IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, Petitioner, vs, THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE ROB BARE, DISTRICT JUDGE, Respondent, and JENNIFER SCHNEIDER, Real Party In Interest.	Electronically Filed Aug 04 2015 03:51 p.m. Tracie K. Lindeman Clerk of Supreme Court Case No. _____ (Dist. Ct. # C295511)

PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

Routing Statement: This proceeding is appropriately retained by the Supreme Court pursuant to NRAP 17(a)(1) because it invokes the original jurisdiction of the Supreme Court.

The State of Nevada, Petitioner herein, by and through STEVE WOLFSON, District Attorney of Clark County, and his Chief Deputy, BRUCE NELSON, respectfully represents:

I

Respondent, at all times mentioned herein, is the District Judge of Department XXXII of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

II

Jennifer Schneider, Real Party in Interest, hereinafter referred to as Schneider, was arrested for DUI on January 26, 2012. Petitioner's Appendix (hereinafter "PA") 1-2.

III.

Schneider's case went to trial on January 15, 2014 in the Las Vegas Justice Court, the Honorable Cynthia Dustin-Cruz presiding. (Judge Dustin-Cruz was sitting pro tempore for Judge Baucum).

IV.

At the conclusion of the trial, Schneider was found guilty. PA 18.

V.

After Schneider was convicted she was sentenced. Schneider was sentenced to serve one day in jail but she was granted bail on the one day in jail. Id. In exchange for posting bail, she was permitted to perform 96 hours of community service in lieu of the jail time. Id. Schneider was also ordered to attend a DUI school, a victim impact panel, and to pay a fine of $585. Id.

VI.

On or about January 16, 2014, Schneider filed a notice of appeal to the Eighth Judicial District Court. PA 29-30.

VII.

Sometime before February 14, 2014, Craig Mueller Esq., counsel for Schneider, filed a motion to disqualify Judge Baucum from hearing DUI cases on the ground that Judge Baucum was biased against DUI defendants who elect to proceed to trial. PA 31-43. Judge Baucum filed a response PA 44-51, and the matter was heard by the chief judge of the justice court, the Honorable Karen Bennett-Haron.

VIII.

On February 14, 2014, Mueller's motion to disqualify was heard by Judge Bennett-Haron. Judge Bennett-Haron found that Judge Baucum was not biased against DUI defendants who elect to proceed to trial. PA 52-72. Mueller never sought review of this finding by way of writ or appeal.

IX.

Mueller then pursued Schneider's appeal in the Eighth Judicial Court. Schneider filed an opening brief PA 73-95 and the State filed an answering brief. PA 96-105.

X.

On December 3, 2014, argument was had on Schneider's appeal in District Court Department XXXII, the Honorable Rob Bare presiding. PA 107-148. Judge

Bare rejected all of Schneider's claims except one, which involved an allegation of purported judicial bias relating to Schneider's sentence. The court requested additional briefing on this issue.

XI.

Schneider then filed a supplemental brief relating to purported judicial bias PA 149-159. The State filed also a supplemental brief. PA 160-167.

XII.

On January 21, 2015, another hearing was held on the Schneider matter. PA 169-191. Judge Bare found that Judge Dustin-Cruz was biased against Schneider during Schneider's sentencing. Judge Bare also found that Schneider's sentence and conviction should be vacated. PA 192-195.

XIII.

The ruling by the district court is an arbitrary and capricious abuse of discretion justifying relief by way of a writ of mandamus.

XIV.

A decision of the district court arising from an appeal of a case that originated in the Las Vegas Justice Court is not an appealable order. The district court ruling has left the State without any ability to challenge the district court's

improper ruling. Therefore the State is without a plain, speedy, and adequate remedy at law.

XV.

This petition is brought pursuant to NRS 34.150 and NRS 34.320.

STATEMENT OF FACTS

Schneider was arrested on January 26, 2012 and eventually was charged with violating NRS 484C.110 (DUI). PA 1-2. Schneider's case was set for trial and was heard on January 15, 2014 in the Las Vegas Justice Court, the Honorable Cynthia Dustin-Cruz sitting for the Honorable Suzan Baucum.

Schneider was found guilty of DUI and sentenced. Her sentence included the mandatory minimums for a DUI as well as 96 hours of community or one day in jail. PA 18. Argument was had by both sides on the propriety of sentencing Schneider to an additional day in jail. In addressing those arguments, the trial judge indicated as follows: THE COURT: "Mr. Morey, I understand your argument. Like I said, my theory is that I am sitting for Judge Baucum. I do have sentencing discretion. I do follow what her policies and procedures are." Id. Because of Schneider's medical condition, the trial court then stayed imposition of Schneider's additional day in jail upon the posting of $500 bail. Id. Schneider was

also given the option of performing 96 hours of community service in lieu of one additional day in jail.

On January 17, 2014, Schneider appealed her conviction to the Eighth Judicial District Court, the Honorable Rob Bare presiding. PA 29-30. Schneider's appeal argued, among other issues, that there was insufficient evidence to convict her and that she was penalized for going to trial. PA 73-95.

Sometime before February 14, 2014, Craig Mueller, Esq. filed a motion to disqualify Judge Baucum from hearing DUI cases on the ground that Judge Baucum was biased against DUI defendants who elect to proceed to trial. PA 31-43. Judge Baucum filed a response PA 44-51 and the matter was heard by the chief judge of the justice court, the Honorable Karen Bennett-Haron.

On February 14, 2014, Mueller's motion to disqualify was heard by Judge Bennett-Haron. Judge Bennett-Haron found that Judge Baucum was not biased against DUI defendants. PA 52-72. No review was ever sought of this finding by way of writ or appeal.

On December 3, 2014, Schneider's appeal was heard by Department XXXII of the Eighth Judicial District Court, the Honorable Rob Bare presiding. PA 107. Judge Bare denied all of Schneider's appellate issues except her claim that she was

penalized for proceeding to trial. On that issue the court asked for further briefing. The State filed an additional brief PA 160-167 as did Schneider PA 149-159.

On January 21, 2015, Judge Bare heard further argument on Schneider's claim that she was penalized for going to trial. PA 169-191. On May 1, 2015, Judge Bare issued an order setting forth his findings. PA 192-195. Judge Bare determined that Schneider was penalized for going to trial. Judge Bare also vacated Schneider's sentence and conviction. Judge Bare then remanded the matter for re-trial. This writ followed.

There has been some delay in filing this writ caused by the need to obtain a transcript of the December 3, 2014 hearing; the State was finally able to obtain that transcript on July 1, 2015.

ISSUES PRESENTED

1. Whether the District Court acted arbitrarily and capriciously by finding that Judge Dustin-Cruz penalized Schneider for going to trial.
2. Whether the District Court acted arbitrarily and capriciously by vacating not only Schneider's sentence but also her conviction.

RELIEF SOUGHT

Petitioner prays that this Court issue a writ of mandamus and/or prohibition, directed to the Respondent District Court, ordering said court to vacate its order filed May 1, 2015 and to dismiss the appeal filed by the real party in interest.

Procedural History

Schneider was convicted of violating NRS 484C.110 in the Las Vegas Justice Court. PA 18. Specifically, Schneider was found guilty after a trial before the Honorable Cynthia Dustin-Cruz. At the conclusion of Schneider's trial, she was sentenced by Judge Dustin-Cruz. Schneider was sentenced to the minimum sentence except that she was ordered to serve one day in jail or perform 96 hours of community service. Id. She was also permitted to post a $500 bail in lieu of serving the day in jail.

Schneider then filed an appeal in which she argued that she had been punished for going to trial. PA 73-95. The district court agreed with Schneider's argument. PA 192-195.. That court then vacated Schneider's sentence and conviction and remanded Schneider's case for a new trial. This writ followed.

Standard for Mandamus

This Court may issue a writ of mandamus to enforce "the performance of an act which the law enjoins as a duty especially resulting from an office . . . or to compel the admission of a party to the use and enjoyment of a right . . . to which he is entitled and from which he is unlawfully precluded by such inferior tribunal." NRS 34.160.

Mandamus will not lie to control discretionary action unless it is manifestly abused or is exercised arbitrarily or capriciously. Office of the Washoe County DA v. Second Judicial District Court, 5 P.3d 562, 566 (2000). Thus a writ of mandamus will issue to control a court's arbitrary or capricious exercise of its discretion. Id., *citing* Marshall v. District Court, 108 Nev. 459, 466, 836 P.2d 47, 52 (1992); City of Sparks v. Second Judicial District Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015-16 (1996); Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

A writ of mandamus will issue when the petitioner has no plain, speedy, and adequate remedy at law. Scrimer v. Eighth Judicial District Court, 998 P.2d 1190, 1193 (2000). It is within the discretion of the court to determine if such writ will be considered. Id.; see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983).

Standards for Prohibition.

Nevada Revised Statute 34.420 states:

> The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person from exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

The object of a writ of prohibition is to restrain inferior courts from acting without authority of law in cases where wrong, damage, and injustice are likely to follow from such action. Olsen Family Trust, 110 Nev. at 552, 874 P.2d at 781; Silver Peaks Mines v. Second Judicial District Court, 33 Nev. 97, 110 P. 503 (1910). Petitions for extraordinary writs are addressed to the sound discretion of this Court, and may only issue where there is no plain, speedy, and adequate remedy at law. NRS 34.330; Jeep Corp. v. Second Judicial District Court, 98 Nev. 440, 442-43, 652 P.2d 1183, 1185 (1982).

POINTS AND AUTHORITIES

This petition is being brought because of two arbitrary and capricious errors by the district court. The first error is that the court found that Judge Dustin-Cruz was biased against Schneider because Schneider went to trial. The district court's second error is that the court reversed both Schneider's sentence and her conviction upon a finding that the trial judge was biased against her for proceeding to trial. In committing these errors the district court acted arbitrarily and capriciously.

I.
THE DISTRICT COURT ACTED ARBITRARILY AND CAPRICIOUSLY IN FINDING THAT SCHNEIDER WAS PENALIZED WITH A HIGHER SENTENCE FOR PROCEEDING TO TRIAL.

Schneider was convicted of DUI in the justice court. Schneider was sentenced by that court. Schneider appealed her conviction and sentence on various grounds. The only ground found to be valid by the district court was Schneider's claim that the trial court punished her for proceeding to trial. The district court then vacated Schneider's sentence and conviction. The district court acted arbitrarily and capriciously by wrongly deciding that the trial judge was biased at sentencing and the district court imposed the wrong sanction for the purported bias of the trial court.

At the conclusion of Schneider's trial, she was sentenced. Argument regarding her sentencing consisted of the following:

> THE COURT: . . . Now, it's my understanding that Miss Schneider only has one day of credit on this particular case. So, Miss Schneider, you are remanded into the Clark County Detention Center.
>
> MR. MOREY: Judge, could we have that converted into community service?
>
> THE COURT: No. She'll be remanded into –
>
> MR. MOREY: Well here's the thing. That's a trial tax Judge. There's already judicial bar complaints going in about this. It's not equal protection to go ahead and remand a person at trial just because they decide to test the State's evidence as she has.
>
> She had a right to go ahead and demand the witnesses before her. The State doesn't even bring them in and now we're going to go ahead and place her into custody? That's completely unfair, Judge.
>
> The statute allows for 24-96 hours of community service and two days to six months or 24 hours. I'm sorry 48 to 96 hours. We've got 18 hours in custody. We ask that the remainder be placed on community service. . . .

> THE COURT: Mr. Morey, I understand your argument. Like I said, my theory is that I am sitting for Judge Baucum. I do have sentencing discretion. I do follow what her policies and procedures are.
>
> What I was going to do was remand her for the 24 hours on this particular case. If she can get – I'll set a bail on it of $500 on the 24 hours. Then if she can bail out on that, post a cash bail on that, she is going to have 48 hours of community service which she still needs to do.
>
> She needs to do the DUI school and the Victim Impact Panel. . . .
>
> MR. NANCE: And, Judge, she was born in 1990. She's under the age of 25 years old so I would ask for the Coroner's program as a precautionary measure of an additional requirement. . . .
>
> THE COURT: I'm not going to impose the Coroner's program requirement because of the additional community service. . . .

PA 18.

At the conclusion of her sentencing, Schneider's case was continued 90 days. She was never remanded into custody.

The district court apparently confused the discretion given to a court to sentence a defendant with the prohibition against punishing a defendant solely for going to trial. When Schneider was convicted after trial, she essentially received the minimum sentence. NRS 484C.400 mandates that a convicted person serve two days in jail or 48 hours of community service. Prior to her conviction, Schneider had served one day in jail. When Schneider was convicted she was sentenced to serve one more day in jail. Thus, the mandatory minimum sentence was imposed.

> Moreover, this court has repeatedly declined to interfere with sentencing when the sentence is legal and within the statutory limits and where the appellant cannot show that the district court relied on highly suspect or impalpable evidence. Lloyd v. State, 94 Nev. 167, 576 P.2d 740 (1978); Silks v. State, 92 Nev. 91, 545 P.2d 1159 (1976). Nothing in the record indicates that the judge relied on impalpable or highly suspect evidence. Appellant's arguments are without merit, and we affirm appellant's conviction and sentence.

Cameron v. State, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998); see also Kinna v. State, 84 Nev. 642, 447 P.2d 32 (1968).

Schneider cannot show that her sentence was based on highly suspect evidence. In this case, Schneider's repeated attempts to avoid taking responsibility for her actions justified a higher sentence. It has long been recognized that a defendant who refuses to accept responsibility for his crimes may be and usually is punished more severely than a defendant who acknowledges wrongdoing. For example, under the Federal Sentencing guidelines, "acceptance of responsibility" can be used to significantly reduce a sentence. USSG, § 3E1.1, 18 U.S.C. Likewise, the United States Supreme Court and the Nevada Supreme Court have repeatedly held defendants who accept responsibility for their crimes may be punished less severely than those who do not. In Brady v. U.S., 397 U.S. 742, 751-53, 90 S. Ct. 1463, 1471 (1970), the U.S. Supreme Court held as follows:

> The issue we deal with is inherent in the criminal law and its administration because guilty pleas are not constitutionally forbidden, because the criminal law characteristically extends to judge or jury a

> range of choice in setting the sentence in individual cases, and because both the State and the defendant often find it advantageous to preclude the possibility of the maximum penalty authorized by law. For a defendant who sees slight possibility of acquittal, the advantages of pleading guilty and limiting the probable penalty are obvious—his exposure is reduced, the correctional processes can begin immediately, and the practical burdens of a trial are eliminated. For the State there are also advantages—the more promptly imposed punishment after an admission of guilt may more effectively attain the objectives of punishment; and with the avoidance of trial, scarce judicial and prosecutorial resources are conserved for those cases in which there is a substantial issue of the defendant's guilt or in which there is substantial doubt that the State can sustain its burden of proof. It is this mutuality of advantage that perhaps explains the fact that at present well over three-fourths of the criminal convictions in this country rest on pleas of guilty, a great many of them no doubt motivated at least in part by the hope or assurance of a lesser penalty than might be imposed if there were a guilty verdict after a trial to judge or jury.
>
> Of course, that the prevalence of guilty pleas is explainable does not necessarily validate those pleas or the system which produces them. But we cannot hold that it is unconstitutional for the State to extend a benefit to a defendant who in turn extends a substantial benefit to the State and who demonstrates by his plea that he is ready and willing to admit his crime and to enter the correctional system in a frame of mind that affords hope for success in rehabilitation over a shorter period of time than might otherwise be necessary.

See also Corbitt v. New Jersey, 439 U.S. 212, 220-21, 99 S. Ct. 492, 498 (1978) ("While confronting a defendant with the risk of more severe punishment clearly may have a 'discouraging effect on the defendant's assertion of his trial rights, the imposition of these difficult choices [is] an inevitable'—and permissible—'attribute of any legitimate system which tolerates and encourages the negotiation

of pleas.'"); Aguilar-Raygoza v. State, 127 Nev. __, 255 P.3d 262 (2011) (statute that allows drunk driver to enter into diversion program upon a plea of guilty but denies such diversion to defendant who elects to go to trial is constitutional); El v. Artuz, 105 F. Supp. 2d 242, 255 (S.D. N.Y. 2000):

> The failure to show remorse is a relevant factor for courts to consider when determining the appropriate sentence because "[a] contrite defendant is considered to be more likely to benefit from rehabilitation and is, therefore, more deserving of leniency in sentencing."

It is also only natural for a court to impose a higher sentence on a defendant who chooses to go to trial rather than a defendant who pleads guilty. This was best explained by the court in Waring v. Delo, 7 F.3d 753, 758 (8th Cir. 1993):

> During a trial, "the judge may gather a fuller appreciation of the nature and extent of the crimes charged" and gain "insights into [the defendant's] moral character and suitability for rehabilitation." In addition, "after trial, the factors that may have indicated leniency as consideration for the guilty plea are no longer present." 490 U.S. at 801, 109 S. Ct. at 2206. Therefore, it is not reasonable to presume that a longer sentence imposed after trial was motivated by unconstitutional vindictiveness.

In this case, the trial court had ample reasons to punish Schneider more severely than imposing the mandatory minimum sentence. The evidence adduced at trial showed that Schneider committed multiple traffic violations before she was stopped by the police. Specifically, she made unsafe lane changes and drove

unsafely into an intersection before she was stopped by the police. PA 6. A court may consider the fact that a defendant who commits multiple crimes during the course of her criminal conduct is deserving of a higher sentence. Apprendi v. New Jersey, 530 U.S. 466, 481, 120 S. Ct. 2348, 2358, 147 L. Ed. 2d 435, 449 (2000):

> We should be clear that nothing in this history suggests that it is impermissible for judges to exercise discretion -- taking into consideration various factors relating both to offense and offender -- in imposing a judgment within the range prescribed by statute. We have often noted that judges in this country have long exercised discretion of this nature in imposing sentence within statutory limits in the individual case.

In addition to her multiple criminal violations in this case, Schneider also had a criminal record. On January 16, 2011, Schneider was cited for minor in possession of alcohol. Barely one year later, she is arrested for driving under the influence of alcohol. Her repeated criminal conduct involving alcohol would serve as justification for a higher sentence.

Finally, Schneider was barely 21 years old when she committed this offense. Thus, she had two alcohol offenses in a short period of time. The trial judge may have believed she had to deter Schneider from future crimes by having Schneider serve one day in jail.

It should also be noted that many of the claims Schneider made were more properly directed at the State rather than the lower court. For example, Schneider bemoaned the fact that the State offered lower sentences to persons who pled guilty

to their crimes. The State is permitted to do so; to hold otherwise would invalidate all plea bargaining because neither the State nor the defendant would have any incentive to plea bargain if a lower sentence could not be offered to a defendant who accepts the plea bargain. Brady, supra. The State is prohibited from increasing the charges against a defendant who rejects the plea bargain but that did not happen here; Schneider was charged with a DUI before and after she failed to accept the offered negotiation.

Finally, the facts of this case do not bear out the district court's conclusion. The district court apparently found that Judge Baucum has a policy of sentencing DUI defendants who go to trial to one additional day in jail. Counsel for Schneider had already sought to disqualify Judge Baucum from hearing any DUI cases on the ground that she was prejudiced against defendants who proceeded to trial. PA 31-51. The chief judge of the justice court found, after a hearing, that Judge Baucum was not biased. PA 52-72.

The district court also apparently concluded that Judge Dustin-Cruz was blindly following Judge Baucum's purported policy of imposing one additional day in jail on defendants who went to trial. Yet this policy was found to not constitute bias by the chief judge of the justice court and no review of that decision was ever sought. Further, if the district court were correct, then Schneider should

have served one additional day in jail but Schneider did not do so. Instead, Schneider was permitted to post a $500 bail and perform 96 hours of community service. Obviously Judge Dustin-Cruz was not blindly following Judge Baucum's purported policy because Judge Dustin-Cruz departed significantly from that supposed policy.

In Cameron v. State, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998), the Supreme Court addressed the question of whether a judge was biased against a defendant. The Court found that, unless a judge was so closed minded that she would not consider any evidence in mitigation, the judge was not biased:

> In addition, remarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence. Id. § 4.07, at 105. The record in this case reflects that the district judge carefully considered all the evidence, including the psychiatrists' reports, before rendering his decision. So long as a judge remains open-minded enough to refrain from finally deciding a case until all of the evidence has been presented, remarks made by the judge during the course of the proceedings will not be considered as indicative of disqualifying bias or prejudice. Id. at 105-106. The statements made by the district judge in this case do not exhibit impermissible bias or prejudice.

Although Cameron dealt with purported bias during trial, its holding is equally applicable to sentencing. Unless a judge is so closed minded during sentencing that she automatically imposes the same harsh sentence in every case, there is no basis to find bias. In this case, Judge Dustin-Cruz did not impose the

maximum sentence nor did she blindly follow a supposed sentencing policy. She initially sentenced Schneider to one day in jail but then gave Schneider the right to post bail and to perform community service in lieu of jail time. PA 18. The rest of Schneider's sentence was nothing more than the mandatory minimum sentence (DUI school, etc.).

There was no bias by the trial judge at sentencing. That judge followed the law and imposed the sentence she thought was appropriate. The district court acted arbitrarily and capriciously in finding otherwise. The arbitrariness of the district court's decision is further shown by the fact that the court vacated not only Schneider's sentence but her conviction as well.

II.
THE DISTRICT COURT ERRED IN REVERSING SCHNEIDER'S CONVICITON AS WELL AS HER SENTENCE.

The district court acted arbitrarily and capriciously in finding that the trial judge was biased against Schneider during sentencing. Even more arbitrary was the remedy chosen by that court. The court, once it found bias at sentencing, then vacated Schneider's sentence and her conviction. In so doing, the appellate court ignored a universally recognized rule of law.

If a judge is biased against a defendant at sentencing, then the proper remedy is to vacate the "biased" sentence. The bias of the judge at sentencing does not affect the validity of the verdict itself.

Every court that has considered the question of what remedy is appropriate when a judge exhibits bias at sentencing has found resentencing is the appropriate remedy. All of the following cases involved a finding by a court that the trial judge punished a defendant more severely for going to trial. All of the same cases found that the appropriate remedy was to have the defendant resentenced. Karras v. State, 60 So. 3d 1186 (Fla. 2011); Prado v. State, 816 So. 2d 1155 (Fla. 2002). United States v. Medina-Cervantes, 690 F.2d 715, 717 (9th Cir. 1982) ("Accordingly, in order to avoid the "chilling effect" upon the exercise of the right to trial presented by even the appearance of such a practice, we conclude that the sentence imposed on Medina-Cervantes must be vacated.") (Emphasis added). See also Commonwealth v. Spencer, 496 A.2d 1156 (Pa. 1985) and the cases cited therein.

The appellate court's error was particular egregious in the present case because it had already found Schneider had received a fair trial. The appellate court rejected all of Schneider's claims on appeal except her claim that the trial judge was biased against her at sentencing. PA 192. Thus, the appellate court

found Schneider received a fair trial but that she now had to be retried for reasons unrelated to her trial. Ironically, one of the cases cited by district court as a basis for its decision made the point that, even if a judge is biased, the defendant's conviction should not be reversed. In Kinna v. State, 84 Nev. 642, 447 P.2d 32 (1968), the court concluded the trial judge had been biased but that the evidence of guilt was overwhelming. The court then declined to reverse Kinna's conviction:

> The issue before us is narrowed to a determination whether the judicial misconduct of which appellant complains denied him his constitutional right to a fair and impartial trial.
> In State v. Clark, 38 Nev. 304, 149 P. 185 (1915), this court held that the amount of misconduct necessary to reverse depends on how strong and convincing is the evidence of guilt. However, even when evidence is quite apparent, misconduct may so interfere with the right to a fair trial as to constitute grounds for reversal. State v. Boyle, 49 Nev. 386, 248 P. 48 (1926); People v. Mahoney, 258 P. 607 (Cal. 1927).
> While it is difficult to appraise the effect judicial misconduct may have played in the case before us, it is clear from the record that the evidence of appellant's guilt is most substantial and convincing, and for that reason only, appellant's conviction must be affirmed.

Kinna v. State, 84 Nev. 642, 647-48, 447 P.2d 32, 35-36 (1968).

In the present case, the district court did not find there was any basis to reverse Schneider's conviction other than judicial bias at sentencing. In fact, the court specifically found that, with the exception of punishing Schneider for going to trial, the trial court committed no other error. ("I, in my heart of hearts, I have no problem with the merits of the case as Judge Cruz handled it" PA 190. Thus,

the district court found there was sufficient evidence to convict Schneider of DUI and that Schneider received a fair trial. If the district court believed the trial judge was biased during trial, the district court would have found so found. But the district court only found the trial judge was biased at sentencing. Yet the district court reversed both the sentence and the conviction.

The district court order did find the conviction had to be reversed because the sentencing judge and the trial judge were one and the same. Yet in all of the above cases determining that the judge was biased at sentencing, the sentencing judge and the trial judge were the same. Despite this fact the appellate courts only reversed the sentence, not the conviction. The district court's decision makes no sense in law or logic.

CONCLUSION

The district court acted arbitrarily and capriciously in finding the trial court judge was biased against Schneider because she proceeded to trial. The district court certainly erred in finding Schneider was entitled to a new trial. This Honorable Court should issue a writ of mandamus and/or prohibition directing the lower court to vacate its order reversing Schneider's conviction and remand this case for further proceedings.

/ / /

DATED this 4th day of August, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on August 4, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JUDGE ROB BARE
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BY */s/ E.Davis*
Employee, District Attorney's Office

BN/SSO/Bryan Schwartz/ed