

IN RE DISQUALIFICATION OF DEWEESE AND NAUMOFF.

THE STATE OF OHIO v. LINDSAY.

**[Cite as *In re Disqualification of DeWeese and Naumoff*, 169 Ohio St.3d 1230,
2022-Ohio-3882.]**

Judges—Affidavits of disqualification—R.C. 2701.03— Affiant waived right to disqualify judges based on conflicts of interest that allegedly existed during affiant’s 2010 trial—Former judge no longer assigned to affiant’s case, and affiant has failed to sufficiently explain why currently assigned judge should be disqualified based on former judge’s alleged conflict during trial—Chief justice lacks authority to vacate a conviction or transfer venue in an affidavit-of-disqualification proceeding—Disqualification denied.

(No. 22-AP-103—Decided September 1, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Richland County Court of Common
Pleas, General Division, Case No. 2010 CR 0419 D.

O’CONNOR, C.J.

{¶ 1} Defendant Wendell R. Lindsay II has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify former Judge James DeWeese and Judge Phillip Naumoff from the above-referenced case.

{¶ 2} Mr. Lindsay primarily claims that Judge DeWeese had a conflict of interest during Mr. Lindsay’s October 2010 trial because the victim’s grandmother was a former employee of the Richland County Court of Common Pleas. Mr. Lindsay asserts that the prosecutor, a juror, and Mr. Lindsay’s trial attorney also had conflicts of interest and that therefore, his convictions should be vacated and his case transferred to another venue.

{¶ 3} An affidavit of disqualification, however, “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. Lindsay has not adequately explained why he waited until August 2022 to seek either judge’s disqualification based on alleged conflicts of interest during Mr. Lindsay’s 2010 trial. Because nothing in the record justifies the delay, Mr. Lindsay has waived the right to disqualify Judge DeWeese or Judge Naumoff based on conflicts of interest that allegedly existed in 2010. *See In re Disqualification of Dezso*, 134 Ohio St.3d 1223, 2011-Ohio-7081, 982 N.E.2d 714, ¶ 6 (affiant’s delay in filing affidavit of disqualification “constitutes an independent ground for denying his disqualification request”); *In re Disqualification of Knece*, 156 Ohio St.3d 1337, 2019-Ohio-3247, 130 N.E.3d 306, ¶ 4 (affiant waived his right to disqualify judge based on conduct occurring six years before filing of affidavit of disqualification).

{¶ 4} Further, most of the relief that Mr. Lindsay seeks is not available in an affidavit-of-disqualification matter. “Article IV, Section 5(C) of the Ohio Constitution and the relevant statutory provisions enacted pursuant to that provision limit the authority of the chief justice to passing on the matter of disqualification and, if necessary, assigning a replacement judge.” *In re Disqualification of Burt*, 138 Ohio St.3d 1213, 2013-Ohio-5898, 3 N.E.3d 1198, ¶ 6. Therefore, “[t]he issue here is narrow and limited to determining whether a judge in a pending case has a bias, prejudice, or other disqualifying interest that mandates the judge’s removal.” *In re Disqualification of Sieve*, 151 Ohio St.3d 1232, 2017-Ohio-7523, 90 N.E.3d 939, ¶ 6. If Mr. Lindsay had demonstrated that Judge DeWeese had a conflict of

interest, the only remedy would be Judge DeWeese's disqualification. Judge DeWeese, however, no longer serves as a judge of the Richland County Court of Common Pleas and is not assigned to Mr. Lindsay's case. Further, Mr. Lindsay has failed to sufficiently explain why Judge Naumoff—who is currently assigned to Mr. Lindsay's case—should be disqualified based on Judge DeWeese's alleged conflict during the 2010 trial. Similarly, the chief justice lacks authority to vacate a conviction or transfer venue in an affidavit-of-disqualification proceeding. *See Burt* at ¶ 6 (“It is beyond the constitutional and statutory authority given to the chief justice in affidavit-of-disqualification proceedings to void or stay orders issued by a trial judge”).

{¶ 5} The affidavit of disqualification is denied. The case may proceed before Judge Naumoff.
