

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

March 23, 2022

[Cite as *03/23/2022 Case Announcements #2, 2022-Ohio-791.*]

APPEALS NOT ACCEPTED FOR REVIEW

2021-1533. State v. Bowen.

Holmes App. No. 21CA001, **2021-Ohio-3969.**

Donnelly, J., dissents, with an opinion.

Stewart and Brunner, JJ., dissent.

DONNELLY, J., dissenting.

{¶ 1} Appellant, Richard Bowen, has alleged that the trial judge who presided over his 2018 criminal case indicated during an off-the-record conversation that he would not grant any motion to suppress Bowen's confession, which Bowen claimed was false and coerced, because the judge knew of the questioning officer's interrogation skills and did not think that the officer's tactics would ever be coercive. Although Bowen had presented, along with other evidence outside the record, an affidavit from his trial counsel to support his coerced-confession claim in his petition for postconviction relief, the trial court overruled the claim without holding an evidentiary hearing to test the truth of Bowen's allegations. The Fifth District Court of Appeals affirmed the trial court's judgment on the grounds that Bowen should have raised the issue on direct appeal and should have filed an affidavit of disqualification during the trial proceedings in an effort to have the judge removed. 2021-Ohio-3969, ¶ 32-34.

{¶ 2} This case presents this court with the opportunity to address the problems that can arise when trial judges have off-the-record discussions about the cases pending before them, the inapplicability of res judicata to claims involving evidence outside the record, and the narrow purpose of affidavits of disqualification. Moreover, this case presents us with the opportunity to

address what I have repeatedly bemoaned as the increasingly miserly standards that Ohio's courts use to justify their refusals to hold evidentiary hearings on petitions for postconviction relief. *See State v. Burke*, 162 Ohio St.3d 1431, 2021-Ohio-1204, 166 N.E.3d 1245 (Donnelly, J., dissenting); *State v. McFeeture*, 159 Ohio St.3d 1468, 2020-Ohio-3885, 150 N.E.3d 123 (Donnelly, J., dissenting); *State v. Bonnell*, 159 Ohio St.3d 1413, 2020-Ohio-3276, 147 N.E.3d 647 (Donnelly, J., dissenting).

{¶ 3} Because I believe that this court should seize on the opportunities discussed above, I dissent from this court's decision to not accept jurisdiction over Bowen's appeal.
