

IN RE DISQUALIFICATION OF LUCCI.

THE STATE OF OHIO v. CHASE.

**[Cite as *In re Disqualification of Lucci*, 163 Ohio St.3d 1250,
2020-Ohio-6873.]**

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

(No. 20-AP-114—Decided December 16, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Lake County Court of Common Pleas,
General Division, Case Nos. 18CR001302 and 18CR000996.

O’CONNOR, C.J.

{¶ 1} Defendant Richard Chase Jr. has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Eugene A. Lucci from the above-referenced cases, now pending on Mr. Chase’s motion to withdraw his guilty plea.

{¶ 2} Mr. Chase claims that in May 2019, he entered guilty pleas to two drug-possession charges based on a presumption that he would serve an agreed-upon two-year sentence. But Judge Lucci, Mr. Chase alleges, refused to honor the plea agreement and sentenced him to five years in prison. Mr. Chase states that he would have gone to trial if he had known that the judge could ignore the agreement. Mr. Chase also avers that he was under the influence of drugs when he entered his guilty pleas. For these reasons, he believes it is impossible for Judge Lucci to impartially decide his pending motion to withdraw his plea.

{¶ 3} 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. Mr. Chase has not established that Judge Lucci has hostile feelings toward him or has formed a fixed anticipatory judgment on any issue in the underlying case. Nor has Mr. Chase set forth a compelling argument for disqualifying Judge Lucci to avoid an appearance of partiality.

{¶ 4} “Trial courts may reject plea agreements, and ‘they are not bound by a jointly recommended sentence.’ ” *In re Disqualification of Basinger*, 135 Ohio St.3d 1293, 2013-Ohio-1613, 987 N.E.2d 687, ¶ 6, quoting *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1 922 N.E.2d 923, ¶ 28. Mr. Chase may have other remedies, including a direct appeal, if he believes that his pleas were not knowing and voluntary, that Judge Lucci failed to advise him of the possibility of imposing a greater sentence than that recommended by the parties, or that the judge somehow breached the plea agreement. But without more, the sole fact that a judge decided against imposing a jointly recommended sentence does not require disqualification. See *In re Disqualification of Grigsby*, 36 Ohio St.3d 607, 522 N.E.2d 461 (1988) (“If, in a particular case, it is shown that a judge legally erred in the imposition of sentence, that issue must be raised on appeal and not by an affidavit of disqualification”); *In re Disqualification of Russo*, 110 Ohio St.3d 1208, 2005-Ohio-7146, 850 N.E.2d 713, ¶ 5 (“Adverse rulings, without more, are not evidence that a judge is biased or prejudiced”).

{¶ 5} The statutory right to seek disqualification is an extraordinary remedy. *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. “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.” *Id.* Mr. Chase has not overcome those presumptions here.

{¶ 6} The affidavit of disqualification is denied. The cases may proceed before Judge Lucci.
