DISTRICT OF COLUMBIA COURT OF APPEALS
Nos. 04-CM-760 & 04-CO-1600

ELENA R. SASSOWER, APPELLANT,

v.

UNITED STATES, APPELLEE.

Appeals from the Superior Court of the District of Columbia, Criminal Division M-4113-03

(Hon. Brian Holeman, Trial Judge)

Submitted October 17, 2006
Decided December 20, 2006)

Before: RUIZ and KRAMER, *Associate Judges*, and NEBEKER, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Following a jury trial, appellant Elena R. Sassower was convicted on April 20, 2004 of one count of disrupting Congress[1] and was sentenced on June 28, 2004 to a term of six months incarceration. Appellant filed a timely notice of appeal on June 29, 2004 and now alleges four grounds upon which her conviction should be overturned: (1) the trial court erred in denying her motion for recusal based on bias; (2) the trial court erred in holding that she was not entitled to have her case removed to the United States District Court for the District of Columbia; (3) this Court should hold in the first instance that D.C. Code §10.503.15(b)(4) is unconstitutional both as written and as applied to her

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[1] D.C. Code §10-503.16(b)(4) (2001).

case; and (4) the trial court erred in denying her motion under D.C. Code §23-110, which challenged her sentence as illegal and unconstitutional. We affirm.

On May 22, 2003 appellant attended a confirmation hearing of a judicial nominee for the United States Court of Appeals for the Second Circuit, which was being held by the Senate Judiciary Committee in the Dirksen Senate Office Building, located in the United States Capitol. Two days prior to the hearing, appellant began making repeated efforts to contact Senator Hillary Rodham Clinton about this particular judicial nominee. After conversations with appellant, members of Senator Clinton's staff alerted the Capitol Police, who spoke with appellant and became concerned that she might disrupt the confirmation hearing. At the confirmation hearing, as Senator Chambliss, the acting Chairman of the Committee began to wrap up the hearing, appellant stood up and shouted over the voice of the Senator that he should look into the corruption on the New York Court of Appeals. The Senator banged his gavel and asked the Capitol Police to restore order, and as the **[p. 2]** Capitol Police approached appellant and escorted her out of the room she continued to shout her views and insist that she wanted to testify. She was subsequently charged with one count of disruption of Congress.

Prior to trial, appellant made a motion for a change of venue, which was denied. At trial, she represented herself and made two motions to disqualify the trial judge based on grounds of bias. The motions were denied, and after a relatively lengthy trial, a jury convicted her of misdemeanor disruption of Congress. At sentencing, the trial judge offered a sentence that included probation; however, appellant declined to accept the terms of probation, and the trial judge, therefore sentenced her to six months incarceration. Appellant subsequently filed a motion under D.C. Code §23-110 attacking the legality and constitutionality of her sentence, which the trial judge denied. Sassower

appealed its denial, and we consolidated that appeal with her appeal of the underlying conviction.

I

We review the denial of a motion to disqualify a trial judge on grounds of alleged bias for abuse of discretion. *Anderson v. United States*, 754 A.2d 920, 923 (D.C. 2000). Under Super. Ct. Civ. R. 63-I, made applicable to criminal cases through Super. Ct. Crim. R. 57(a), motions for disqualification must include an affidavit that states the facts and reasons for the belief that bias exists, which must be accompanied by a certificate stating that the allegations are made in good faith. Furthermore, because of the disruptiveness of disqualification, affidavits under Rule 63-I are strictly scrutinized for form, timeliness, and sufficiency. *York v. United States*, 785 A.2d 651, 654 (D.C. 2001), quoting *In re Evans*, 411 A.2d 984, 994 (D.C. 1980).

Appellant's motion for disqualification was wholly lacking in merit, as her allegations focused almost exclusively on unfavorable rulings made by the trial judge. "The bias or prejudice must be personal in nature and have its source 'beyond the four corners of the courtroom.'" *Gregory v. United States*, 393 A.2d 132, 142 (D.C. 1978), quoting *Tynan v. United States*, 126 U.S. App. D.C. 206, 210, 376 F.2d 761, 765, cert. denied, 389 U.S. 845 (1967)). We note that the Supreme Court decision in *Liteky v. United States*, 510 U.S. 540 (1994), upon which appellant relies, does not necessarily apply to claims made specifically under Super. Ct. Civ. R. 63-I.

The Court in *Liteky* was interpreting 28 U.S.C. §455 (a), the statute that governs recusal of federal judges, and in that context concluded that judicial bias sufficient to demand recusal need not arise only from an "extrajudicial source." *Id.* at 554-55. In other words, the Court found it possible that an "unfavorable predisposition can also deserve to be characterized as 'bias' or 'prejudice' because, even though it springs from

the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment." *Id.* At 551. Super. Ct. Civ. R. 63-I, however, contains additional language that requires the bias to be "personal," thus it is not clear that the extrajudicial source reasoning from *Liteky* would apply to judicial recusal in D.C. Superior Court. However, we need not reach that question since appellant's allegations were insufficient to warrant disqualification even viewing this claim under the standard set in *Liteky*. "[J]udicial rulings **[p. 3]** alone almost never constitute a valid basis for a bias or partiality motion." *Id.* at 455. "'[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias of partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.'" *In re Banks*, 805 A.2d 990, 1003 (D.C. 2002) (quoting *Liteky*, *supra*, 510 U.S. at 550). No such showing was made in this case, and none of the evidence suggested by appellant provides us with any reason to question the impartiality of the trial judge. As such, the trial court did not abuse its discretion in denying appellant's motions for disqualification.

II

Appellant states that she was "entitled" to have her case removed to the United States District Court for the District of Columbia. This argument is meritless because it not only invites this court to review the executive branch's exercise of prosecutorial authority where we have no power to do so, but D.C. Code §10-503.18 conveys no right upon a criminal defendant to choose the court in which her case will be brought.[2]

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[2] D.C. Code § 10-503.18(c) provides that "[p]rosecution for any violation of § 10.503.16 (a) or for conduct which constitutes a felony...shall be in the United States District Court for the District of Columbia. All other prosecutions for violations of this part may be in the Superior Court of the District of Columbia." It is clear that a misdemeanor violation of

Furthermore, the decision to remove a criminal prosecution to federal district court rests with the district court, and even if appellant had followed the requisite procedures to request removal to federal court,[3] this court lacks authority to review that decision.

III

Nowhere in the copious proceedings at the trial court did appellant challenge the constitutionality of D.C. Code § 10-503.16 (b)(4) or its application to her situation. As such, we need not entertain this claim now. *See Washington v. United States*, 884 A.2d 1080, 1098-99 (D.C. 2005) (stating that constitutional challenges not raised before the trial court are rejected as waived) (citing *Hager v. United States*, 856 A.2d 1143, 1151 (D.C. 2004); *Mitchell v. United States*, 746 A.2d 877, 885 n.11 (D.C. 2000)). Moreover, it is patently clear that this statute is constitutional on its face. Indeed, this court has already held as much. *See Armfield v. United States*, 811 A.2d 792, 796 (D.C. 2002) (stating that D.C. Code § 9-112 (b)(4) (1981 ed.) [recodified as D.C. Code § 10-503.16 (b)(4) (2001 ed.)] is "constitutional as written"); *Smith-Caronia v. United States*, 714 A2d **[p. 4]** 764, 766 (D.C. 1998) (holding that the statute "comfortably meets" the standards for constitutionality because it is "viewpoint neutral on its face and imposes reasonable time, place, and manner restrictions on speech consistent with the significant government interest it serves, while leaving open ample means of communication not calculated to disrupt the orderly conduct of the legislature's business").

Appellant's suggestion that the statute was unconstitutionally applied because of the difference

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§10.503.16 (b) may be prosecuted in either United States. District Court or District of Columbia Superior Court. The prosecutor was therefore acting within his lawful discretion in choosing to bring this case in District of Columbia Superior Court.

[3] See 28 U.S.C. § 1446(c) (2006).

between a committee hearing and a session of Congress does not create a viable distinction, as the statute clearly applies to "any hearing...before any committee...of the Congress." D.C. Code § 10-503.16 (b)(4) (2001). Appellant's final argument that the statute was unconstitutionally applied rests on factual assertions that were properly presented to the jury, which was "entitled to disregard what [s]he said in the courtroom and base its verdict on what [s]he actually did." *Armfield*, *supra*, 811 A.2d at 798. We, therefore, find no plain error in the actions of the trial court. *See Shepherd v. United States*, 905 A.2d 260, 262 (D.C. 2006) (stating that where constitutional argument was not raised before the trial court, discretionary review was limited to plain error).

IV

Appellant has completed serving her six-month sentence, thus her sentencing claims are now moot. *See McClain v. United States*, 601 A.2d 80, 81 (D.C. 1992); *Holley v. United States*, 442 A.2d 106, 107 (D.C. 1981) (stating that a claim is moot where there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged decision) (citations omitted). Accordingly, it is

ORDERED and ADJUDGED that the decision be, and hereby is, affirmed.

ENTERED BY DIRECTION OF THE COURT:
s/
GARLAND PINKSTON, JR.
Clerk of the Court

Copies to:

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UNITED STATES,

Appellee.

BEFORE: Washington, Chief Judge; Farrell, *Ruiz, Reid, Glickman, *Kramer, **Fisher, Blackburne-Rigsby, and Thompson, Associated Judges; *Nebeker, Senior Judge.

O R D E R

On consideration of appellant's *pro se* petition for rehearing or rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

** Associate Judge Fisher has recused himself from these cases.

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