

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAURICE CARROLL A/K/A MAURICE
AUSBOURN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66688

FILED

MAR 16 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal under NRAP 4(c) from a judgment of conviction, pursuant to a jury verdict, of 17 counts of forgery. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant Maurice Carroll argues the district court erred in concluding his trial counsel did not have a conflict of interest. Todd Schwarting, a State's witness, had previously been represented by the Clark County Public Defender's Office. Carroll asserts this caused a conflict and limited his trial counsel's ability to question Schwarting, as evidenced by counsel's failure to question Schwarting regarding his felony convictions.

"Conflict of interest and divided loyalty situations can take many forms, and whether an actual conflict exists must be evaluated on the specific facts of each case. In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties." *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (quoting *Smith v. Lockhart*, 923 F.2d 1314, 1320 (8th Cir.1991)). A conflict of interest exists if "counsel 'actively represented conflicting interests'" and the "conflict of interest adversely affected his lawyer's performance." *Strickland v.*



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Washington, 466 U.S. 668, 692 (1984) (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 350, 348 (1980)).

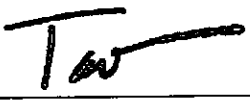
We conclude Carroll fails to demonstrate an actual conflict of interest existed. Carroll's attorney from the public defender's office informed the district court he discovered his office had previously represented Schwarting, a former employee of Carroll's. The district court conducted a hearing and made the following findings: Schwarting had been represented by a different attorney, that attorney worked in a different division than Carroll's attorney, the office no longer represented Schwarting, and Carroll's attorney had no exposure to any confidential information related to Schwarting's case. Schwarting had been convicted of attempted lewdness with a child under 14 and burglary; convictions that were not related to Carroll's charges for fraudulent activity. Given those findings, the district court concluded Carroll's counsel did not have a conflict of interest and ordered counsel to explain to Carroll that the public defender's office had previously represented Schwarting. We note that at trial, the State questioned Schwarting regarding his criminal record and Carroll does not demonstrate his counsel declined to repeat those questions out of a concern for Schwarting's interests. Under these circumstances, Carroll does not demonstrate his counsel acted under an improper conflict of interest. *See id.*


In addition, Carroll fails to demonstrate counsel violated RPC 1.7 or RPC 1.9 because he failed to demonstrate Schwarting's interests were directly adverse to those of his, counsel was materially limited by representation of both clients, or counsel was prevented from revealing information favorable to Carroll out of a concern of disadvantaging

Schwarting's interests. Accordingly, Carroll does not demonstrate he is entitled to relief for this claim, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elissa F. Cadish, District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk