

laws against conspiracy to commit a crime, corruptly influencing a legislator and violation of criminal law against perjury. The District Court, Hennepin and Ramsey Counties, Allen Olesky, and Sidney P. Abramson, JJ., dismissed complaints, and private citizens appealed. The Supreme Court, Sheran, C. J., held that private citizen could commence and maintain private prosecution for alleged violations of criminal law.

Affirmed.

1. Indictment and Information ==39

Private citizen may not commence and maintain private prosecutions for alleged violations of the criminal law.

2. Judges ==51(4)

Appellate judges must decide for themselves whether recusal is required in case in which party claims bias.

2. Judges ==51(4)

In action wherein private citizen sought to commence and maintain private prosecutions for alleged violations of criminal law, judges determined that affidavit of prejudice filed by plaintiff against them was without justification. M.S.A. §§ 609.175, subd. 2, 609.425, 609.43.

4. Grand Jury ==33, 34

While citizen does not have a right to appear before a grand jury and persuade it to indict, he is free to attempt to get grand jury to take action and grand jury can permit aggrieved citizen to appear as witness for this purpose. Rules Crim.Proc., rules 2.02, 18.01, 18.03, 18.04, 27A M.S.A.; M.S.A. § 388.12.

5. Attorney General ==2

District and Prosecuting Attorneys ==3(1)

Mandamus ==41

Remedies available to an aggrieved citizen when prosecutor refuses to commence a prosecution include petitioning district court to appoint special prosecutor, appeal-

ing to the governor who then might order Attorney General to commence prosecution, or seeking mandamus. Rules Crim.Proc., rules 2.02, 18.01, 18.03, 18.04, 27A M.S.A.; M.S.A. §§ 8.01, 388.12.

6. Mandamus ==41

Problem with mandamus from standpoint of aggrieved citizen seeking to force prosecutor to commence a prosecution is that decision whether to initiate a particular prosecution is discretionary and therefore normally beyond the scope of mandamus.

7. District and Prosecuting Attorneys ==3

Grand Jury ==25

Approach to prosecutions taken in Minnesota is to give grand jury and county attorney the authority to commence prosecutions and to provide safety-valve alternatives for use in extreme cases of prosecutorial inaction. Rules Crim.Proc., rules 2.02, 18.01, 18.03, 18.04, 27A M.S.A.; M.S.A. §§ 8.01, 388.12.

8. Indictment and Information ==39

To permit prosecutions by private citizens would entail grave danger of vindictive use of processes of criminal law and could well lead to chaos in administration of criminal justice.

Syllabus by the Court

1. Appellant judges must decide for themselves whether recusal is required in case in which party claims bias.

2. A private citizen has no authority to commence and maintain private prosecutions for alleged violations of criminal law.

J. J. Wild, pro se.

Warren Spannaus, Atty. Gen., Richard B. Allyn, Sol. Gen., Thomas Jensen, Sp. Asst. Atty. Gen., Briggs & Morgan and Leonard J. Keyes, St. Paul, for respondents.

Considered and decided by SHERAN, C. J., and YETKA, SCOTT, WINTON,* and PREECE,* JJ., without oral argument.

SHERAN, Chief Justice.

[1] These consolidated appeals raise the issue of whether a private citizen may commence and maintain private prosecutions for alleged violations of the criminal law. We hold that he may not.

Prior to commencing the present action, plaintiff, J. J. Wild, requested the county attorneys of Ramsey and Hennepin Counties to approve criminal complaints which he had prepared against defendants, but the respective county attorneys refused to prosecute. Plaintiff then tried unsuccessfully to persuade the grand jury of the two counties to issue indictments. Finally, plaintiff filed complaints himself in an attempt as a private citizen to prosecute defendants.

The complaint against defendants filed in Ramsey County alleged a violation of the criminal laws against conspiracy to commit a crime, Minn.St. 609.175, subd. 2, and corruptly influencing a legislator, § 609.425. The complaint against defendant Mr. Justice James C. Otis in Hennepin County alleged a violation of the criminal law against perjury, § 609.48. The complaints requested that the named defendants be convicted and sentenced according to law. The respective complaints were dismissed by the district courts of Ramsey and Hennepin Counties, and these appeals from judgments followed.

[2] 1. A preliminary issue is presented by the affidavits of prejudice which plaintiff has filed against the special panel of justices considering his appeal.

Section 3.42, and the commentary thereto, of the A. B. A. Standards of Judicial Administration, Standards Relating to Appellate Courts (Approved Draft, 1977), state the appropriate standards and procedures to be followed in the case of challenges such as this:

"3.42 Disqualification of Judges

"A judge of an appellate court should be subject to disqualification on the grounds set forth in the Code of Judicial Conduct recommended by the American Bar Association, and in any case in which

the judgment under review is one by a court in whose decision he participated as judge in a lower court.

"Commentary

"An appellate judge should be subject to challenge for cause on the same grounds as a trial judge, and also when an appeal involves a review of his own decision. The most difficult problem concerns the procedure to be employed. As in the challenge of a trial judge, if the challenge is sufficient on its face and any reasonable doubt of the judge's disinterestedness is suggested, the judge may be expected to disqualify himself. If he does not do so, in the case of a trial judge factual issues relating to disqualification should properly be determined by another judge. See § 2.32, Standards Relating to Trial Courts. In the case of an appellate judge, however, that procedure would subject the judge to decision of his disinterestedness by official peers with whom he may continue to serve in a collegial capacity in deciding the case. Moreover, because an appellate court decides questions of law rather than fact, the question of an appellate judge's 'bias' is often practically indistinguishable from the question of his views on the law, which are not properly subject to disputation through the recusal procedure. Given these complications, it is better that the question of recusal be decided by the judge himself. If he is a judge of an intermediate appellate court, there remains the remedy of appeal from a decision in which he participates; if he is a judge of a supreme court, rehearing must be placed on his recognition that a court should not only be disinterested but that it should appear to be so.

"In some jurisdictions, provision for peremptory challenge of a trial judge is permitted. See Commentary to § 2.32(b), Standards Relating to Trial Courts. This procedure is inappropriate in the case of an appellate judge. In the collegial decision-making of an appellate court an individual judge's purely personal views are of less significance than they would be in a trial court and he is subject to collegial

* Acting as Justice of the Supreme Court by appointment pursuant to Minn. Const. art. 6, § 2, and Minn.St. 2.724, subd. 2.