

**IN RE DISQUALIFICATION OF SAFFOLD.**

**THE STATE OF OHIO v. COVER.**

**[Cite as *In re Disqualification of Saffold*, 157 Ohio St.3d 1256,  
2019-Ohio-4431.]**

*Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to  
demonstrate bias or prejudice—Disqualification denied.*

(No. 19-AP-065—Decided July 2, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Cuyahoga County Court of Common  
Pleas Case Nos. CR-18-627518 and CR-19-637096.

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**O’CONNOR, C.J.**

{¶ 1} John D. Mizanin Jr., counsel for the defendant, has filed an affidavit with the clerk of this court pursuant to R.C. 2701.03 seeking to disqualify Judge Shirley Strickland Saffold from presiding over any further proceedings in the above-referenced cases.

{¶ 2} Mr. Mizanin claims that three days before the scheduled sentencing, his client suffered a mild heart attack and was hospitalized. Consequently, the defendant moved to continue sentencing, but Judge Saffold denied the motion and instead issued a capias after he failed to attend. Mr. Mizanin claims that the judge’s staff informed him that the judge has a “no exceptions” policy of issuing a capias whenever a defendant fails to appear. Mr. Mizanin believes that an appearance of impropriety exists because Judge Saffold (1) ignored the defendant’s “legitimate health concerns,” (2) adhered “to a policy that has no exceptions,” and (3) has since refused to remove the warrant and reschedule the sentencing, which Mr. Mizanin believes will require his client’s incarceration in unhealthy jail conditions prior to sentencing.

{¶ 3} Judge Saffold has filed two responses to the affidavit. The judge denies any bias or ill will against the defendant, denies that she ignored his health issues, and denies that she adhered to a “no exceptions” policy. The judge explains that she issued the capias because this particular defendant has a “history of not appearing for court dates.” The judge cited various cases in which a court issued one or more warrants for the defendant based on his failure to appear for court proceedings. Indeed, in one of the underlying cases, Judge Saffold issued a capias in 2018 that remained in effect for almost ten months until the defendant was taken into custody. The judge does not believe that her actions have created an appearance of impropriety.

{¶ 4} “The proper test for determining whether a judge’s participation in a case presents an appearance of impropriety is \* \* \* an objective one. A judge should step aside or be removed if a reasonable and objective observer would harbor serious doubts about the judge’s impartiality.” *In re Disqualification of Lewis*, 117 Ohio St.3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 8. “The reasonable observer is presumed to be fully informed of all relevant facts in the record—not isolated facts divorced from their larger context.” *In re Disqualification of Gall*, 135 Ohio St.3d 1283, 2013-Ohio-1319, 986 N.E.2d 1005, ¶ 6. Further, in affidavit-of-disqualification proceedings, “[a] judge is presumed to follow the law and not to be biased, and the appearance of bias or prejudice must be compelling to overcome these presumptions.” *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5.

{¶ 5} Based on this record, Mr. Mizanin has not established that an objective observer would harbor serious doubts about Judge Saffold’s impartiality. Although other judges may have granted the defendant’s motion to continue sentencing based on his health status, in general, “[a] judge’s decision to grant or deny a party’s request for a continuance is within the sound discretion of the judge and is not, by itself, evidence of bias or prejudice,” *In re Disqualification of*

*Pontious*, 94 Ohio St.3d 1235, 1236, 763 N.E.2d 603 (2001). Judge Saffold explains that she issued the *capias* because the defendant “has proven that he will not appear for court dates, and does not abide by the rules of court.” Further, the judge notes that the *capias* “did not in any way change the course of his treatment.” In deciding a disqualification request, it is not the role of the chief justice to second-guess a judge’s trial decisions. See *In re Disqualification of O’Donnell*, 142 Ohio St.3d 68, 2014-Ohio-5873, 28 N.E.3d 59, ¶ 6. And “affidavits of disqualification cannot be used to remove a judge from a case simply because a party is particularly unhappy about a court ruling or a series of rulings.” *In re Disqualification of D’Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5.

{¶ 6} The record does not support a conclusion that Judge Saffold’s decisions—either her refusal to continue sentencing, her issuance of the *capias*, or her refusal to revoke the *capias*—were the product of bias against the defendant. Without more, the presumption that the judge is fair and impartial has not been overcome.

{¶ 7} The affidavit of disqualification is denied. The cases may proceed before Judge Saffold.

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