

STATE OF LOUISIANA

*

NO. 2016-KA-0230

VERSUS

*

COURT OF APPEAL

MYRON LEE TURNER

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

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BELSOME, J., CONCURS IN PART AND DISSENTS IN PART WITH REASONS

I concur in the majority’s decision to vacate the defendant’s sentence based on the bias comments made on the record by the trial judge. However, I disagree with the determination that the recusal of Judge Clement should be limited to the sentencing hearing.

State v. Cooper, addressed an almost identical issue. In that case, as is the case here, a review of the record revealed that the trial judge had represented the defendant on two prior convictions.¹ That court reasoned that although it may appear to be grounds for recusal, the judge’s ruling that the defendant was a fourth habitual offender was based solely on the public record and independent from any prior representation of the defendant.² That case is distinguishable from this case because here we have a clear statement on the record that the trial judge was prejudiced by his prior representation of the defendant.

Although all parties were informed of the past relationship, once the judge realized that he had represented the defendant on two prior occasions he should have recused himself on his own motion. “The tantamount duty of a judge is to

¹ 96-119, pp. 15-16 (La. App 3 Cir. 7/17/96), 678 So.2d 59, 68.

² *Id.*

conduct fair and impartial proceedings.”³ If the judge “[i]s biased, prejudiced, or personally interested in the cause to such an extent that he would be unable to conduct a fair and impartial trial”, recusal is mandated.⁴ Even though there is nothing evident in the trial record to indicate that Judge Clement did not conduct a fair trial, his candid statements that his past relationship with the defendant influenced his decision on sentencing places the integrity of the entire proceeding into question. This Court should not view that bias in isolation.

For these reasons, I would vacate the conviction and the sentence and order a new trial.

³ *Covington v. McNeese State Univerisity*, 10-250, p.2 (La. 4/5/10)32 So.3d 223, 224 (citing *In re: Cooks*, 96-1447, p. 17 (La. 5/20/97). 694 So.2d 892, 903.

⁴ La. C.Cr. P. art. 671(A)(1).