

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

NEALON LEO DUMAS,

Petitioner,

v.

Case No. 5D21-2748
LT Case No. 2019-CF-001123-A

STATE OF FLORIDA,

Respondent.

Opinion filed December 30, 2021

Petition for Writ of Prohibition,
Richard A. Howard, Respondent Judge.

J. Michael Blackstone, Crystal River, for
Petitioner.

Ashley Moody, Attorney General,
Tallahassee, and Roberts J. Bradford,
Jr., Assistant Attorney General, Daytona
Beach, for Respondent.

PER CURIAM.

Nealon Leo Dumas petitions this Court for a writ of prohibition following
the denial of his motion to disqualify the presiding judge. Because the motion

to disqualify was legally sufficient and timely, we grant the writ. See Fla. R. Jud. Admin. 2.330.

A party may seek disqualification of the assigned trial judge when “the party reasonably fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.” Fla. R. Jud. Admin. 2.330(e)(1). To be legally sufficient the motion to disqualify must establish a “well-grounded fear on the part of the movant that he will not receive a fair hearing,” and such fear must be objective rather than subjective. *Lynch v. State*, 2 So. 3d 47, 78 (Fla. 2008) (quoting *Arbelaez v. State*, 898 So. 2d 25, 41 (Fla. 2005)).

Here, Petitioner has met that burden. Petitioner alleges that at a scheduling conference the presiding judge commented—before the State had offered evidence in the case—that he believed Petitioner intended to commit the crime he was being charged with. Specifically, Petitioner alleges in his motion to disqualify that the presiding judge opined that Petitioner traveled to Volusia County to “molest that little girl.”

While a judge may form mental impressions and opinions during the course of hearing evidence, he or she may not, as it appears the presiding

judge did here,¹ prejudge the case. *Minaya v. State*, 118 So. 3d 926, 929 (Fla. 5th DCA 2013). We find that the specific comments made by the presiding judge, before evidence was ever introduced in this case, would put a reasonably prudent person in well-founded fear of not receiving a fair or impartial hearing or trial. *Wargo v. Wargo*, 669 So. 2d 1123, 1125 (Fla. 4th DCA 1996). Accordingly, we grant the petition for writ of prohibition and remand this case for assignment to a different judge.

PETITION GRANTED.

EISNAUGLE, HARRIS and NARDELLA

¹ We recognize that the presiding judge's comments appear to be based on evidence discussed at a violation of probation hearing held several months earlier in a different case. No evidence, however, had been ruled admissible and introduced into evidence in this case.