

IN RE DISQUALIFICATION OF SINGER.

THE STATE OF OHIO v. SNOWDEN.

**[Cite as *In re Disqualification of Singer*, 160 Ohio St.3d 1238,
2020-Ohio-4054.]**

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

(No. 20-AP-036—Decided June 11, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Montgomery County Court of Common
Pleas, General Division, Case No. 2016 CR 01809.

O’CONNOR, C.J.

{¶ 1} Defendant Deonte D. Snowden has filed an affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge Gregory F. Singer from the above-referenced case, now pending on Mr. Snowden’s petition for postconviction relief and motion for a new trial.

{¶ 2} Mr. Snowden alleges that one of the state’s witnesses perjured himself at trial and later wrote a letter to Judge Singer regarding the witness’s false testimony. The judge, Mr. Snowden asserts, suppressed the letter and failed to share it with Mr. Snowden or his attorney. Mr. Snowden argues that the judge’s alleged actions violated ethical rules and demonstrate that he has a conflict of interest that should prevent him from resolving the pending postconviction matters.

{¶ 3} Judge Singer filed a response to the affidavit and states that Mr. Snowden’s allegations are “simply not accurate.” The judge acknowledges receiving the letter in question, but he states that he provided copies of the letter to Mr. Snowden’s attorney and the prosecution. The judge further notes that although the individual who authored the letter testified at Mr. Snowden’s first trial, which

resulted in a deadlocked jury, the witness did not testify at Mr. Snowden’s second trial, which resulted in the underlying convictions.

{¶ 4} Jud.Cond.R. 2.9(B) provides that if a judge receives an unauthorized ex parte communication bearing upon the substance of a matter, “the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.” In prior disqualification matters, the chief justice has recognized that judges often receive unsolicited letters from nonparties attempting to bring information to the court’s attention and that upon receiving any such ex parte communication, judges should promptly advise the parties and inform them of the substance of the communication. *See, e.g., In re Disqualification of Mayberry*, 127 Ohio St.3d 1238, 2009-Ohio-7198, 937 N.E.2d 1025, ¶ 5.

{¶ 5} In deciding affidavits of disqualification, “[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. In addition, the burden in these matters falls on the affiant to submit specific evidence demonstrating that disqualification is warranted. *See* R.C. 2701.03(B)(1). To overcome the presumption, affiants are often required “to submit evidence beyond the affidavit of disqualification supporting the allegations contained therein.” *In re Disqualification of Baronzzi*, 135 Ohio St.3d 1212, 2012-Ohio-6341, 985 N.E.2d 494, ¶ 6.

{¶ 6} Here, Mr. Snowden avers that Judge Singer failed to share the letter with Mr. Snowden’s attorney. The judge, however, expressly denies that allegation and claims that he provided copies of the letter to all counsel. Mr. Snowden has offered only his affidavit to support his allegation, although he could have substantiated his claim with an affidavit from his attorney. Given the conflicting statements in the record—and Mr. Snowden’s failure to substantiate his allegation

with a third-party affidavit or other evidence—he has failed to set forth sufficiently compelling evidence to overcome the presumption that Judge Singer will fairly and impartially decide the postconviction matters. *See, e.g., In re Disqualification of Harwood*, 137 Ohio St.3d 1221, 2013-Ohio-5256, 999 N.E.2d 681, ¶ 6-7 (affiant failed to set forth compelling evidence to overcome presumption of impartiality when judge had denied affiant’s allegations and affiant had failed to substantiate her allegations with third-party affidavits or other evidence); *see also In re Disqualification of Nastoff*, 134 Ohio St.3d 1232, 2012-Ohio-6339, 983 N.E.2d 354, ¶ 9 (“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”).

{¶ 7} The affidavit of disqualification is denied. The case may proceed before Judge Singer.
