

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDAL N. WIIDEMAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37014

FILED

MAR 15 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. S. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a plea of nolo contendere, of two counts of forgery, one count of attempted forgery and one count of attempting to obtain money under false pretenses. The district court sentenced appellant to three consecutive terms of 12 to 48 months for the two counts of forgery and the attempted forgery, and a consecutive term of 12 to 60 months for attempting to obtain money under false pretenses. These sentences were ordered to run consecutively to the sentence appellant is serving for a previous conviction.

First, appellant contends that his due process rights were violated because the prosecutor had a conflict of interest. Appellant claims that because the Attorney General and the prosecuting Deputy Attorney General were victims of appellant's law suits, the prosecutor had an actual conflict and should have been disqualified. We conclude that appellant's contention is without merit.

Primarily, we note that, as a matter of common sense, a prosecuting attorney has no duty to be impartial under the adversarial system. This court has held that "[t]he disqualification of a prosecutor's office rests with the sound discretion of the district court."¹ In the judgment of conviction, the district court specifically rejected appellant's claims that the Attorney General's Office should be

¹Collier v. Legakes, 98 Nev. 307, 309, 646 P.2d 1219, 1220 (1982).

disqualified. We conclude that the district court did not abuse its discretion and that appellant's contention is without merit.

Next, appellant contends that his due process rights were violated by being sentenced by a judge with a conflict of interest. Appellant claims that the sentencing judge was biased against him because of court actions that appellant brought against the judge. We conclude that appellant's contention is without merit.

NRS 1.235 provides for the procedure to disqualify a district court judge. The statute states,

Any party . . . 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; or (b) Not less than 3 days before the date set for the hearing of any pretrial matter.²

Appellant never, at any time, filed an affidavit to disqualify the district court judge. Thus, appellant has waived any claim of apparent or actual bias by the district court judge.³ Moreover, our review of the record indicates that there was no actual or implied bias on the part of the district judge.

Furthermore, this court has consistently afforded the district court wide discretion in its sentencing decision.⁴ 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."⁵

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect

²NRS 1.235(1) (emphasis added).

³See generally *Valladares v. District Court*, 112 Nev. 79, 910 P.2d 256 (1996) (holding that district court did not err by denying as untimely affidavit to disqualify presiding judge where affidavit was filed eight minutes before arraignment).


⁴See *Houk v. State*, 103 Nev. 659, 747 P.2d 1376 (1987).

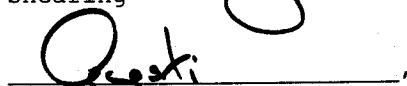
⁵*Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

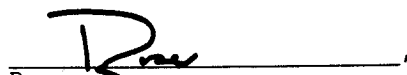
evidence. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.⁶ We conclude, therefore, that appellant's claim that the district judge should have been disqualified is without merit.

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

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Rose

cc: Hon. Richard A. Wagner, District Judge
Attorney General
Pershing County District Attorney
State Public Defender
Pershing County Clerk

⁶See NRS 205.085; NRS 205.090; NRS 205.095; NRS 205.110; NRS 205.380; NRS 193.130; NRS 193.330.

⁷We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.