

STATE OF MAINE

v.

AUBREY ARMSTRONG

Submitted on Briefs April 19, 2022  
Decided June 7, 2022

Panel: STANFILL, C.J., and MEAD, HORTON, and CONNORS, JJ.\*

MEMORANDUM OF DECISION

Aubrey Armstrong appeals from a judgment of conviction on merged guilty verdicts of felony murder (Class A), 17-A M.R.S. § 202(1) (2022), and robbery (Class A), 17-A M.R.S. § 651(1)(C) (2022), entered by the trial court (Kennebec County, *Billings, J.*) after a jury-waived trial and after a resentencing proceeding conducted on remand. *See State v. Armstrong (Armstrong I)*, 2019 ME 117, ¶ 26, 212 A.3d 856; *State v. Armstrong (Armstrong II)*, 2020 ME 97, ¶¶ 13-15, 237 A.3d 185. Contrary to Armstrong’s argument, the court did not err or abuse its discretion in denying his motion for recusal of the sentencing Justice before the resentencing proceeding.

Armstrong’s motion was based on comments the sentencing Justice made regarding the legal issue of whether, after a double jeopardy violation was identified on appeal, a new sentencing hearing was required. *See Armstrong I*, 2019 ME 117, ¶¶ 1, 24-26, 212 A.3d 856; *Armstrong II*, 2020 ME 97, ¶ 12, 237 A.3d 185 (explaining that the question is one “of substantial justice that

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\* Although Justice Humphrey participated in the appeal, he retired before this memorandum of decision was certified.

depends on the particular circumstances of each case”). We had not yet clarified that issue, and neither the State nor Armstrong had indicated any intention to present any additional information relevant to sentencing, so the court decided that no new sentencing hearing was required. Armstrong was entitled to file an appeal challenging the court’s substantive decision that a new hearing was not required, and he did so successfully. *Armstrong II*, 2020 ME 97, ¶¶ 14-15, 237 A.3d 185. However, the court did not err or abuse its discretion when, viewing the comments at issue in their context, it determined that those comments did not reasonably raise a question of partiality or demonstrate deep-seated favoritism or antagonism justifying recusal. See M. Code Jud. Conduct R. 2.11; *State v. Rameau*, 685 A.2d 761, 762-63 (Me. 1996); *State v. Bard*, 2018 ME 38, ¶¶ 39-45, 181 A.3d 187.

The entry is:

Judgment affirmed.

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Jeremy Pratt, Esq., and Ellen Simmons, Esq., Camden, for appellant Aubrey Armstrong

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