Mr. Jorgensen? No, I'll tell you what. I'll look at you. And I won't get out of your face. I want you to feel how those girls felt. Just a little bit. Just a little bit, Mr. Jorgensen. Just feel how they felt. And others that probably haven't been here. Life in Nevada State Prison without the possibility of parole.

This court has stated that in "very unique circumstances," a motion to disqualify a judge was timely filed when it was filed immediately after counsel received the information constituting the basis for the motion.[2] In this case, however, Jorgensen did not object to the statements made by the district court, did not file a motion to disqualify the judge, and did not file a motion for a new trial. "'[A] judge has as great an obligation not to disqualify himself, when there is no occasion to do so, as he has to do so in the presence of valid reasons.'"[3]

Further, the United States Supreme Court has stated that after all the evidence has been presented, a trial judge may "be exceedingly ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were

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[2]Matter of Parental Rights as to Oren, 113 Nev. 594, 598-99, 939 P.2d 1039, 1042 (1997); but cf. NRS 1.235 (stating that:

> 1. Any party to an action or proceeding pending in any court other than the supreme court, who seeks to disqualify a judge for actual or implied bias or prejudice must file an affidavit specifying the facts upon which the disqualification is sought. . . . [T]he affidavit must be filed:
>
> (a) Not less than 20 days before the date set for trial or hearing of the case . . . .).

[3]Goldman v. Bryan, 104 Nev. 644, 649, 764 P.2d 1296, 1299 (1988) (quoting Amidon v. State, 604 P.2d 575, 577 (Alaska 1979)).

properly and necessarily acquired in the course of the proceedings . . . ."[4] Nevertheless, the strong opinion acquired by a trial judge towards the defendant may rise to the level of improper bias or prejudice if "it is so extreme as to display clear inability to render fair judgment."[5] The defendant claiming bias or prejudice against him must demonstrate "that the judge learned prejudicial information from an extrajudicial source."[6]

We conclude that Jorgensen's contention that the trial judge was improperly biased is without merit. The strong statements made at sentencing by the judge indicated that the opinion he formed of Jorgensen was acquired over the course of the trial and sentencing hearing. The sentence imposed by the district court was within the parameters provided by the relevant statutes, and was entirely reasonable given the severity of the crimes resulting in the recent conviction and the number of previous felony convictions.[7] Jorgensen cannot demonstrate that a disproportionate sentence was imposed to show that the judge was biased. Further, this court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."[8] In the instant case, Jorgensen does not allege that the district court relied on impalpable or highly suspect evidence. Therefore, we find no reason to vacate Jorgensen's sentence based on allegedly improper judicial bias.

Second, Jorgensen contends the district court abused its discretion by denying his motion for a mistrial after a prosecution witness inadvertently referred to Jorgensen having been previously incarcerated.

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[4]Liteky v. United States, 510 U.S. 540, 550-51 (1994); see also Kirksey v. State, 112 Nev. 980, 1007, 923 P.2d 1102, 1119 (1996).

[5]Liteky, 510 U.S. at 551.

[6]Kirksey, 112 Nev. at 1007, 923 P.2d at 1119.

[7]See NRS 207.010(1)(b); cf. Hughes v. State, 116 Nev. 327, 996 P.2d 890 (2000).

[8]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

Jorgensen argues that the denial of his motion denied him the right to choose whether or not to testify. We disagree.

During the State's redirect examination of its witness, a friend and co-worker of Jorgensen's, the following exchange took place:

> MR. GRECO: So you told Mr. Giese [defense counsel] you had hung out with [Jorgensen] before?
>
> A. Right.
>
> Q. How long had the two of you been friends?
>
> A. I started work at Arcade in 1998. And he went to prison before then --
>
> MR. GIESE: Objection, Your Honor.
>
> THE WITNESS: Oh. Excuse me.
>
> THE COURT: I'll sustain it. Strike it.
>
> MR. GRECO: Please just answer the specific question asked.

Outside the presence of the jury, Jorgensen moved for a mistrial arguing that the comment was "horribly damaging." The State responded by arguing that the comment by the witness was not responsive to the question and therefore not elicited by the prosecution, and it was brief. The district court denied the motion and defense counsel refused the offer of the district court to have the jury admonished to disregard the witness's comment.

On appeal, Jorgensen contends that the denial of his motion for a mistrial denied him the right to choose whether or not to testify, and in effect, forced him to testify. Jorgensen does not cite to any apposite authority in support of his contention,[9] and we conclude that he is not entitled to relief. While the statement by the witness may have constituted error, it was harmless due to the overwhelming evidence of Jorgensen's guilt, it was inadvertent and not elicited by the prosecutor, it was struck from the record, and Jorgensen refused the district court's offer

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[9]See Mazzan v. Warden, 116 Nev. 48, 75, 993 P.2d 25, 42 (2000) (stating that contentions unsupported by specific argument or authority should be summarily rejected on appeal).

to admonish the jury.[10] "Denial of a motion for a mistrial is within the sound discretion of the district court, and that ruling will not be reversed absent a clear showing of abuse of discretion."[11] For the reasons above, we conclude that the district court did not abuse its discretion.

Having considered Jorgensen's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

Young, J.

Agosti, J.

Leavitt, J.

cc: Hon. Steven P. Elliott, District Judge
Attorney General/Carson City
Washoe County District Attorney
Calvert & Wilson
Washoe County Clerk

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[10]See Thomas v. State, 114 Nev. 1127, 1141-42, 967 P.2d 1111, 1121 (1998); Stickney v. State, 93 Nev. 285, 286-87, 564 P.2d 604, 605 (1977).

[11]McKenna v. State, 114 Nev. 1044, 1055, 968 P.2d 739, 746 (1998).