

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

ORLANDO SANDOVAL,

Respondent.

No. 38860

FILED

JAN 17 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court granting respondent Orlando Sandoval's pretrial petition for a writ of habeas corpus.

The State charged Sandoval with a gross misdemeanor violation of NRS 281.210, which proscribes nepotistic hiring practices in certain State institutions, including Clark County Community College, where Sandoval worked. A grand jury found that there was probable cause to indict Sandoval on this charge.

Sandoval filed a pretrial petition for a writ of habeas corpus in the district court, seeking dismissal of the nepotism indictment. Sandoval argued, among other things, that the grand jury was improperly influenced in its finding of probable cause by excerpts from the written college policy regarding nepotism. The members of the grand jury had

copies of this written policy before them during deliberations. Following a hearing, the district court entered a written order granting the petition on October 31, 2001. This appeal followed.

We conclude that the State has not demonstrated that the district court erred in granting Sandoval's petition. Our review of the record supports the district court's finding that the grand jury was improperly influenced by the written college policy materials, causing the grand jury to inappropriately infer probable cause for the criminal offense from the prosecutor's assertions that Sandoval merely violated college policy.¹

The transcript of the grand jury proceedings shows that the written policy provided to the jurors did not indicate that nepotism was a criminal offense, and that the policy was markedly easier to violate than the criminal statute. Factually, the prosecutor demonstrated that Sandoval's father-in-law worked in Sandoval's department, and that Sandoval may have played some role in helping his father-in-law renew his annual employment contract. However, as the district court observed, the prosecutor did not show a sufficient link between the written policy and the criminal statute to demonstrate any criminal culpability on Sandoval's part. Therefore, we conclude that the district court's finding

¹See Bank of Nova Scotia v. United States, 487 U.S. 250, 256 (1988) (holding that criminal defendant is entitled to dismissal of indictment if error in grand jury proceedings substantially influenced grand jury's decision to indict).


that the grand jury was improperly influenced by the written policy was not erroneous.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Attorney General/Las Vegas
Frank J. Cremen
Clark County Clerk