

257 NW.2d, 361

STATE of Minnesota ex rel. J. J. WILD, M. D., Ph. D., Appellant,

v.

James C. OTIS, Esquire, Respondent.

STATE of Minnesota ex rel. J. J. WILD, M. D., Ph. D., Appellant,
v. Oscar R KNUTSON, Esq., et al., Respondents.

Nos. 4689S, 46882.

Supreme Court of Minnesota.

Aug. 12, 1977.

Private citizen filed complaint against defendants alleging violation of criminal 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 Oleisky, and Sidney P. Abramson, JJ., dismissed complaints, and private citizen appealed. The Supreme Court Sheran, C. J., hold that private citizen could not commence and maintain private prosecution for alleged violations of criminal law.

Affirmed.

1. Indictment and Information

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

2. Judges

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

3. Judges

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 it was without justification. M.S.A. §§ 609.176, subd. 2, 609.426, 609.48.

4. Grand Jury

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, District and Prosecuting Attorney and Mandamus Remedies available to an aggrieved citizen when prosecutor refuses to commence a prosecution include petitioning district court to appoint special prosecutor, appealing 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

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 Grand Jury

Approach to prosecutions taken in Minnesota is to give grand jury and county attorney the authority to commence prosecutions and to provide safety-valve alternative 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, a Indictment and Information e.39

To permit prosecutions by private citizens would entail grave danger of vindictive use of process 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.