

IN RE DISQUALIFICATION OF BATCHELOR.

THE STATE OF OHIO v. NORFLEET.

**[Cite as *In re Disqualification of Batchelor*, 160 Ohio St.3d 1235,
2020-Ohio-4052.]**

*Judges—Affidavits of disqualification—R.C. 2701.03—Jud. Cond.R. 2.11(A)(7)(b)
does not require judge’s disqualification—Affiant failed to demonstrate
bias or prejudice—Disqualification denied.*

(No. 20-AP-033—Decided June 4, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Coshocton County Court of Common
Pleas, General and Domestic Relations Division, Case No. 2016CR0016.

O’CONNOR, C.J.

{¶ 1} Defendant Joshua L. Norfleet has filed an affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge Robert J. Batchelor from the above-referenced case, now pending on Mr. Norfleet’s motion to correct his sentence.

{¶ 2} In 2005, Judge Batchelor, while he was serving as a prosecuting attorney, prosecuted a case against Mr. Norfleet. Mr. Norfleet’s sentence in that matter included a term of postrelease control. In 2016, Mr. Norfleet was charged with new felony offenses in the underlying case. Judge Batchelor—who took the bench in 2011—presided over Mr. Norfleet’s 2016 case, which resulted in his convictions for several of the charged offenses. As part of Mr. Norfleet’s sentence in that matter, Judge Batchelor imposed a separate sanction for a postrelease-control violation, due to the fact that Mr. Norfleet had committed the new offenses while under the term of postrelease control imposed in the 2005 case.

{¶ 3} In his affidavit of disqualification, Mr. Norfleet alleges that Judge Batchelor had a conflict of interest and demonstrated bias by sanctioning Mr.

Norfleet for violating postrelease control imposed in a case that the judge had prosecuted. Mr. Norfleet also asserts that at his sentencing in the underlying matter, Judge Batchelor failed to request a presentence-investigation report and instead relied on the report created for Mr. Norfleet’s 2005 case. Mr. Norfleet alleges that Judge Batchelor attempted to “play the role of prosecutor[,] judge and jury in both cases.”

{¶ 4} Judge Batchelor filed a response to the affidavit. The judge admits that he prosecuted the 2005 case against Mr. Norfleet, relied on the 2005 presentence-investigation report at the sentencing in the underlying case, and imposed a separate sanction in the underlying case for Mr. Norfleet’s postrelease-control violation. The judge asserts, however, that none of those facts establish that he is biased or require his disqualification.

{¶ 5} This matter presents two issues: whether Judge Batchelor’s disqualification is required by Jud.Cond.R. 2.11(A)(7)(b) and if not, whether the judge’s actions in the underlying case otherwise demonstrated bias or created an appearance of impropriety.

Jud.Cond.R. 2.11(A)(7)(b)

{¶ 6} Jud.Cond.R. 2.11(A)(7)(b) requires a judge who formerly served as a government lawyer to disqualify himself or herself from any “particular matter” in which he or she personally and substantially participated as a government attorney. In *In re Disqualification of Hedric*, 127 Ohio St.3d 1227, 2009-Ohio-7208, 937 N.E.2d 1016, former Chief Justice Moyer interpreted the scope of “matter” for purposes of the rule. A defendant’s attorney had sought to disqualify a judge from a case involving a charge of operating a motor vehicle while under the influence (“OVI”) because the judge had previously prosecuted the same defendant for OVI and the pending OVI charge included a specification enhancing the punishment due to the defendant’s prior OVI convictions, including the OVI charge prosecuted by the judge. Chief Justice Moyer concluded that Jud.Cond.R. 2.11(A)(7)(b) did not

apply, because the judge was not involved as a prosecutor in the “particular matter” pending before him. Although the affiant had argued that “matter” should be interpreted broadly because the defendant’s prior OVI conviction was an essential element of the OVI specification, Chief Justice Moyer found “no ambiguity” in Jud.Cond.R. 2.11(A)(7)(b)’s “particular matter” language “and thus no room to construe [the rule] broadly.” *Id.* at ¶ 6.

{¶ 7} Under *Hedric*, because Judge Batchelor has not served as a prosecutor in the particular matter pending before him—i.e., case No. 2016CR0016—Jud.Cond.R. 2.11(A)(7)(b) does not compel his disqualification. And the fact that the judge imposed a sanction for the postrelease-control violation does not warrant a different result. R.C. 2929.141(A) provides that when a defendant who is on postrelease control is convicted of a new felony, the trial court may terminate the postrelease-control term and impose a prison term for the postrelease-control violation, “regardless of whether the sentencing court or another court of this state imposed the original prison term for which the person is on post-release control.” If a prison term is imposed, R.C. 2929.141(A)(1) establishes the maximum prison term and requires the defendant to serve the additional term consecutively to the prison term for the new felony. This additional penalty is often referred to as a “judicial sanction.” *State v. Bishop*, 156 Ohio St.3d 156, 2018-Ohio-5132, 124 N.E.3d 766, ¶ 13 (lead opinion), citing *State v. Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, ¶ 25.

{¶ 8} In the underlying case, Judge Batchelor imposed a sanction for the postrelease-control violation and prison terms for the new felony convictions. The new case, however, was not a continuation of Mr. Norfleet’s 2005 case. Rather, the underlying case arose from new offenses committed by Mr. Norfleet and therefore cannot be considered the same “particular matter” as the 2005 case—at least for purposes of Jud.Cond.R. 2.11(A)(7)(b). Further, considering that many

judges are former prosecutors, requiring disqualification here on such technical grounds would hamper the orderly administration of judicial proceedings.

Bias or an appearance of impropriety

{¶ 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. In addition, a “presumption of impartiality” is “accorded all judges” in affidavit-of-disqualification proceedings. *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7.

{¶ 10} Mr. Norfleet has not established that Judge Batchelor has hostile feelings toward him or that the judge expressed a fixed anticipatory judgment on any issue in the case. Nor has Mr. Norfleet set forth a compelling argument for disqualifying Judge Batchelor to avoid an appearance of impropriety. If Mr. Norfleet believes that Judge Batchelor committed legal error by failing to request a new presentence-investigation report for the underlying case or by relying on the report created for the 2005 case, Mr. Norfleet should have raised those issues on appeal. But he has otherwise failed to sufficiently explain why an objective observer would question Judge Batchelor’s impartiality merely because he referred to the 2005 report during the sentencing in the underlying case.

{¶ 11} The affidavit of disqualification is denied. The case may proceed before Judge Batchelor.
