

IN RE DISQUALIFICATION OF THOMAKOS.

THE STATE OF OHIO v. HUNT.

[Cite as *In re Disqualification of Thomakos*, ___ Ohio St.3d ___,
2020-Ohio-6874.]

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to demonstrate bias or prejudice—No statutory or practical basis to order a judge’s disqualification from an inactive case—Affidavit dismissed.

(No. 20-AP-110—Decided December 14, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Tuscarawas County Court of Common Pleas, General and Domestic Relations Division, Case No. 2018 CR 07 0234.

O’CONNOR, C.J.

{¶ 1} Defendant Kolt Hunt has filed an affidavit pursuant R.C. 2701.03 seeking to disqualify Judge Elizabeth Lehigh Thomakos from the above-referenced case.

{¶ 2} Mr. Hunt alleges that Judge Thomakos’s biased comments about him at his codefendant’s sentencing hearing violated his due-process rights.

{¶ 3} The chief justice’s statutory authority to disqualify judges extends to those matters only in which “a proceeding [is] pending before the court.” R.C. 2701.03(A). “[T]he chief justice cannot rule on an affidavit of disqualification when * * * nothing is pending before the trial court.” *In re Disqualification of Hayes*, 135 Ohio St.3d 1221, 2012-Ohio-6306, 985 N.E.2d 501, ¶ 6. Here, Mr. Hunt states that he has appealed many of Judge Thomakos’s rulings but that nothing is currently pending before her. Based on this record, there is no statutory or practical basis to order Judge Thomakos’s disqualification from a seemingly inactive case. *See, e.g., In re Disqualification of Selvaggio*, 156 Ohio St.3d 1301,

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2019-Ohio-1826, 128 N.E.3d 264, ¶ 4 (“The chief justice will not decide an affidavit of disqualification based merely on the possibility of a remand from the court of appeals”); *In re Disqualification of Sweeney*, 159 Ohio St.3d 1209, 2020-Ohio-1545, 148 N.E.3d 601, ¶ 2.

{¶ 4} In addition, Mr. Hunt avers that because of the due-process violation, his underlying convictions must be reversed. Alleged due-process violations, however, may be addressed on appeal. *See, e.g., State v. Jackson*, 149 Ohio St.3d 55, 2016-Ohio-5488, 73 N.E.3d 414, ¶ 43 (“If the record evidence indicates that the trial was infected by judicial bias, the remedy is a new trial”), citing *State v. Dean*, 127 Ohio St.3d 140, 2010-Ohio-5070, 937 N.E.2d 97, ¶ 2. In deciding an affidavit of disqualification, the “chief justice’s statutory authority is limited to removing a judge from a case.” *In re Disqualification of Jamison*, 146 Ohio St.3d 1252, 2015-Ohio-5683, 55 N.E.3d 1116, ¶ 8. The chief justice lacks the authority to reverse a judgment or conviction.

{¶ 5} The affidavit of disqualification is dismissed.
