

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
v.)	Crim. I.D. No. 0407020818
)	
ANDREW GUDZELAK,)	
)	

ORDER

AND NOW, TO WIT, this 6th day of March, 2007, upon consideration of Defendant's motion for postconviction relief, it appears to the Court that:

1. On September 14, 2005, Defendant pled guilty to Fourth Degree Rape. On November 18, 2005, Defendant was sentenced to five years at Level V, suspended after two years for declining levels of supervision. Defendant filed a timely motion for postconviction relief, alleging that the Sentencing Judge had a conflict of interest and should have recused herself from the matter.

2. This Court decided a portion of Defendant's motion for postconviction relief in a January 31, 2007 Order.¹ The Court also determined that no procedural bars applied and decided Defendant's motion on the merits.

3. The ground for relief addressed in this decision is limited to Defendant's claim that the Sentencing Judge had a conflict of interest. It is not disputed that while in private practice, the Judge represented Defendant in a civil matter. Defendant claims that the prejudicial effect of the Judge's conflict is presumed, and the Judge

¹ *State v. Gudzelak*, 2007 WL 293016 (Del. Super.). The Court denied the portion of Defendant's motion for postconviction relief that alleged (1) the Deputy Attorney General had a conflict of interest, (2) prosecutorial misconduct and vindictiveness, (3) ineffective assistance of counsel, and (4) actual innocence.

should have recused herself from the matter.

4. It is inherent that a judge presiding over a case must be impartial.² Canon 3 C(1) of the Delaware Code of Judicial Conduct specifically addresses when a judge should recuse himself from a case. “A judge should disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where: (a) The judge has a personal bias or prejudice concerning a party.” However, a judge is not automatically disqualified when a claim is raised that the judge has a personal bias or prejudice concerning a party.³

5. The Delaware Supreme Court established a two-part test for a judge to administer when confronted with a potential claim of personal bias or prejudice.⁴ First, the judge must be satisfied subjectively that she can proceed with the matter without bias or prejudice to the party.⁵ Second, the judge must conduct an objective analysis to determine if an appearance of bias exists that is “sufficient to cause doubt as to the judge’s impartiality.”⁶

6. It is not unusual for the judge or counsel to be acquainted with a party in a case. In this case, the Judge *sua sponte* revealed her prior representation of

² *State v. Phillips*, 2003 WL 21517888, at *2 (Del. Super.) (“It is of course a fundamental tenet of the administration of justice that no judge should preside over a case in which he or she is not disinterested or impartial.”)

³ *Los v. Los*, 595 A.2d 381, 384 (Del. 1991) (citing *Steigler v. State*, 277 A.2d 662, 668 (Del. 1971); *Weber v. State*, 547 A.2d 948, 52 (Del. 1988)).

⁴ *Id.*

⁵ *Id.* at 384-385.

⁶ *Id.* at 385 (citing *State v. Walberg*, 109 Wis.2d 96, 325 N.W.2d 687, 692 (1982)). See also *Phillips*, 2003 WL 21517888, at *3.

Defendant to the parties before the sentencing proceeding commenced. At the time she did so, the parties were already aware of the Judge and Defendant's previous attorney-client relationship, because Defendant recognized the Judge.⁷ The record indicates that the Judge clearly communicated her subjective satisfaction that she could proceed without prejudice to either party.⁸

7. The Judge's objective analysis of the alleged conflict of interest is evidenced by the parties' colloquy with the Judge. *Both* parties confirmed their confidence in the Judge and waived any claim of bias or prejudice.⁹ The record further indicates that Defendant's counsel conferred with Defendant about the alleged conflict, and Defendant agreed to waive any conflict of interest.¹⁰ Defendant has failed to demonstrate that the Judge was impartial. Therefore, Defendant is not entitled to relief on this ground.

⁷ Aff. Louis B. Ferrara, Esquire, D.I. 36, ¶ 10.

⁸ Sentencing Hr'g, Tr. 3:8-11, Nov. 18, 2005.

⁹ Sentencing Hr'g, Tr. 3:10-13, Nov. 18, 2005.

MR. FERRARA: The parties are okay. I didn't know this until yesterday, I called Mr. Roberts yesterday and we weren't able to hook up. As soon as I saw him this morning, I advised him of the representation and nobody on our end or the State, as I understand it, objects to Your Honor.

¹⁰

"When Judge Jurden came onto the bench, it was discussed that she had represented him and *after discussing it with Gudzelak*, I advised that we had no problem with her as the sentencing judge." Aff. Louis B. Ferrara, Esquire, D.I. 36, ¶ 10 (emphasis added).

8. For the aforementioned reasons, Defendant's motion for postconviction relief is **DENIED**.

IT IS SO ORDERED.

Jan R. Jurden
Judge

cc: Prothonotary
Mr. Andrew Gudzelak
Donald R. Roberts, Deputy Attorney General