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CRIMINAL JUSTICE

Defendant gets new trial without having to prove bribe-taking judge was biased, 7th Circuit rules

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FEBRUARY 10, 2021, 3:23 PM CST

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began closing in,” the 7th Circuit said.

The judge, Thomas Maloney of Cook County, Illinois, was convicted in 1993 for taking bribes in three murder trials and a felony case. The appeals court cited testimony that he also took a bribe from Gacho’s co-defendant, Dino Titone, who later won a new trial and was convicted

(<https://www.chicagotribune.com/news/ct-xpm-1993-04-17-9304170108-story.html>) a second time.

A defendant tried with a co-defendant who paid \$10,000 for an acquittal does not have to prove actual bias by the judge to obtain a new trial, the 7th U.S. Circuit Court of Appeals at Chicago has ruled.

The appeals court ruled Feb. 8

([http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2021/D02-08/C:19-](http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2021/D02-08/C:19-3343;J:Sykes:aut:T:fnOp:N:2657608:S:0)

[3343;J:Sykes:aut:T:fnOp:N:2657608:S:0](http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2021/D02-08/C:19-3343;J:Sykes:aut:T:fnOp:N:2657608:S:0) for Robert

Gacho, who is serving a life sentence after his conviction by a jury for the 1982 kidnapping and murders of two men. His co-defendant, who opted for a bench trial, was nonetheless convicted by the judge “as federal investigators

In an opinion by Chief Circuit Judge Diane Sykes, the appeals court ruled that “the acute conflict between Maloney’s duty of impartiality and his personal interest in avoiding criminal liability created a constitutionally unacceptable likelihood of compensatory bias in Gacho’s case.”

Any decisions that Maloney made in Titone’s case to deflect federal scrutiny would necessarily affect Gacho, too, the appeals court said.

Sykes said it’s not necessary for a defendant to prove actual bias by a judge to establish a due process violation.

“Constitutional claims of judicial bias also have an objective component: the reviewing court must determine whether the judge’s conflict of interest created a constitutionally unacceptable likelihood of bias for an average person sitting as judge,” Sykes said.

The objective standard was established in the 2009 U.S. Supreme Court case *Caperton v. A.T. Massey Coal Co.*, according to the appeals court. That decision held

(https://www.abajournal.com/news/article/supreme-court-big-judicial-contributions-required-recusal-of_w_va_judge) that a state judge should have recused himself in a case involving a coal company after the corporate CEO spent \$3 million supporting his election.

Sykes is an appointee of former President George W. Bush. Other judges on the panel were Judge David Hamilton, an appointee of former President Barack Obama, and Judge Michael Scudder, an appointee of former President Donald Trump.

Hat tip to Bloomberg Law (<https://news.bloomberglaw.com/business-and-practice/evidence-of-corrupt-judges-actual-bias-not-needed-for-relief>).

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