

IN RE DISQUALIFICATION OF BURNSIDE.

THE STATE OF OHIO v. PRICE.

**[Cite as *In re Disqualification of Burnside*, 155 Ohio St.3d 1245,
2018-Ohio-5435.]**

*Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to identify any
currently pending matter—Affidavit dismissed.*

(No. 18-AP-083—Decided July 6, 2018.)

ON AFFIDAVIT OF DISQUALIFICATION in Cuyahoga County Court of Common
Pleas Case Nos. CR-11-549930-A and CR-12-558932-A.

O’CONNOR, C.J.

{¶ 1} Defendant, Christian Price, has filed an affidavit with the clerk of this court pursuant to R.C. 2701.03 seeking to disqualify Judge Janet R. Burnside. Although it is unclear from the face of his affidavit, it appears that he is seeking Judge Burnside’s removal from case Nos. CR-11-549930-A and CR-12-558932-A.

{¶ 2} The chief justice, however, cannot rule on an affidavit of disqualification when there is no “proceeding pending before the court.” R.C. 2701.03(A); *accord In re Disqualification of Hayes*, 135 Ohio St.3d 1221, 2012-Ohio-6306, 985 N.E.2d 501, ¶ 6. Here, Mr. Price has not identified any motion currently pending before Judge Burnside in the underlying cases, and the case dockets do not reveal any pending matter. Accordingly, because Mr. Price has failed to identify any matter currently pending before the judge he seeks to disqualify, there is no basis to order Judge Burnside’s removal pursuant to R.C. 2701.03.

{¶ 3} In a supplemental affidavit, Mr. Price avers that he attempted to file an affidavit of disqualification in April 2018 and at that time, he had a motion for

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judicial release pending before Judge Burnside. Mr. Price claims that the clerk of this court improperly rejected his previous affidavit for filing and that Judge Burnside then denied his motion. Because the clerk allegedly should have accepted his previous affidavit, Mr. Price requests that the chief justice vacate Judge Burnside's decision and consider his allegations of judicial bias.

{¶ 4} The chief justice, however, lacks authority to vacate trial-court orders in deciding affidavits of disqualification. *See In re Disqualification of Cox*, 74 Ohio St.3d 1276, 1277, 657 N.E.2d 1371 (1995). Further, the clerk of this court rejected Mr. Price's previous affidavit because he failed to meet the filing requirements of R.C. 2701.03(B). Specifically, Mr. Price's certificate of service failed to indicate that he had served a copy of his prior affidavit on Judge Burnside "and on all other parties or their counsel," R.C. 2701.03(B)(1), which includes the attorneys representing the state of Ohio in the underlying cases.

{¶ 5} For these reasons, the affidavit of disqualification is dismissed.
