

IN RE DISQUALIFICATION OF KRICHBAUM.

THE STATE OF OHIO v. HOLLOWAY.

**[Cite as *In re Disqualification of Krichbaum*, 159 Ohio St.3d 1226,
2020-Ohio-2866.]**

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

(No. 20-AP-019—Decided March 11, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Mahoning County Court of Common
Pleas, General Division, Case No. 2016 CR 1351.

O’CONNOR, C.J.

{¶ 1} Defendant Jermaill Holloway has filed an affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge R. Scott Krichbaum from deciding Mr. Holloway’s petition for postconviction relief.

{¶ 2} Mr. Holloway claims that Judge Krichbaum is biased against him or that an appearance of bias would exist if the judge remained on the case. Mr. Holloway primarily alleges that after he entered a guilty plea, he made statements to Judge Krichbaum that should have caused the judge to hold an evidentiary hearing regarding the voluntariness of Mr. Holloway’s plea. Mr. Holloway also claims that certain comments the judge made in court indicate that he had a personal relationship with Mr. Holloway’s trial counsel, who Mr. Holloway alleges was ineffective.

{¶ 3} Judge Krichbaum filed a response to the affidavit and detailed his handling of Mr. Holloway’s case. The judge denies any bias against Mr. Holloway and requests that the affidavit be denied.

{¶ 4} “It is well settled that a judge who presided at trial will not be disqualified from hearing a petition for postconviction relief in the absence of evidence of bias, prejudice, or a disqualifying interest.” *In re Disqualification of Nastoff*, 134 Ohio St.3d 1232, 2012-Ohio-6339, 983 N.E.2d 354, ¶ 9. In disqualification requests, “[t]he term ‘bias or prejudice’ ‘implies a hostile feeling or spirit of ill-will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.’ ” *In re Disqualification of O’Neill*, 100 Ohio St.3d 1232, 2002-Ohio-7479, 798 N.E.2d 17, ¶ 14, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956). “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.

{¶ 5} Mr. Holloway has not established that Judge Krichbaum has hostile feelings toward him or that he expressed a fixed anticipatory judgment on any issue in the case. Nor has Mr. Holloway set forth a compelling argument for disqualifying Judge Krichbaum to avoid an appearance of partiality. An affidavit of disqualification “is not a vehicle to contest matters of substantive or procedural law.” *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4. Therefore, it is outside the scope of this proceeding to determine whether Judge Krichbaum erred in accepting Mr. Holloway’s plea or whether his trial counsel’s conduct was insufficient. Moreover, it appears that Mr. Holloway already raised those challenges on appeal. *See State v. Holloway*, 7th Dist. Mahoning No. 17 MA 0048, 2018-Ohio-5393, ¶ 7, 46. In addition, Mr. Holloway has not established that Judge Krichbaum has a disqualifying relationship with Mr.

Holloway's trial counsel. The fact that during a hearing, Judge Krichbaum complimented counsel's professional capabilities is insufficient by itself to demonstrate that the judge had a close personal relationship with him.

{¶ 6} The affidavit of disqualification is denied. The case may proceed before Judge Krichbaum.
