

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

MARC MEDIATE,

Petitioner

v.

Case No. 5D21-2277
LT Case No. 1986-CF-244

STATE OF FLORIDA,

Respondent.

Opinion filed November 19, 2021

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

Michael A. Graves, Public Defender and
Edward C. Spaight, Assistant Public
Defender, Inverness, for Petitioner.

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

PER CURIAM.

Petitioner, Marc Mediate, a juvenile offender, seeks a writ of prohibition following the postconviction court's order denying his motion to disqualify the

presiding judge from hearing his application for a sentence review filed pursuant to Florida Rule of Criminal Procedure 3.802. A motion to disqualify is legally sufficient if the facts alleged—when taken as true and considered objectively—would reasonably cause a litigant to have a well-founded fear that he or she would not receive a fair trial or hearing before the presiding judge. See *Shuler v. Green Mountain Ventures, Inc.*, 791 So. 2d 1213, 1215 (Fla. 5th DCA 2001); see also § 38.10, Fla. Stat. (2021); Fla. R. Jud. Admin. 2.330(e)(1). We find that Petitioner has met that burden.

To rule on Petitioner’s application, the postconviction court must consider a non-exhaustive list of factors found in section 921.1402(6), Florida Statutes (2021). Those factors include whether the juvenile offender demonstrates maturity and rehabilitation, whether the juvenile offender remains at the same level of risk to society as he or she did at the time of the initial sentencing, and whether the juvenile offender has shown sincere and sustained remorse for the criminal offense. Before hearing Petitioner’s application, the judge presiding over Petitioner’s postconviction proceedings made several statements about the Petitioner, two of which warrant disqualification. First, the presiding judge stated that the Petitioner is “an older, dedicated unrepentant rapist [who is] driven to sexually offend [and who] has a low possibility of rehabilitation.” Second, the presiding judge

stated that Petitioner “is and will remain as long as he lives, irredeemably incorrigible.” We find these statements would reasonably cause a litigant to fear that the presiding judge has predetermined the appropriate sentence. *Hauter v. State*, 287 So. 3d 1263, 1264 (Fla. 5th DCA 2019). Accordingly, we grant the petition for writ of prohibition and remand this case for assignment to a different judge.

PETITION GRANTED.

EDWARDS, HARRIS, and NARDELLA, JJ., concur.