

IN RE DISQUALIFICATION OF GAUL.

THE STATE OF OHIO v. THOMPSON.

[Cite as *In re Disqualification of Gaul*, ___ Ohio St.3d ___, 2020-Ohio-5313.]

Judges—Affidavit of disqualification—R.C. 2701.03—Affidavit granted— Judge’s failure to respond to certain allegations in affidavit necessitate removal to avoid appearance of partiality and to ensure the parties’ and the public’s confidence in the fairness and integrity of proceedings.

(No. 20-AP-067—Decided October 14, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Cuyahoga County Court of Common Pleas, General Division, Case No. CR-19-640568-A.

O’CONNOR, C.J.

{¶ 1} Defendant Ronald J. Thompson has filed an affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge Daniel Gaul from the above-referenced criminal case. Mr. Thompson has been charged with felonious assault against an elderly woman, and the indictment includes a repeat-violent-offender specification and a notice-of-prior-conviction specification.

{¶ 2} Mr. Thompson avers that, among other things, Judge Gaul made statements at a July 2, 2020 pretrial hearing that show the judge is biased against him and has already determined his guilt. For example, Mr. Thompson alleges that Judge Gaul stated that he had “hit an old lady in the face” and that his extensive criminal record made him a liar.

{¶ 3} Judge Gaul requested—and was granted—an extension of time to respond to the affidavit. The judge stated that he was in the process of collecting transcripts that were necessary to provide a proper response. But when the judge later filed his response, he failed to submit a transcript of the July 2, 2020 pretrial,

even though he referenced transcripts in the response. Nor did Judge Gaul address Mr. Thompson's allegation that the judge had made biased comments at the July 2 pretrial. The chief justice therefore requested Judge Gaul to supplement his response "to address, with specificity, Mr. Thompson's allegation that the judge's statements at the July 2, 2020 pretrial hearing demonstrated bias." The chief justice also requested Judge Gaul to submit a transcript of that hearing. Judge Gaul later filed a copy of the transcript, but he again failed to respond to Mr. Thompson's allegation about the judge's comments.

{¶ 4} The transcript reveals that the parties discussed a plea offer—which Judge Gaul apparently had a hand in "craft[ing]"—at the July 2 pretrial. When directly addressing Mr. Thompson, Judge Gaul stated that Mr. Thompson's nine prior indictments "[spoke] very loudly to this Court," that the plea offer was "never going to get better," and that if he rejected it that day, it would be forever off the table. Mr. Thompson, however, wanted to discuss his alleged problems with his counsel and stated that he felt like he was being accused of a crime he did not commit. At the end of the hearing, Mr. Thompson stated that he hoped Judge Gaul was not "mad at [him]," that he was trying to do the best thing for himself, and that his mother was in the hospital. Judge Gaul responded with the following:

Let me explain something to you. A lot of times criminals come in here and they want to talk about what they're going through, and their mother and their brother. How about the 88 year old victim in this case, 88 year old victim who is seriously assaulted by you just off the street, random, do you care about her?

* * *

You have nine prior felony indictments in Cuyahoga County. Don't bother telling me how sorry you are or how much

you are interested in taking care of yourself. It's my job to put peace and dignity to the State of Ohio; that's what I'm going to do.

{¶ 5} The judge's final comment supports Mr. Thompson's allegation that Judge Gaul has predetermined Mr. Thompson's guilt. Because judges occasionally make isolated misstatements in moments of frustration or express conditional opinions of the law or facts based on preliminary aspects of the case—without necessarily being subject to disqualification—Judge Gaul was given the opportunity to explain or clarify his comments at the July 2 pretrial. But the judge failed to do so. Even after the chief justice requested him to address “with specificity” Mr. Thompson's allegation about the judge's comments, Judge Gaul submitted only the 33-page transcript.

{¶ 6} “[A] judge's failure to respond to allegations of bias and prejudice may result in the judge's disqualification to avoid the appearance of impropriety.” *In re Disqualification of Corrigan*, 94 Ohio St.3d 1234, 1235, 763 N.E.2d 602 (2001) (disqualifying a judge who was twice requested to respond to an affidavit of disqualification but failed to do so); *In re Disqualification of Burge*, 136 Ohio St.3d 1205, 2013-Ohio-2726, 991 N.E.2d 237, ¶ 8 (disqualifying a judge, in part, because he had failed to respond to some of the allegations in a supplemental affidavit of disqualification). Given Judge Gaul's comments to Mr. Thompson at the pretrial hearing and the judge's failure to address Mr. Thompson's allegations about those comments, Judge Gaul must be disqualified from the underlying case to avoid the appearance of partiality and to ensure the parties' and the public's confidence in the fairness and integrity of these proceedings.

{¶ 7} The affidavit of disqualification is granted, and Judge Gaul is disqualified from further proceedings in this matter. The case is returned to the

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administrative judge of the Cuyahoga County Court of Common Pleas, General Division, for random reassignment to another judge of that court.
