

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KELSIE DENISE HOOVER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 77490-COA

**FILED**

FEB 11 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Kelsie Denise Hoover appeals from a judgment of conviction, entered pursuant to a guilty plea, of burglary; possession of a document or personal identifying information to establish false status, membership, license, or identity; fraudulent application for driver's license; false application to obtain vehicle registration; and stolen valor. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

First, Hoover argues the district court judge (reviewing judge) who reviewed her motion to recuse the sentencing judge erred by denying her motion.<sup>1</sup> Hoover argues the issue of whether the motion was timely was waived because the sentencing judge did not raise that issue in its response and the reviewing judge did not deny the motion on that ground. Further, she claims the reviewing judge erred by denying the motion because she presented sufficient argument and evidence that the sentencing judge was potentially biased against her given his military service, his daughter's military service, and comments he made at another defendant's sentencing hearing.

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<sup>1</sup>Hon. Barry L. Breslow reviewed the motion to recuse.

NRS 1.235(1)(a) requires that a motion to recuse/disqualify must be filed “not less than 20 days before the date set for trial or hearing of the case.” Hoover filed her motion five days prior to the sentencing hearing. Therefore, the motion was not timely filed. Contrary to Hoover’s assertions, the sentencing judge argued in his response that the motion was untimely and should be denied on that ground. Further, the reviewing judge denied the motion as untimely in addition to ruling that the motion was meritless. Therefore, Hoover’s claim regarding waiver lacks merit, and we conclude the reviewing court correctly denied the motion as untimely.

Further, we conclude the reviewing court did not err by denying the motion on the merits. “[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) (internal citations, quotation marks, and brackets omitted). “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.” *Rippo v. Baker*, 580 U.S. at \_\_\_, 137 S. Ct. 905, 907 (2017) (internal quotation marks omitted). “Because a judge is presumed to be impartial, the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification.” *Id.* (internal quotation marks omitted).

Based on the limited record provided by Hoover on appeal, Hoover failed to demonstrate the probability of actual bias on the part of the sentencing judge was too high to be constitutionally tolerable. The fact that the sentencing judge was a former military member and his daughter is a current military member do not demonstrate the sentencing judge could

not be impartial. Likewise, the limited transcripts of the statements the sentencing judge made in a different sentencing hearing for a different defendant did not demonstrate the judge could not be impartial in this case. Accordingly, we conclude the reviewing judge did not err by denying the motion on its merits.

Second, Hoover argues the sentencing judge abused its discretion when imposing sentence. The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere with the sentence imposed by the district court “[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.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

Hoover claims the sentencing judge abused his discretion by failing to do an independent judicial assessment of the appropriate sentence in this case. Specifically, she claims the judge merely imposed the sentence previously imposed by a prior sentencing judge, which was vacated by this court.<sup>2</sup> *See Hoover v. State*, Docket No. 72554 (Order Vacating Judgment and Remanding, April 16, 2018). At the sentencing hearing, the sentencing judge stated he had considered all of the facts and circumstances at length, noted Hoover’s family support, reviewed her criminal record and discussed the harm done to the veteran community by her actions. He then stated he agreed with the sentence imposed by the previous sentencing judge, and

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<sup>2</sup>This court found the previous sentencing judge did not abuse his discretion by imposing consecutive sentences but found the State breached the plea agreement by not affirmatively recommending concurrent sentences.

imposed that sentence. Based on this record, we conclude Hoover failed to demonstrate the sentencing judge relied solely on the sentence previously imposed, and therefore, Hoover failed to demonstrate the sentencing judge abused his discretion at sentencing.

Hoover also claims the sentencing judge abused his discretion by placing undue weight on the alleged injury flowing from Hoover's criminal conduct. As stated above, the sentencing judge considered many factors when imposing sentence and it was not an abuse of discretion to consider the injury to the veteran community caused by Hoover's criminal conduct. *See Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) ("Few limitations are imposed on a judge's right to consider evidence in imposing a sentence."). Therefore, Hoover failed to demonstrate the sentencing judge abused his discretion at sentencing.

Having concluded Hoover is not entitled to relief, we  
ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Egan K. Walker, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk