

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES LEE RANDOLPH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57959

FILED

DEC 14 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING MOTIONS TO STRIKE

This is an appeal from a district court order denying appellant's second postconviction petition for a writ of habeas corpus in a death penalty case. On March 16, 2011, Justice Douglas voluntarily recused himself from participating in the case because he presided over Randolph's death penalty trial when he was a district court judge. On May 16, 2011, Randolph filed separate motions to disqualify Justices Gibbons and Cherry.¹ On July 27, 2011, Justices Gibbons and Cherry voluntarily recused themselves.²

¹These motions were based on the fact that the challenged justices, when they were on the district court bench, provided affidavits as to the good professional character and ethics of Deputy District Attorney William Kephart. The affidavits were submitted to the Supreme Court as part of Kephart's response to an order entered in Randolph's direct appeal. Kephart was ordered to show cause as to why he should not be sanctioned for statements made during closing argument at Randolph's trial.

²The record indicates both justices participated in Randolph's first postconviction appeal. *See Randolph v. State*, Docket No. 46864 (Order of Affirmance, March 13, 2008). The panel's review of that appeal indicates
continued on next page . . .

On January 24, 2014, the four remaining justices—Chief Justice Parraguirre, Justice Hardesty, Justice Pickering, and Justice Saitta (now retired)—entered an order affirming the district court’s judgment. *See Randolph v. State*, Docket No. 57959 (Order of Affirmance, January 24, 2014). On February 14, 2014, appellant filed a petition for rehearing and a motion to disqualify the justices who decided appellant’s second postconviction appeal. On March 25, 2014, then Chief Justice Gibbons denied the motion for disqualification on procedural grounds—it was untimely pursuant to NRAP 35(a)(1). On April 7, 2014, appellant filed a motion to strike the order entered on March 25, 2014. On April 22, 2014, appellant filed a renewed motion for disqualification of all the justices.³ On September 17, 2014, this court entered a one-judge order signed by Chief Justice Gibbons denying appellant’s motion to strike the March 25, 2014, order and the renewed motion to disqualify.

On September 30, 2014, appellant filed a motion to strike the September 17, 2014, order.⁴ On May 4, 2016, appellant filed a motion for

... continued

Randolph, who was represented by the same counsel as in this appeal, did not file a motion to disqualify Justices Gibbons and Cherry in that case even though the grounds asserted for their disqualifications in this case were available at the time of the first postconviction appeal.

³Contemporaneously with the renewed disqualification motion, appellant filed a notice of letter to the Governor requesting the appointment of three judges to hear Randolph’s appeal.

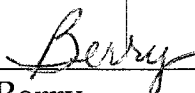
⁴Contemporaneously with the motion to strike, appellant filed a notice of demand to the Nevada Commission on Judicial Discipline for immediate intervention and discipline in Randolph’s case.

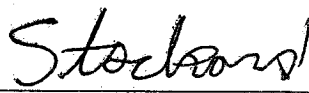
ruling and demanded a "legitimate lawful ruling" on the petition for rehearing and his motion to strike the court's September 17, 2014, order.

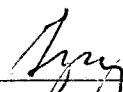
On July 22, 2016, Chief Justice Parraguirre and Justices Hardesty, Saitta, and Pickering entered an order recusing themselves from deciding appellant's September 30, 2014, motion to strike because it implicated the previous motion to disqualify. The order also directed the clerk of court request the designation of three judges to decide the motion to strike and, if the motion to strike is granted, to reconsider the motion to disqualify Chief Judge Parraguirre and Justices Hardesty, Saitta, and Pickering. On September 21, 2016, by executive order, the Governor appointed District Court Judges Berry, Gregory, and Stockard.

Appellant's motions to strike the March 25, 2014, order and the September 17, 2014, order challenge then Chief Justice Gibbons' authority to rule on the disqualification motion in light of his previous voluntary recusal from participation in the case. Having considered appellant's arguments, we conclude that relief is warranted. *See* SCR 7(5) (providing that a chief justice who is disqualified or voluntary recuses himself from participation in the decision of any litigated matter is also prohibited from undertaking any administrative action in the case). Therefore, we grant appellant's motions and direct the clerk to strike the March 25, 2014, order and the September 17, 2014, order.

It is so ORDERED.


_____, D. J.
Berry


_____, D. J.
Stockard


_____, D. J.
Gregory

cc: James A. Colin
Attorney General/Carson City
Clark County District Attorney