

IN RE DISQUALIFICATION OF ENGLISH.

THE STATE OF OHIO v. MADRIGAL.

**[Cite as *In re Disqualification of English*, 166 Ohio St.3d 1243,
2021-Ohio-4670.]**

Judges—Affidavits of disqualification—R.C. 2701.03—Most of affiant’s allegations are waived for his failure to timely raise them—Affiant failed to demonstrate bias, prejudice, or an appearance of partiality—Disqualification denied.

(No. 21-AP-144—Decided November 16, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Lucas County Court of Common Pleas,
General Division, Case Nos. CR-96-5761 and CR-07-1081.

O’CONNOR, C.J.

{¶ 1} Defendant Jamie R. Madrigal has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Ian B. English from the above-referenced cases.

{¶ 2} Mr. Madrigal claims that for several reasons, Judge English is biased against him and has a conflict of interest. First, Mr. Madrigal alleges that at the time of his 2005 convictions, Judge English was serving as an assistant prosecutor and was privy to details about the underlying cases. Second, Mr. Madrigal asserts that Judge English is a “protégé” of former Judge Frederick McDonald, who entered the convictions against Mr. Madrigal. Because of that relationship, Mr. Madrigal asserts, Judge English is incapable of impartially reviewing the pending postconviction motions. Third, Mr. Madrigal alleges that in August 2019, Judge English issued a decision that shows bias and an inability to comply with the law.

{¶ 3} Judge English filed a response to the affidavit and denies any bias against Mr. Madrigal. The judge acknowledges that he formerly served as an assistant prosecutor, but he further states that he was not involved in the underlying matters and was not privy to any details about Mr. Madrigal’s cases. The judge also acknowledges that Judge McDonald helped him with the transition process after Judge English’s election to the bench. But according to Judge English, they never discussed Mr. Madrigal’s cases. Judge English also notes that the court of appeals affirmed his 2017 and 2019 decisions in these matters.

{¶ 4} For the reasons explained below, no basis has been established to order the disqualification of Judge English.

{¶ 5} First, “[a]n affidavit of disqualification must be filed as soon as possible after the incident giving rise to the claim of bias and prejudice occurred,” and failure to do so may result in waiver of the objection, especially when “the facts underlying the objection have been known to the party for some time.” *In re Disqualification of O’Grady*, 77 Ohio St.3d 1240, 1241, 674 N.E.2d 353 (1996). The affiant has the burden to demonstrate that the affidavit is timely filed. *In re Disqualification of Capper*, 134 Ohio St.3d 1271, 2012-Ohio-6287, 984 N.E.2d 1082, ¶ 11. Mr. Madrigal has failed to explain why he waited until October 2021 to seek Judge English’s disqualification based on allegations that he could have raised when the underlying cases were first assigned to Judge English in 2015 or when Mr. Madrigal’s prior postconviction motions were pending before the judge. Because nothing in the record justifies the delay, Mr. Madrigal has waived the right to disqualify Judge English based on most of these allegations. *See, e.g., In re Disqualification of Dezso*, 134 Ohio St.3d 1223, 2011-Ohio-7081, 982 N.E.2d 714, ¶ 6 (“[the affiant’s] delay in filing the affidavit of disqualification constitutes an independent ground for denying his disqualification request”).

{¶ 6} Second, even if Mr. Madrigal had not waived his objections, he has failed to set forth sufficient grounds for removal. Jud.Cond.R. 2.11(A)(7)(b)

requires a judge who formerly served as a government attorney to disqualify himself or herself from any particular matter in which he or she personally and substantially participated as a government attorney. However, “[a] judge generally need not disqualify himself from presiding over a criminal matter that, although pending at the time he served as a prosecuting attorney, was one in which he had no direct involvement.” *In re Disqualification of Rastatter*, 117 Ohio St.3d 1231, 2005-Ohio-7147, 884 N.E.2d 1085, ¶ 3. Because Judge English states that he was not involved in the underlying cases when he served as an assistant prosecutor, his removal is not required. Nor has Mr. Madrigal established that Judge English had any sort of disqualifying personal or professional relationship with Judge McDonald that would cause anyone to reasonably question Judge English’s ability to fairly preside over the underlying cases. Finally, Mr. Madrigal’s dissatisfaction with Judge English’s prior rulings does not require his removal. It is well settled that “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.

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