

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

JOSHUA CUMMINGS,

Petitioner,

v.

Case No. 5D13-4431

BRILLIANT MONTALVO,

Respondent.

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Opinion filed February 3, 2014

Petition for Writ of Prohibition,  
Sally D.M. Kest, Respondent Judge.

Adam Pollack, Law Office of Adam L.  
Pollack, P.A., Orlando, for Petitioner.

No appearance for Respondent.

PER CURIAM.

Petitioner seeks prohibition following an order denying his motion to disqualify the trial judge. The motion, which sought disqualification based upon the judge's statements indicating that she had strongly and definitively prejudged Petitioner's credibility in an unfavorable fashion, should have been granted. See *Brown v. St. George Island, Ltd.*, 561 So. 2d 253, 257 (Fla. 1990). Because Petitioner has alleged facts that would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial, *id.*, we quash the order denying the motion to

disqualify and remand to the trial court for further proceedings consistent with this opinion. We trust that the issuance of a formal writ will be unnecessary.

PETITION GRANTED.

SAWAYA, PALMER and LAWSON, JJ., concur.