IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

DARIEN A. HAUTER,

Appellant,

v. Case No. 5D19-2921

STATE OF FLORIDA,

Appellee.

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Opinion filed December 27, 2019

3.800 Appeal from the Circuit Court
for Citrus County,
Richard A. Howard, Judge.

Jason T. Forman, of Law Offices of Jason T. Forman, P.A., Ft. Lauderdale, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Douglas T. Squire, Assistant Attorney General, Daytona Beach, for Appellee.

LAMBERT, J.

Darien A. Hauter appeals two orders entered on the same day in two cases below. The first order denied Hauter's motion to disqualify the trial judge as "legally insufficient." The second order, filed with the clerk of the circuit court some fifteen minutes later, denied Hauter's motion to mitigate his sentences under Florida Rule of Criminal Procedure

3.800(c). We treat Hauter's challenge to the denial of his motion for disqualification of the trial judge as a petition for writ of prohibition[1] and, as briefly explained below, we grant the writ.

It is unnecessary to provide a detailed chronology that led up to the events resulting in the filing of the motion to disqualify the trial judge. Suffice it to say, Hauter stated in his affidavit in support of his motion certain specific facts showing that prior to his presentation of any evidence or argument at his sentencing hearing for a downward departure sentence, the judge had made comments that indicated that he had predetermined that Hauter would receive lengthy prison sentences.[2] Such comments, which, for purposes of the motion must be taken as true, provided Hauter with a well-grounded fear that he would not receive a fair sentencing hearing before the judge. *See Livingston v. State*, 441 So. 2d 1083, 1087 (Fla. 1983) (recognizing that for a motion for disqualification to be legally sufficient, "[t]he facts alleged in the motion need only show that 'the party making it has a well grounded fear that he will not receive a fair trial at the hands of the judge'"); *see also Dorch v. State*, 952 So. 2d 1244, 1245 (Fla. 3d DCA 2007) ("Florida's courts have frequently held that a judge who has made statements indicating that he or she has predetermined the appropriate sentence is disqualified from presiding over the entire proceeding." (quoting *Konior v. State*, 884 So. 2d 334, 335 (Fla. 2d DCA 2004))).

The State has commendably and understandably conceded that the trial judge

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[1] *See Kline v. JRD Mgmt. Corp.*, 165 So. 3d 812, 813 (Fla. 1st DCA 2015) ("A petition for writ of prohibition is the appropriate vehicle to test the validity of the denial of a motion for disqualification.").

[2] Which the trial judge did impose—Hauter received four concurrent life imprisonment sentences together with other lesser prison sentences.

erred by failing to grant Hauter's legally-sufficient motion to disqualify. We agree. Accordingly, we grant the writ and prohibit the trial judge from further presiding in the two cases below. Additionally, under the circumstances, because the trial judge should have disqualified himself prior to ruling on Hauter's rule 3.800(c) motion to mitigate sentences, we vacate those orders as well, *see Plaza v. Plaza*, 21 So. 3d 181, 182 (Fla. 3d DCA 2009) ("As a general rule, once an order disqualifying a judge is entered, the judge is prohibited from any further participation in the case."), to allow the successor judge to rule on the merits of the motion.[3]

PETITION FOR WRIT OF PROHIBITION GRANTED; WRIT ISSUED. ORDERS DENYING MOTIONS FOR MITIGATION OF SENTENCES VACATED.

ORFINGER and HARRIS, JJ., concur.

[3] We take no position on the merits of the motion to mitigate sentences. *See generally Daniels v. State*, 143 So. 3d 476, 476 (Fla. 5th DCA 2014) (recognizing that a trial court's ruling on a rule 3.800(c) motion is not subject to review on appeal).