

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

STATE OF DELAWARE,)
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)
)
v.)
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)
WILLIAM SEAN DAHL,) ID No. 9905002754
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Defendant.)
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Submitted: September 20, 2014
Decided: November 25, 2014

Upon Defendant's Motion to Recuse
DENIED

MEMORANDUM OPINION

Defendant William Sean Dahl has filed a motion requesting that Judge Mary M. Johnston recuse herself from Dahl's case. In support of his motion, Dahl asserts that (1) Judge Johnston is the Judge of Record in Dahl's ongoing violation of probation case; (2) Dahl has filed a civil lawsuit in United States District Court naming Judge Johnston as the lead defendant; and (3) Judge Johnston sentenced Dahl to twenty-three years of incarceration in 2006.

DISCUSSION

The Court recognizes that there are certain circumstances which require judges to disqualify themselves. “A judge should disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.”¹ However, a judge has a duty not to recuse or disqualify “in the absence of a *bona fide* disqualifying condition, as defined in [Delaware Judges’ Code of Judicial Conduct] Rule 2.11, such that the judge is not genuinely convinced of the need for recusal or disqualification.”²

Civil Lawsuit

By filing a civil lawsuit in United States District Court against the judge in this matter, Dahl asserts that he has created a conflict of interest warranting recusal or disqualification. “The mere fact that a judge is an adverse party in another proceeding will not, by itself, result in automatic disqualification.”³ The Court must consider the policy reasons for and against disqualification when a litigant initiates a separate suit against a judge.⁴ Requiring disqualification, regardless of

¹ Del. Judges’ Code of Judicial Conduct R. 2.11 (A).

² *State v. Desmond*, 2011 WL 91984, at *10 (Del. Super.).

³ *Los v. Los*, 595 A.2d 381, 385 (Del. 1991).

⁴ *Id.*

the circumstances, would permit litigants to avoid certain judges and would severely hamper the orderly administration of justice.⁵

Prior Criminal Proceedings

Dahl also cites his ongoing violation of probation case and former sentencing with Judge Johnston as conflicts of interest. On April 4, 2006, Dahl was convicted of Loitering by a Sex Offender within 550 Feet of a School in violation of 11 Del. C. § 1112(a)(2). On July 28, 2006, Judge Johnston sentenced Dahl to: (1) 3 years at Level V for the loitering charge; (2) 17 years at Level V as an habitual offender; and (3) 8 years at Level V, suspended after 3 years for 8 months at Level IV, followed by 8 years at Level III, for violating probation.

On May 15, 2007, the Delaware Supreme Court overturned Dahl's loitering conviction. After finding Dahl's other arguments to be without merit, the Supreme Court reversed on the narrow technicality that the dance academy was not a "school" as that term has been defined by the General Assembly.⁶

⁵ *Id.*

⁶ *Dahl v. State*, 926 A.2d 1077, 1083-84 (Del. 2007) ("Although it is certainly possible that a dance studio may meet the statutory definition of a school, the State failed to produce sufficient evidence to prove that essential element in this case. The state was required to prove that the *primary purpose* of the Dance Academy was to educate or instruct children under the age of 16. Because 'primary purpose' is not defined by the statute, we must look to the commonly accepted meaning of the term. 'Primary' has been defined as 'first or highest in rank, quality, or importance; principal.' 'Purpose' has been defined as 'the object toward which one strives or for which something exists; an aim or goal.' In other words, the State was required to prove that the principal object of the Dance Academy was to

On June 19, 2007, the Superior Court on remand entered a judgment of acquittal on the loitering charge. The Superior Court did not modify the violation of probation sentence.

teach children under 16. The only evidence of the purpose of the Dance Academy in the record is the testimony of Mrs. Pate, who testified as follows:

Q: Okay, and what type of business is conducted there?
A: We teach dance lessons.

Mrs. Pate also explained who her own students were as follows:

Q: And who do you teach dance lessons to?
A: Children. Actually, I teach ages 2 to adult myself.

Q: 2 to Adult.
A. Uh-huh.

Q: On Saturdays, at around lunchtime, was there a particular group that would be getting education and learning how to dance?

A. Yes. We were putting on the Nut Cracker, so we had like rehearsals at that time.

Q. Okay, and how old were the children on Saturdays at around lunchtime?
A. They ranged from 7 to probably 13.

Based on this testimony, it is apparent that both children and adults receive dance instruction at the Dance Academy from more than one instructor. Although Mrs. Pate teaches children, the Dance Academy's business is to teach dance lessons. The State's argument that the Dance Academy is a 'school' as defined by the statute because Mrs. Pate taught children under the age of 16 on Saturdays is unavailing. A focus upon the activities of one teacher on one day of the week without more, does not show that the primary purpose of the Dance Academy was to educate or instruct children under 16. At a minimum, the evidence (or lack thereof) raised a reasonable doubt as to whether the Dance Academy was a 'school' as defined by 11 Del. C. § 1112.).

Postconviction Relief Motion

On February 5, 2008, Dahl filed a pro se motion for postconviction relief alleging: (i) abuse of discretion; (ii) excessive sentencing; and (iii) ineffective assistance of counsel.

In the Rule 61 Motion, Dahl argued that “since he was acquitted of the predicate charge to which the violation of probation attached, then the violation should have been negated as well.” Dahl claimed no evidence was offered at trial demonstrating Dahl violated probation. Dahl believed the Court committed an abuse of discretion by upholding Dahl’s sentence for violating probation.

This Court noted that Delaware Courts characterize probation as an “act of grace.”⁷ A judge has broad discretionary power when deciding whether probation should be revoked.⁸ During a violation of probation hearing, the State must only prove by a preponderance of the evidence that a violation has occurred.⁹ The State need only present “some competent evidence” to “reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation.”¹⁰

In 2000, Dahl pled guilty to 10 counts of possession of child pornography. On March 24, 2000, Dahl was sentenced to 12 years at Level V (suspended for

⁷ *Collins v. State*, 897 A.2d 159, 160 (Del. 2006).

⁸ *Id.*

⁹ *Jenkins v. State*, 2004 WL 2743556, at *3 (Del.).

¹⁰ *Collins*, 897 A.2d at 160.

probation after 3 years). As a condition of Dahl's probation he was to have no contact with children or persons under 21 years of age. Dahl was released on December 2, 2004, to Level IV home confinement. During May of 2005 Dahl was allowed to leave his home on Saturdays from 12:00-2:00 to look for employment.

On a Saturday in May, at approximately 12:30, Dahl went to the picnic area of a pizza parlor next to the New Castle County Dance Academy. On Saturdays, the Dance Academy only taught children between the ages of 7 and 13. The children walked to and from the pizza parlor before and after dance classes. Dahl went to the picnic area to watch the children. The dance instructor had seen Dahl watching her students on previous occasions. Dahl's presence made the children uncomfortable. Dahl was confronted by the dance instructor's husband, but refused to leave. The instructor reported the incident to the Delaware State Police. Dahl subsequently was arrested.

Dahl was charged with and convicted of Loitering by a Sex Offender within 550 Feet of a School in violation of 11 *Del.C.* § 1112. Following the verdict of guilty on all charges, the Court sentenced Dahl to 3 years at Level V for loitering; 17 years at Level V as an habitual offender; and a total of 3 years at Level V, followed by probation for violating his probation. The Court specifically considered the statement of Dahl's probation officer that Dahl was one of the most

dangerous, and irremediable, child predators that the Office of Probation and Parole had ever supervised.

The Delaware Supreme Court overturned Dahl's loitering charge, finding that there was insufficient evidence "to establish that the dance school was a 'school,'" as defined by 11 Del.C. § 1112.¹¹ The Supreme Court remanded the case to this Court to enter a judgment of acquittal and vacate the loitering sentence. The violation of probation sentence remained unaltered.

Dahl argued he was sentenced excessively for his violation of probation. Dahl claims the Court exceeded its authority when it sentenced Dahl to Level V, stating: "In this case it would be at the most an increase to Level IV." Additionally, Dahl claims the Court displayed an apparent closed mind while imposing his sentence.

A sentence may be deemed excessive due to judicial vindictiveness, bias or a closed mind.¹² "A judge sentences with a closed mind when the sentence is based on a preconceived bias without consideration of the nature of the offense or the character of the defendant."¹³

The evidence presented at trial proved beyond a reasonable doubt that Dahl used the limited freedom given to him in May of 2005, to repeatedly and

¹¹ *Dahl v. State*, 926 A.2d 1077, 1082-84 (Del. 2007).

¹² *Weston v. State*, 832 A.2d 742, 746 (Del. 2003).

¹³ *Id.*

intentionally linger near and leer at young children. Dahl's presence was ominous enough to cause the dance instructor and children alarm. Instead of seeking employment, the only purpose for which Dahl was permitted 2 hours release from home confinement, Dahl went directly to a place he knew would be in close proximity to little children in dance costumes. The Court was more than "reasonably satisfied" that Dahl had violated the condition of his probation that he have no contact with children.

The sentence for violation of probation was based upon objective factors. The Court considered Dahl's lengthy criminal history and his character as a repeat sex offender. In 1989, Dahl was convicted of Unlawful Sexual Contact in the 1st Degree and Unlawful Sexual Contact in the 3rd Degree. In 1996, Dahl violated probation. In 1998, Dahl was convicted of Unlawful Sexual Contact in the 3rd Degree. In 1999, Dahl was indicted on more than 20 charges of Dealing in Child Pornography. Dahl pled guilty to 10 counts and the State dismissed the remaining charges. While in prison in 2000, Dahl was indicted on three counts of Unlawful Sexual Contact with a minor and sentenced to 2 years. According to sentencing guidelines, when a violation of probation has occurred, "it is presumed that the offender may move up only one [SENTAC] level." However, the Court may increase the sentence, if it finds: (1) the behavior of the offender represents an

immediate threat to the community or an identified victim; and (2) the behavior of the offender is repetitive and flagrantly defies the authority of the court.

Dahl is a registered sex offender and has a history of sex-related convictions involving children. Dahl has a history of violating probation. In 2005, Dahl demonstrated an inability to follow or take seriously the conditions of his probation. The Court was convinced that Dahl's character and his conduct in 2005 demonstrated that he was a continuing threat to society. The Court found, based upon Dahl's repeated conduct, that if released into the community, he would in all probability flagrantly disregard the conditions of his probation and would continue to be a predator, targeting and victimizing young children.

This Court denied Dahl's Motion for Postconviction Relief.¹⁴ The Delaware Supreme Court affirmed the denial by Order dated October 20, 2008, finding:

In this case, the sentencing transcript reflects that the Superior Court considered all the relevant factors bearing on Dahl's VOP sentence, including the probation officer's report that Dahl had been keeping company with a minor and had failed to report being fired from his job, Dahl's allegation of childhood sexual abuse, his pattern of sexual offenses involving children, and his history of probation violations. The transcript further reflects that the Superior Court's decision to sentence Dahl as it did was based on a careful weighing of those factors. In the absence of any evidence of bias, vindictiveness or a closed mind on the part of the

¹⁴ *State v. Dahl*, 2008 WL 189707 (Del. Super.).

Superior Court, we conclude that Dahl's first claim is without merit.¹⁵

Disqualification

For a judge to disqualify herself merely because she had “ruled against [the defendant] in a related matter would establish a very dangerous precedent which, if carried to its logical conclusion, would prevent a judge who ruled against a movant for summary judgment from hearing the trial on the merits.”¹⁶

To the extent Dahl's conflict of interest argument insinuates that Judge Johnston should recuse herself due to personal bias, the argument is without merit. Disqualification due to personal bias or prejudice is required when the impartiality of the judge might *reasonably* be questioned.¹⁷ “Previous contact between the judge and a party, in the same or different judicial proceeding, does not require automatic disqualification.”¹⁸ To warrant disqualification, the alleged bias “must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.”¹⁹

¹⁵ *Dahl v. State*, 962 A.2d 256 (Del.)(TABLE).

¹⁶ *Matter of Will of Stotlar*, 1985 WL 4782, at *1 (Del. Ch.).

¹⁷ Del. Judges' Code of Judicial Conduct R. 2.11(A)(1).

¹⁸ *In re Wittrock*, 649 A.2d 1053, 1053 (Del. 1994) (citing *Los v. Los*, 595 A.2d 381, 384 (Del. 1991)).

¹⁹ *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966).

The Delaware Supreme Court set out the test for disqualification due to bias in *Los v. Los*.²⁰ A judge should perform a two-part analysis when faced with a claim of bias. First, a judge must “as a matter of subjective belief, be satisfied that [s]he can proceed to hear the cause free of bias or prejudice concerning that party.”²¹ Second, a judge must consider that “situations may arise where, actual bias aside, there is the appearance of bias sufficient to cause doubt as to the judge’s impartiality.”²² The standard for the second part of the analysis is whether an objective observer “would conclude that a fair or impartial hearing was unlikely.”²³

In accordance with the two-part analysis set out in *Los v. Los*, this Court is satisfied that it can hear the cause without bias or prejudice concerning Dahl. The Court also finds that there is no appearance of bias due to the enumerated objective factors the Court relied on in determining the violation of probation sentence.

CONCLUSION

The Court finds that Dahl’s Motion to Recuse due to conflict of interest is without merit. Dahl’s initiation of litigation against Judge Johnston does not

²⁰ 595 A.2d 381 (Del. 1991).

²¹ *Id.* at 384-85.

²² *Id.* at 385.

²³ *Fritzinger v. State*, 10 A.3d 603, 611 (Del. 2010).

automatically require disqualification. The Court's interest in the efficient administration of justice weighs against Judge Johnston disqualifying herself from Dahl's case. The Court also considers the insinuation of bias found in Dahl's motion and is satisfied—in accordance with the *Los v. Los* analysis—that this is not an instance in which disqualification is appropriate.

THEREFORE, Dahl's Motion to Recuse is hereby **DENIED**.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston