STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 3, 2011
V LEWIS CLIFTON HENDERSON, Defendant-Appellant.	No. 299790 Midland Circuit Court LC No. 10-004389-FH

Before: SAWYER, P.J., and WHITBECK and WILDER, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order denying defendant's motion to disqualify the trial judge, which followed de novo review of the trial judge's denial of such a motion. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant is charged as a fourth habitual offender with operating a motor vehicle while under the influence of marijuana causing death, contrary to MCL 257.625(4)(a). While a *Cobbs*[1] agreement was being discussed in chambers, defense counsel understood the judge to say that defendant would be sentenced to ten years in prison under a *Cobbs* agreement but would be sentenced to 19 years in prison if he proceeded to trial. The judge took offense at counsel's accusation that such a statement had been made. Defense counsel claimed that the judge became enraged and screamed "screw you . . . get out . . . you'll get your trial . . . this hearing is over . . . get out."

Defendant moved to disqualify the judge and set the motion for hearing for six days later, when other motions were scheduled to be heard. However, the judge scheduled the hearing for 4:30 p.m. on the following day. Defense counsel advised the court that he had other commitments, but the court proceeded with the hearing. The judge explained why he needed to decide the motion expeditiously because he was to hear other motions six days later, he was to preside over the trial that was to take place in approximately two weeks, and, if the motion were denied, it would be subject to review by a judge appointed by the State Court Administrative

[1] *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993).

Office, which would take time. The judge noted that it had counsel's affidavit with the pertinent allegations, and therefore proceeded without oral argument. The judge acknowledged having made the statement, and expressed regret.

The motion was denied, and on subsequent review by an appointed judge, it was again denied. The reviewing judge noted that it was an isolated remark, and concluded it did not establish actual bias or prejudice or the appearance of bias or prejudice.

"When this Court reviews a decision on a motion to disqualify a judge, the trial court's findings of fact are reviewed for an abuse of discretion, while the application of the facts to the relevant law is reviewed de novo." *People v Wells*, 238 Mich App 383, 391; 605 NW2d 374 (1999).

MCR 2.003(C)(1)(b) provides:

> (1) Disqualification of a judge is warranted for reasons that include, but are not limited to, the following:
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> * * *
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> (b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, __ US __; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

In *Caperton*, 129 S Ct at 2255, the Court stated that an appearance of impropriety exists if "the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." Canon 2B provides:

> A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. *Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect.* [Emphasis added].

Defendant first argues that expediting the hearing reflected actual bias based on *Caperton*. We disagree. The judge gave a reasonable explanation for holding a hearing immediately. The decision to go forward with an expedited hearing under the circumstances did not create a perception that the judge's ability to carry out his responsibilities would in any way be impaired.

Regarding the interplay between the court rule and Canon 2, the question is whether any breach of Canon 2, however slight, would "warrant" disqualification. The interpretation and application of a court rule is reviewed de novo. *Pellegrino v Ampco Sys Parking*, 486 Mich 330, 338; 785 NW2d 45 (2010). "When construing a court rule, we begin with its plain language; when that language is unambiguous, we must enforce the meaning expressed, without further

judicial construction or interpretation." *People v Williams*, 483 Mich 226, 232; 769 NW2d 605 (2009). However, "when reasonable minds can differ on the meaning of the language of the rule, then judicial construction is appropriate." *Wilcoxon v Wayne Co Neighborhood Legal Servs*, 252 Mich App 549, 553; 652 NW2d 851 (2002). Dictionary definitions can be consulted when necessary. *People v Buie*, 285 Mich App 401, 416; 775 NW2d 817 (2009).

Resolution of this issue turns on whether "warranted" is defined as "authorized" or "required." Black's Law Dictionary (8th ed) defines warrant, in pertinent part, as follows: "4. To justify <the conduct warrants a presumption of negligence>." Similarly, The American Heritage Dictionary (2nd college ed) defines "warrant", in pertinent part, as follows: "2. Justification for an action; grounds." These definitions indicate that a breach of Canon 2 would justify or authorize disqualification. They do not indicate that a breach would require disqualification. Under the facts of this case, the reviewing judge properly held that disqualification was not warranted based on the fleeting breach of courtesy, followed by an acknowledgement of regret.

Affirmed.

/s/ David H. Sawyer
/s/ Kurtis T. Wilder