

IN RE DISQUALIFICATION OF VAVRA.

THE STATE OF OHIO v. SNIDER.

**[Cite as *In re Disqualification of Vavra*, 168 Ohio St.3d 1232,
2022-Ohio-2192.]**

*Judges—Affidavits of disqualification—R.C. 2701.03(B)—Affiant failed to timely
file affidavit of disqualification—Affidavit dismissed.*

(No. 22-AP-053—Decided May 2, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Belmont County Court of Common Pleas,
General Division, Case No. 21 CR 0226.

O’CONNOR, C.J.

{¶ 1} Sterling E. Gill II, counsel for the defendant, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge John A. Vavra from the above-referenced case.

{¶ 2} Mr. Gill avers that on April 12, 2022, Judge Vavra made comments that were antagonistic to him and racially motivated.

{¶ 3} Mr. Gill, however, filed his affidavit on Friday, April 29, 2022—three days before the defendant’s Monday, May 2 sentencing hearing.¹ Under R.C. 2701.03(B), an affidavit of disqualification must be filed “not less than seven calendar days before the day on which the next hearing in the proceeding is scheduled.” “This statutory deadline may be set aside only ‘when compliance with the provision is impossible,’ such as when the alleged bias or prejudice occurs fewer than seven days before the hearing date or the case is scheduled or assigned

1. Although Mr. Gill’s affidavit did not identify the May 2 hearing as the defendant’s sentencing hearing, the trial court’s docket indicates that on April 14, Judge Vavra scheduled sentencing for May 2.

to a judge within seven days of the next hearing.” *In re Disqualification of Gaul*, 147 Ohio St.3d 1219, 2016-Ohio-7034, 63 N.E.3d 1211, ¶ 3, quoting *In re Disqualification of Leskovyansky*, 88 Ohio St.3d 1210, 723 N.E.2d 1099 (1999). The affiant bears the burden of showing that he or she has complied with the statutory filing deadline. *In re Disqualification of Eyster*, 105 Ohio St.3d 1246, 2004-Ohio-7350, 826 N.E.2d 304, ¶ 3.

{¶ 4} Mr. Gill avers that it was impossible for him to timely file his affidavit because he wanted to submit a copy of the trial-court transcript for April 12 and the court’s stenographer had initially advised him that it would be completed by April 22. But he later learned, he claims, that the transcript would not be completed by that date. Mr. Gill further asserts that he intended to file his affidavit by April 25—which would have complied with the statutory deadline—but he has “not yet learned how to use the Court’s e-filing” system and had to rely on someone else to drive him to this court in order to file the affidavit in person.

{¶ 5} On this record, Mr. Gill has not set forth a sufficient basis for excusing his failure to comply with the seven-day filing requirement in R.C. 2701.03(B). The alleged bias occurred on April 12, and on April 14, Judge Vavra scheduled the defendant’s sentencing hearing for May 2. Mr. Gill therefore had sufficient time to file his affidavit within the statutory requirements. Further, S.Ct.Prac.R. 21.01(A) clarifies that affidavits of disqualification may be filed by merely emailing the affidavit to AOD_Filing@sc.ohio.gov. *See also In re Disqualification of Synenberg*, 138 Ohio St.3d 1214, 2013-Ohio-5916, 3 N.E.3d 1199, ¶ 3-5 (affiant’s car problems while en route to filing an affidavit of disqualification did not excuse his failure to meet the seven-day filing requirement).

{¶ 6} The affidavit of disqualification is dismissed. The case may proceed before Judge Vavra.