

STATE OF MAINE  
CUMBERLAND, ss.

UNIFIED CRIMINAL DOCKET  
No. CR-14-3454

NICHOLAS GLADU,

STATE OF MAINE  
Cumberland, ss. Clerk's Office

AUG 24 2016

Petitioner,

RECEIVED

v.

ORDER

STATE OF MAINE,

Respondent

Petitioner Nicholas Gladu has filed a pro se motion seeking to have the court recuse in the above-captioned post-conviction case. The current status of the case is that Gladu's counsel has moved to withdraw. That motion has not been formally acted on, but it is the court's understanding that a substitute counsel has been approached by the clerk's office and has agreed to take the case if the motion is granted.

The basis of Gladu's motion is that he contends that the court is a material witness to events on March 8, 2012, the fourth day of his trial, when, after an evaluation by Dr. LeBlanc in the presence of the defense psychiatrist, Gladu was found to be too anxious to proceed with trial on that date. His trial counsel reported that Gladu had missed a psychiatric appointment during the trial and that Gladu was requesting different medication. All of that is on the record. Trial Tr. 715-34.

Gladu was examined the following morning (March 9) by Dr. LeBlanc, who concluded that he was able to proceed. Gladu's trial counsel agreed. This was all stated on the record as well. Trial Tr. 738-39. At that time the court stated its understanding that Gladu had been seen by a psychiatrist at the jail and had been prescribed some kind of medication at that time.

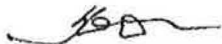
In his motion Gladu argues that he was heavily sedated on March 9, that he was essentially not competent to proceed, that he was not given an adequate competency evaluation. He further argues the court was a material witness to those events and bases his request for recusal on Code of Judicial Conduct Rule 2.11(A)(4)(c).

The short answer to Gladu's motion is that disqualification may be required when a judge has personal knowledge of facts "gained outside the course of the regular course of present or prior judicial proceedings." Rule 2.11(A)(1) (emphasis added). As the 2015 Advisory Committee Note to Rule 2.11 states, a judge's knowledge of facts gained in the course of prior judicial proceedings does not make the judge a material witness subject to recusal under Rule 2.11.

In this case the only knowledge that the court has of the claim now made by Gladu was gained in the course of the trial. Moreover, the court was not present for either the assessment of Gladu's ability to proceed on March 8 or the subsequent assessment on March 9, and the court has no knowledge as to what medication Gladu received or the effects of that medication. To the extent that evidence may be presented on those issues during the post-conviction proceeding, the court is prepared to evaluate that evidence and has no reason to conclude that it cannot do so fairly and impartially.

Accordingly, petitioner's motion to recuse is denied.

Dated: August 24, 2016



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Thomas D. Warren  
Justice, Superior Court