

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00333-CR

EX PARTE ALTO V. WATSON III

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause Nos. 12-14962-A, 12-14963-A, 12-14964-A, 12-15663-A,
13-17023-A

MEMORANDUM OPINION

This is an appeal of the habeas court's¹ denial of Alto V. Watson III's application seeking a writ of habeas corpus. *See* Tex. Code Crim. Proc. Ann. art. 11.072, § 2 (West 2015)² (authorizing an application for a writ of habeas corpus to

¹ Judge Raquel West, the elected judge of the 252nd District Court for a term that began January 1, 2015, presided over the habeas proceedings that are discussed in the appeal.

² Unless otherwise noted, we cite to the current version of the statutes cited in the opinion because any changes to them are not relevant to the matters that Watson has raised in his appeal.

be filed with the clerk of the court in which a community-supervision order was imposed). The habeas court denied Watson's application on its merits.

In his application, Watson complained about several orders signed by Judge Layne Walker, who was the presiding judge over the 252nd District Court when Watson was placed on community supervision based on his guilty plea to one of the indictments charging him with theft.³ The arguments Watson raised in his application for habeas relief sought to overturn Judge Walker's orders in five separate criminal cases that were filed against Watson in trial court cause numbers 12-14962, 12-14963, 12-14964, 12-15663, and 13-17023. Of these, Judge Walker dismissed cause numbers 12-14963, 12-14964, 12-15663, and 13-17023. However, in cause number 12-14962, Judge Walker placed Watson on deferred adjudication, community supervision ("probation"), following a plea bargain agreement that Watson made with the State to an indictment in which the State charged him with theft. Under the plea agreement, Watson agreed to plead guilty in cause number 12-14962 in return for the State's agreement to dismiss cause numbers 12-14963, 12-14964, and 12-15663. The State also asked the trial court to dismiss cause number 13-17023, and the trial court did so, but cause number 12-17023 was not dismissed as part of Watson's plea agreement in cause 12-14962.

³ Judge Walker resigned from his position before Watson filed the application seeking habeas relief that resulted in this appeal.

In the habeas proceeding, Watson challenged Judge Walker's authority to preside over the five criminal causes previously mentioned, arguing that the habeas court should find that Judge Walker was either disqualified or that he should have recused from presiding over the cases. Watson asserted that Judge Walker should not have presided in these cases because Judge Walker contacted witnesses and discussed facts concerning an alleged burglary that involved Watson, conduct that subsequently resulted in Watson's indictment in cause number 13-17023. After considering the merits of Watson's claims, Judge West dismissed Watson's applications that relate to trial court cause numbers 12-14963, 12-14964, 12-15663, and 13-17023. Judge West dismissed Watson's applications in these four cases based on her conclusion that Watson was not entitled to habeas relief in them because he was never convicted or subjected to community supervision orders in those cases.

Judge West also denied Watson's application for habeas relief as it related to trial court cause number 12-14962. In connection with that case, Judge West found that Judge Walker was neither disqualified nor subject to recusal based on the evidence that she concluded should be considered in resolving the issues Watson raised in his request for habeas relief. Among the findings relevant to trial court cause number 12-14962, Judge West concluded that Judge Walker did not rely on any information that he may have learned about the burglary when deciding any of

the matters that related to trial court cause number 12-14962. Based on her extensive findings and conclusions, Judge West also denied Watson's application for habeas relief in cause number 12-14962.

Watson raises three issues in his appeal from Judge West's order denying habeas relief in trial court cause numbers 12-14962, 12-14963, 12-14964, 12-15663, and 13-17023. In issue one, Watson asserts that Judge West abused her discretion by failing to conduct an adversarial hearing on his application as it relates to cause number 12-14962. In issue two, Watson contends the habeas court erred by refusing to consider all of the evidence that he submitted in deciding whether he was entitled to any relief. In issue three, Watson argues that Judge West's written findings are not supported by the evidence that she used in deciding whether he was entitled to habeas relief.

We conclude (1) Judge West did not abuse her discretion by refusing to conduct a formal evidentiary hearing to resolve the issues Watson raised in his application seeking relief from the order of community supervision rendered in trial court cause number 12-14962; (2) Judge West's decision not to consider some of the evidence that Watson attached to his application was harmless, given the findings that Judge West made that are relevant to the issues Watson raised in his appeal; and, (3) Judge West's material findings on the issues relevant to our resolution of Watson's appeal are findings that are supported by the evidence that

Judge West considered in deciding whether he was entitled to habeas relief. We affirm the order denying Watson’s request seeking habeas relief.

Background

In 2012, Watson was indicted in four separate cases for felony theft.⁴ In early April 2013, Watson reached a plea agreement with the State in cause number 12-14962. Watson’s plea agreement had several material conditions, including a requirement that the court would place Watson on probation in cause number 12-14962, a requirement that the theft charges against Watson in cause numbers 12-14963, 12-14964, and 12-15663 be dismissed, a requirement that Watson pay “up front” restitution to the individuals who were the victims of his four alleged thefts, and a requirement that Watson resign his license to practice law. While the terms of Watson’s plea bargain were subject to Judge Walker’s approval, several details of the bargain, such as the exact conditions the trial court would impose on Watson through the community supervision order, were left to Judge Walker’s discretion.

Shortly after Watson entered into his plea agreement with the State, Judge Walker conducted a hearing to decide whether he would approve the proposed

⁴ The four indictments, cause numbers 12-14962, 12-14963, 12-14964, and 12-15663, all alleged thefts that are classified as state jail felonies. *See* Act of May 29, 2011, 82nd Leg., R.S., ch. 1234, § 21, 2011 Tex. Gen. Laws 3301, 3309-310 (amended 2015) (current version at Tex. Penal Code Ann. § 31.03(e)(4)(A) (West Supp. 2015)).

bargain, which required three of the cases of theft to be dismissed. During the hearing, Watson stated that he was guilty of the charges that were alleged by the indictment in cause number 12-14962, that his plea was made freely and voluntarily, and that he had read, understood, and signed the written plea admonishments that related to his plea. Watson advised Judge Walker that he understood he would be required to resign his license to practice law as a condition of the agreement, but the record indicates the resignation was to occur after Watson had paid restitution to the various individuals identified in the four indictments as the persons from whom he had allegedly stolen money. Near the end of the plea hearing, Watson requested that Judge Walker approve the agreement. In response, Judge Walker pronounced that the plea agreement was acceptable to the court, and he advised Watson that he would determine at a later date the period Watson would be required to be on probation. Judge Walker did not comment on what other conditions he might decide to impose on Watson when rendering the community supervision order in cause number 12-14962; nonetheless, under Watson's agreement with the State, these details were left to Judge Walker's discretion. When the hearing concluded, Judge Walker stated: "I will see you back here on sentencing day."

In late May 2013, before the sentencing hearing occurred, Judge Walker learned that Watson had been arrested for allegedly burglarizing a habitation. In

June 2013, the grand jury indicted Watson for entering a habitation owned by A.A.,⁵ without her effective consent, with the intent to commit an assault. Judge Walker allegedly contacted A.A. and her fiancé, B.B., witnesses to the burglary, the day after the alleged burglary occurred. According to Watson, he was unaware of Judge Walker's contact with A.A. and B.B. when Judge Walker presided over several hearings that occurred after the date of the alleged burglary. Judge Walker's decision to contact A.A. and B.B., and Judge Walker's failure to disclose this information to Watson, serve as the factual background for Watson's complaints that Judge Walker should not have presided over any of his criminal cases.

Watson's sentencing hearing in cause number 12-14962 occurred in August 2013. Near the beginning of the sentencing hearing, Judge Walker was advised that Watson had not paid the restitution amount required by his plea agreement. Judge Walker was also advised that Watson, as of the hearing, had also not resigned his license to practice law. Even though Watson had not fully complied with the requirements of his written plea agreement, Judge Walker honored the agreement, and placed Watson on community supervision for five years. Under the community-supervision order in cause number 12-14962, Judge Walker ordered

⁵ To protect the privacy of the complaining witnesses to the alleged burglary, we will identify them by initials, designed to obscure their true identities.

that Watson pay restitution in the amount of \$29,320 to the victims of his four alleged thefts, and he ordered that Watson serve 180 days in jail, with the term to begin ninety days after the date of the sentencing hearing.

In his brief, Watson argues that the up-front sentence constituted an upward departure from his plea agreement. However, during the sentencing hearing, Watson did not complain that the up-front sentence was a condition that did not comply with the terms of his written plea agreement, that the up-front sentence rendered his guilty plea involuntary, or request that he be allowed to withdraw his plea. During the hearing, Judge Walker explained why he had decided to impose an up-front sentence under the circumstances presented in Watson's case, explaining that an up-front jail sentence was required because Watson had "stole[n] money from [his] clients[.]" Several days after the sentencing hearing, Judge Walker dismissed cause numbers 12-14963, 12-14964, and 12-15663, honoring the terms of Watson's plea agreement with the State.

In November 2013, Judge Walker held a hearing to enforce the community-supervision order's up-front jail condition. Following the hearing, Watson was taken into custody; however, two days later, Judge Walker allowed Watson to post a \$500 bond; after posting bond, Watson was released from jail. During the November hearing, Judge Walker dismissed cause number 13-17023, the case that concerned the alleged burglary of A.A.'s home, which was not an agreed

requirement based on Watson's plea agreement with the State in cause number 12-14962.

In April 2015, Watson filed an application seeking habeas relief. In his application, Watson challenged the validity of all of the orders Judge Walker rendered in trial court causes 12-14962, 12-14963, 12-14964, 12-15663 and 13-17023. *See* Tex. Code Crim. Proc. Ann. art. 11.072, § 2. In his application, Watson alleged that he learned for the first time in December 2014 that Judge Walker had contacted A.A. and B.B. regarding the circumstances of the alleged burglary. Watson also alleged that on the day Judge Walker contacted A.A. and B.B., he increased Watson's bonds in the five criminal matters then pending in his court to oppressive levels.⁶

Watson attached various items to his application in support of his claim that Judge Walker's alleged extrajudicial contact regarding the alleged burglary should have resulted in Judge Walker's disqualification or recusal. The information Watson attached to support his application included a deposition that he obtained from B.B. in a civil suit that he filed against A.A. and B.B. for false arrest. Watson also attached pleadings and discovery from his false arrest case to the application that he filed seeking habeas relief. In his application, Watson asked that Judge

⁶ Watson asserted that each bond was increased to \$3,000,000. In his writ, Watson acknowledged that ten days after the amounts of his bonds were increased, Judge Walker returned the bonding requirements to their prior levels.

West overturn all of Judge Walker's actions, order his release from the community-supervision order in cause number 12-14962, dismiss all the criminal cases the State had filed against him, and expunge all of his records in trial court causes 12-14962, 12-14963, 12-14964, 12-15663, and 13-17023. Watson subsequently amended his application, adding an additional request asking that Judge West invalidate his plea in cause number 12-14962.

The State did not answer either of Watson's applications for habeas relief. Nonetheless, the Code of Criminal Procedure deems the allegations in applications for habeas relief to have been denied, even when the State does not file an answer. *See* Tex. Code Crim. Proc. Ann. art. 11.072, §§ 5(b), (e) (West 2015).

In July 2015, Judge West considered Watson's amended application for habeas relief on its merits; however, she did so without authorizing the State or Watson to submit additional information. *See* Tex. Code Crim. Proc. Ann. art. 11.072, § 6(b) (West 2015) ("In making its determination, the court may order affidavits, depositions, interrogatories, or a hearing, and may rely on the court's personal recollection."). Judge West also did not authorize a formal hearing on Watson's application for habeas relief. *See id.*

After finding that some of the evidence Watson attached to his application was inadmissible and should not be considered, Judge West denied Watson's request for habeas relief. To explain the bases for her rulings regarding the various

trial court causes, Judge West rendered written findings and conclusions. The findings that Judge West rendered thoroughly explain her conclusions regarding why she felt that Watson was not entitled to habeas relief. For example, Judge West noted in her findings that the incident involving the burglary of A.A.'s home occurred after the date that Watson pled guilty in cause number 12-14962. Given the lack of a temporal relationship between the date that Judge Walker contacted witnesses to the alleged burglary and Watson's decision to plead guilty in cause number 12-14962, Judge West found that Watson's application did not include any credible evidence that his plea in cause number 12-14962 was involuntary. In her findings, Judge West also addressed Watson's claim that Judge Walker was disqualified or that he should have been recused from presiding over the August 2013 sentencing hearing, a hearing that occurred after the extrajudicial contact at issue in Watson's request for habeas relief. Addressing the evidence attached to Watson's application for habeas relief, Judge West found that the evidence from Watson's false arrest case was not admissible in his habeas case because the evidence in the false arrest case had not been taken under the requirements found in Chapter 39 of the Texas Code of Criminal Procedure.

Nonetheless, Judge West had substantial other evidence she used to decide whether Judge Walker considered any information about the alleged burglary in deciding any matters related to the sentence that Watson was given in cause

number 12-14962. The evidence Judge West considered included the transcripts of the hearings that Judge Walker conducted in cause number 12-14962, and the files from all of Watson's five criminal cases. Based on all of the evidence that Judge West considered, Judge West found that Watson failed to establish that Judge Walker was either disqualified or that he should have recused from serving as the presiding judicial official at the hearings conducted in cause number 12-14962. Judge West specifically found that Judge Walker did not consider any of the facts relating to Watson's arrest for burglary during any of the hearings that he conducted in cause number 12-14962. Judge West made a number of additional findings that are not relevant to Watson's appeal. Therefore, in resolving Watson's issues, we will address only the findings that Judge West made that are necessary to our resolution of the issues Watson has presented in his appeal. *See* Tex. R. App. P. 47.1.

Issues on Appeal

On appeal, Watson presents three issues for our review, arguing that the habeas court (1) abused its discretion by failing to order a formal hearing to allow him an opportunity to further develop evidence regarding Judge Walker's alleged extrajudicial contact and regarding whether Judge Walker considered the information he learned about the alleged burglary when he conducted the hearings that occurred in cause number 12-14962; (2) erred by refusing to consider various

information attached to his application for habeas relief; and, (3) rendered findings that are not supported by the evidence on the issues presented in his request for habeas relief.

In response to Watson's first two issues, the State filed a brief that contends that the habeas court had all the information that was needed to resolve Watson's claim alleging that Judge Walker should not have presided over the hearings in cause number 12-14962, and it concludes that no formal proceedings were required. In response to Watson's third issue, the State argues the evidence that Judge West considered in denying Watson's application supports her written findings.

Jurisdiction and Standard of Review

We note our jurisdiction over Watson's appeal from the habeas court's orders dismissing Watson's applications addressing trial court causes 12-14963, 12-14964, 12-15663, and 13-17023.⁷ *Houston Mun. Emps. Pension Sys. v. Ferrell*,

⁷ Watson's application and his notice of appeal address all five of his criminal cases, causes 12-14962, 12-14963, 12-14964, 12-15663, and 13-17023. Judge West's findings, and the judgment that she rendered in Watson's habeas case, addressed all five of Watson's criminal cases. *See* Tex. Code Crim. Proc. Ann. art. 11.072, § 1 (West 2015) (providing that the article establishes procedures in habeas cases when the applicant seeks relief "from an order or a judgment of conviction ordering community supervision"). In his brief, Watson has not advanced any challenge to Judge West's decisions to dismiss his applications in cause numbers 12-14963, 12-14964, 12-15663, and 13-17023; therefore, as related to trial court causes 12-14963, 12-14964, 12-15663, and 13-17023, Judge West's

248 S.W.3d 151, 158 (Tex. 2007) (“Courts always have jurisdiction to determine their own jurisdiction.”). We also note our jurisdiction over ancillary cause number 12-14962-A, the case that relates to Judge Walker’s community-supervision order in trial court cause number 12-14962.⁸ *See* Tex. Code Crim. Proc. Ann. art. 11.072, § 8 (West 2015) (authorizing an applicant whose application is denied in whole or in part a right to appeal).

An abuse-of-discretion standard applies to an appellate court’s review of a ruling on a motion to disqualify a judge and a motion to recuse a judge. *Kemp v. State*, 846 S.W.2d 289, 306 (Tex. Crim. App. 1992); *see also* Tex. R. Civ. P. 18a(j)(1)(A), (j)(2). In reviewing a habeas court’s ruling on such motions, the appeals court does not act as the factfinder. *See State v. Guerrero*, 400 S.W.3d 576, 583 (Tex. Crim. App. 2013). As the factfinder, it is the habeas court’s responsibility to resolve all disputed issues of fact that have been raised by a petitioner in his application seeking habeas relief. *See id.* On appeal, the habeas court’s findings are afforded “almost total deference[.]” *Id.* With respect to the resolution of fact questions, which in this case includes whether Judge Walker

order, which dismissed Watson’s applications seeking habeas relief in those four matters for want of jurisdiction, is affirmed.

⁸ The District Clerk assigned “–A” ancillary cause numbers to Watson’s applications seeking habeas relief; thus, cause number 12-14962-A was assigned to Watson’s challenge to the judgment that Judge Walker rendered in cause number 12-14962. *See* Tex. Code Crim. Proc. Ann. art. 11.072, § 4(b) (West 2015).

relied on any information that he learned regarding Watson’s arrest for burglary from the witnesses to the burglary when he made decisions relevant to trial cause number 12-14962, the case in which Watson plead guilty to theft, we point out that in 11.072 habeas appeals, “the trial judge is the sole finder of fact.” *See Ex parte Garcia*, 353 S.W.3d 785, 788 (Tex. Crim. App. 2011). When a habeas court’s resolution of an application for habeas relief turns on applying a legal standard, we utilize a de novo standard to review those rulings. *See Ex parte Peterson*, 117 S.W.3d 804, 819 (Tex. Crim. App. 2003) (per curiam), *overruled on other grounds by Ex parte Lewis*, 219 S.W.3d 335 (Tex. Crim. App. 2007).

While Judge West made a number of findings that Watson criticizes in his appeal, we need discuss only three of her findings to resolve the issues that Watson presents in his appeal.⁹ In resolving Watson’s application for habeas relief, Judge West found that Watson failed to meet his burden to establish (1) that Judge Walker had an interest in the proceedings before him, (2) that Judge Walker had a personal bias or prejudice concerning Watson, or (3) that Judge Walker had personal knowledge of disputed evidentiary facts on which he had relied in conducting the proceedings in cause number 12-14962. These three findings are

⁹ Although Watson’s complaints address findings that are not discussed, we need not address Watson’s complaints to the extent they concern findings that are not material to our resolution of his appeal. *See Tex. R. App. P. 47.1.*

the material findings that are relevant to the issues Watson has raised in the issues he has presented in his appeal.

Analysis

Sufficiency Issue

We first address Watson's third issue, which asserts the evidence is insufficient to support Judge West's findings. In his application, Watson relied on Judge Walker's extrajudicial contact with A.A. and B.B. that occurred following his arrest for burglarizing A.A.'s home as the incident forming the factual basis for his claim that Judge Walker was disqualified or subject to being recused on the filing of a proper motion. Watson claimed that Judge Walker became biased against him following his conversations with A.A. and B.B. regarding the alleged burglary, an incident that occurred in May 2013. Watson points to Judge Walker's conduct following the extrajudicial contact with the witnesses to the burglary to support his claim that Judge Walker became biased against him, pointing out that Judge Walker increased the bonds he was under in his criminal cases, and that Judge Walker imposed an up-front jail sentence during the sentencing hearing that occurred subsequently.¹⁰

¹⁰ Watson's initial application states that he first learned of the contact that occurred between Judge Walker, A.A., and B.B. regarding Watson's arrest for burglary in December 2013, but he did not file his application for habeas relief complaining about the matter until late April 2014. The State did not argue in the

In this case, it is undisputed that Watson entered his plea bargain before May 23, 2013, the date that Judge Walker discussed Watson's arrest for burglary with individuals whose accounts of the incident led police to arrest Watson for burglary. It is also undisputed that before the incident involving the alleged burglary occurred, Watson pled guilty to the indictment charging him with theft in cause number 12-14962. During the April 2013 hearing that concerned Watson's plea in cause number 12-14962, Judge Walker accepted Watson's plea that he was guilty of committing that theft.

Judge West found that the extrajudicial contacts at issue were not relevant to Watson's guilty plea since Watson pled guilty before the date Judge Walker's extrajudicial contact regarding the burglary occurred. Given the lack of a temporal relationship between the plea-bargain agreement and the hearing on Watson's plea, Judge West finding the extrajudicial contact could not have affected the voluntariness of Watson's plea is reasonable and finds sufficient support in the

trial court or on appeal that Watson's complaints about Judge Walker's alleged extrajudicial contact with the witnesses were untimely, and Judge West did not base her ruling on a finding that Watson's complaints about Judge Walker's contact with the witnesses were not timely. Since Judge West did not base her ruling on Watson's delay in requesting habeas relief, we express no opinion about whether Watson's three-month delay between learning of Judge Walker's contact with the witnesses to the alleged burglary and Watson's filing for habeas relief were sufficient delays to make Watson's request untimely. However, we caution that Rule 18a, which governs motions to disqualify, requires that such motions be filed "as soon as practicable after the movant knows of the ground stated in the motion." Tex. R. Civ. P. 18a(b)(2).

evidence in the record we have before us in the appeal. We hold that Judge West did not abuse her discretion by denying Watson's claim that his guilty plea in cause number 12-14962 was involuntary.

In his application, Watson also challenged Judge Walker's decision to sharply increase the bonds that Watson used to gain his pre-trial release, claiming that the bonds were increased following the extrajudicial contact that Judge Walker had with the witnesses to the alleged burglary. The evidence before the habeas court reflects that Judge Walker modified Watson's bonds on May 23, 2013, the day after Watson was arrested on the charge alleging he had burglarized A.A.'s home. However, at the point that Judge West considered and ruled on Watson's habeas application in July 2015, the pretrial bonds governing Watson's release in trial court causes 12-14962, 12-14963, 12-14964, 12-15663, and 13-17023 were no longer in place, as all of those cases had either been finally dismissed or adjudicated.

Judge West based her conclusion that Watson's complaints about his bonds were moot on the Court of Criminal Appeals' opinions in *Martinez v. State*, 826 S.W.2d 620 (Tex. Crim. App. 1992), and *Danziger v. State*, 786 S.W.2d 723 (Tex. Crim. App. 1990). In *Danziger*, the Court of Criminal Appeals held that Danziger's complaint about the increase in his bond became moot by the date the habeas hearing occurred because at that point, Danziger was no longer subject to

pre-trial confinement. *Danziger*, 786 S.W.2d at 724. To the extent Watson’s habeas complaint concerns the amount of his bonds, we agree with Judge West’s conclusion that Watson’s complaints about the amount of his bonds were moot. With respect to Watson’s argument that the increase in his bonds reflects that Judge Walker became biased, we must also defer to Judge West’s implied finding, on conflicting evidence, that the manner Judge Walker handled Watson’s pretrial release on bond did not demonstrate that he held a bias sufficient to harm Watson’s right to receive due process. *See Rosas v. State*, 76 S.W.3d 771, 775 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (noting that violations of the Code of Judicial Conduct and unethical conduct, standing alone, do not constitute reversible error; to obtain a reversal, a criminal defendant must demonstrate on appeal that the bias was of “such a nature and extent as to deny [the defendant] due process of law”). In Watson’s case, all of his bonds were subsequently lowered to their prior levels before the date Watson was sentenced, so Judge West could also have reasonably decided that whatever precipitated the decision to increase Watson’s bonds was resolved less than two weeks later when Judge Walker returned Watson’s bonds to their prior levels.

In his application, Watson also complains that Judge Walker served as the presiding judicial official during his sentencing hearing in cause number 12-14962, a hearing that occurred in August 2013. At that point, Watson, several months

earlier, had pled guilty and his plea had been accepted. During the sentencing hearing, Judge Walker decided on the various conditions to impose on Watson based on the discretion that he was given under Watson's plea agreement, which specifically delegated the details of the terms related to the community-supervision order to Judge Walker's discretion. In his brief, Watson claims that the fact that Judge Walker imposed a 180 day up-front sentence is evidence that Judge Walker was biased against him, and he argues that the bias stems from Judge Walker's extrajudicial contact in May 2013 with the witnesses to the alleged burglary.

Briefly, we address the standards that apply to claims alleging a judge should be removed because he is disqualified and asserting a judge should be removed from a case because he is recused. With respect to such claims, Watson bore the burden to prove that Judge Walker was either disqualified from presiding or that he would have been recused had Watson raised his complaints promptly after learning of the matters that form the basis of his complaints. *See Guerrero*, 400 S.W.3d at 583. With respect to issues of disqualification or recusal, the Court of Criminal Appeals has explained that the rules of procedure governing these types of claims that apply to civil cases also apply to criminal proceedings. *Arnold v. State*, 853 S.W.2d 543, 544 (Tex. Crim. App. 1993) (holding that Rule 18a of the Texas Rules of Civil Procedure applies to criminal cases); *see also* Tex. R. Civ.

P. 18a(a)(2) (Rule 18a indicates that the motion to disqualify or recuse must assert one or more of the grounds listed in Rule 18b).

In his brief, Watson suggests that Rules 18a and 18b of the Texas Rules of Civil Procedure apply in his case, as he argues that Judge Walker's conversation with the witnesses to the alleged burglary make his impartiality a matter that was reasonably subject to being questioned. Based on the extrajudicial conversations at issue, conversations that concerned an alleged burglary, Watson contends that Judge Walker acquired a personal bias or prejudice that concerned the subject matter of cause number 12-14962, a case in which he was charged with theft. As the party claiming that the judge should be recused, Watson bore the burden of proof on his claim. *Abdygapparova v. State*, 243 S.W.3d 191, 198 (Tex. App.—San Antonio 2007, pet. ref'd). To establish that a judge's impartiality requires that the judge be recused, the party seeking the judge's recusal must show that "a reasonable member of the public at large, knowing all the facts in the public domain concerning the judge and the case, would have a reasonable doubt that the judge is actually impartial." *Burkett v. State*, 196 S.W.3d 892, 896 (Tex. App.—Texarkana 2006, no pet.); *see also Rogers v. Bradley*, 909 S.W.2d 872, 880 (Tex. 1995) (Enoch, J. concurring). To evaluate the impression left by facts on reasonable members of the public, courts analyze how the judge's acts appear to the "well-informed, thoughtful and objective observer, rather than the

hypersensitive, cynical, and suspicious person.” *United States v. Jordan*, 49 F.3d 152, 156 (5th Cir. 1995). With respect to proving partiality, bias, or prejudice, the terms do “not refer to all favoritism, but only to such as is, for some reason, wrongful or inappropriate.” *Liteky v. U.S.*, 510 U.S. 540, 552 (1994). Therefore, the necessity of ordering another judge’s recusal is triggered only when the judge who presided over the matter displayed an “attitude or state of mind so resistant to fair and dispassionate inquiry” that a reasonable member of the public would question the objective nature of the judge’s rulings. *See id.* at 557-58 (Kennedy, J., concurring).

Judge West was required to look at Watson’s claims objectively from the standpoint of a well-informed observer. *See Jordan*, 49 F.3d at 156. From that standpoint, she might have reasonably viewed the conditions that Judge Walker imposed on Watson in the community-supervision order as lenient, given that his bargain resulted in the dismissal of three other cases of theft and that in them, he was a lawyer indicted for having stolen money from his clients. Judge West was also entitled to consider the fact that Judge Walker never actually required that Watson serve any significant part of the up-front jail sentence; instead, Judge Walker let Watson out on bond after he served two days of that sentence.

The manner Judge Walker handled the sentencing hearing also undercuts Watson’s claim that Judge Walker considered the burglary charge during

sentencing. The transcript of the sentencing hearing reflects that no evidence regarding the burglary was ever introduced, and that Judge Walker never mentioned the burglary in the hearing except to indicate that matters regarding Watson's other cases were not relevant to the hearing that day, which concerned Watson's sentence for theft.¹¹ Additionally, during the sentencing hearing, Watson's attorney expressed no surprise when Judge Walker indicated that an up-front condition in jail would be included as part of Watson's community-supervision obligations, and he never objected during the sentencing hearing that any of the requirements of the community-supervision order were inconsistent with the terms of the agreement that Watson made with the State. In summary, in evaluating Watson's claim of bias, Judge West could reasonably consider that the terms Judge Walker imposed on Watson through the community-supervision order do not reflect an attitude or state of mind so resistant to dispassionate inquiry that reasonable people, knowing of the significant benefits Watson gained for his plea, would question Judge Walker's objectivity with respect to the manner he conducted the sentencing hearing in cause number 12-14962.

¹¹ At the beginning of the hearing, Watson's attorney mentioned that he had filed a motion in limine in another case involving Watson, and that in his motion he had requested that witnesses not be asked about the alleged burglary. Judge Walker responded that he would not consider the motion in limine from another matter. Judge Walker's response regarding the motion in limine is consistent with Judge West's conclusion that he did not consider matters outside those that the reporter's record shows were discussed during the sentencing hearing.

Courts presume that judges understand that they have a duty to “render decisions upon a proper record and to disregard” extraneous matters. *Id.* at 562. Therefore, the party moving to recuse a judge must provide facts that demonstrate the presence of a bias or partiality “of such a nature and extent as to deny the movant due process of law.” *Office of Pub. Util. Counsel v. Public Util. Comm’n*, 185 S.W.3d 555, 574 (Tex. App.—Austin 2006, pet. denied) (quoting *Rosas*, 76 S.W.3d at 774); *Roman v. State*, 145 S.W.3d 316, 321 (Tex. App.—Houston [14th Dist.] 2004, pet. ref’d). Watson was required to show that Judge Walker held an antagonism against him to such a degree that it was impossible for Judge Walker to have rendered a fair judgment. *See Abdygapparova*, 243 S.W.3d at 198. Watson’s evidence, even when we consider the evidence that Judge West indicated she would not consider, does not show that Judge Walker had an antagonism against Watson, much less an antagonism indicating that Judge Walker could not render a fair judgment. Instead, the sentencing hearing supports Judge West’s conclusion that Judge Walker’s decision to impose an up-front sentence as one of the conditions of the community supervision order was unrelated to any matter related to the burglary, and reflects that Watson’s up-front sentence relates to the fact that he had not complied with his agreement to pay up-front restitution and the fact that he was a lawyer who had stolen money from a client, matters unrelated to the alleged burglary.

We are required to defer to Judge West’s finding, on conflicting evidence, that Judge Walker did not consider facts regarding the burglary during any of the hearings in cause number 12-14962. *See Guerrero*, 400 S.W.3d at 583. The record shows that Watson was aware that an up-front jail sentence might be imposed at sentencing, as before pleading guilty, Watson acknowledged in writing that he was aware the trial court could order his confinement for a period of up to 180 days as a condition of the court’s community-supervision order. We conclude that the evidence supports Judge West’s conclusion that Judge Walker did not consider any of the burglary facts during the August 2013 sentencing hearing.¹² We further conclude that the record contains sufficient evidence to support Judge West’s conclusion that Judge Walker was not disqualified, as the evidence does not

¹² We note that the alleged burglary is mentioned in the pre-sentence investigation that Judge Walker considered at the sentencing hearing, but the fact that Judge Walker may have considered the PSI report is not inconsistent with Judge West’s finding that Judge Walker did not rely on any burglary facts in the sentencing hearing. In his brief, Watson does not claim that it would have been improper for the court to have relied on the PSI at sentencing and the record of the sentencing hearing does not show that he objected to the information in the PSI, which we note Watson characterizes as containing “maliciously false allegations of A.A. and B.B” regarding Watson’s arrest for burglary. The transcript from the sentencing hearing reflects that Watson neither objected to Judge Walker’s consideration of the information in the PSI report, nor did he appeal from the sentencing hearing, claiming that Judge Walker had improperly used the report to impose a condition that was not contemplated by his plea bargain with the State. *See Tex. R. App. P. 25.2(a)(2)*. Finally, Watson’s application does not include a claim alleging that he received ineffective assistance of counsel at any stage of the proceedings in cause number 12-14962.

demonstrate that he had served as Watson's lawyer, that he had an interest in the subject matter that was in controversy, or that he was related to Watson in the third degree, either by the rules of affinity or consanguinity. Tex. R. Civ. P. 18b(a). And, we conclude the evidence allowed Judge West to reasonably conclude that Judge Walker's impartiality could not reasonably be subject to question, that Judge Walker did not have a personal bias or prejudice concerning the cases or concerning Watson, and that Judge Walker did not have personal knowledge of disputed evidentiary fact that concerned the proceedings in Watson's theft case, cause number 12-14962. *See* Tex. R. Civ. P. 18b(b)(1), (2), (3). We hold that Judge West did not abuse her discretion in finding that Judge Walker did not rely on the facts regarding the burglary during the sentencing hearing conducted in cause number 12-14962. *See generally Guerrero*, 400 S.W.3d at 583. We overrule issue three.

Refusal to Consider the Discovery from Watson's False Arrest Case

In his second issue, Watson complains that Judge West abused her discretion by refusing to consider evidence that he obtained in his suit against A.A. and B.B. for false arrest in deciding the issues raised by his application for habeas relief. Watson attached evidence he obtained in his false arrest case to his application for habeas relief, and the evidence Judge West refused to consider concerns the substance of the conversations that occurred in May 2013 between Judge Walker,

A.A., and B.B. Having reviewed the evidence that Judge West refused to consider, we conclude that it is not relevant to any of the grounds for disqualification that are at issue in Watson's appeal, as the excluded evidence was not relevant to Watson's claim that Judge Walker was disqualified. *See* Tex. R. Civ. P. 18b(a).

However, the evidence that Judge West excluded is relevant to Watson's recusal claim, as it shows that the extrajudicial contacts about which Watson complains in fact occurred. Nonetheless, even if Judge West should have considered the evidence, the evidence she refused to consider does not show whether Judge Walker relied on any information he learned about the burglary when conducting Watson's sentencing hearing to address Watson's indictment for theft. As we have explained, the transcript of the sentencing hearing shows what Judge Walker considered when he sentenced Watson on the charge of theft. In that hearing, the burglary facts were not discussed, and Judge West was entitled to find that the facts regarding the burglary did not influence Judge Walker in conducting Watson's sentencing hearing to address the charge of theft. Therefore, any error in excluding the evidence from Watson's false arrest case was harmless because it does not contradict Judge West's finding that Judge Walker did not consider the facts regarding the burglary during the sentencing hearing. *See Ex parte Parrott*, 396 S.W.3d 531, 534 (Tex. Crim. App. 2013) (noting that generally, applicants for habeas relief "must show harm" to obtain relief).

Given Judge West's findings that the burglary facts were not considered at sentencing, the exclusion of the evidence from Watson's false arrest case did not affect Watson's substantial rights. Therefore, the error in excluding the evidence, if any, must be disregarded on appeal. *See* Tex. R. App. P. 44.2(b) (directing that errors that do not affect substantial rights must be disregarded). Issue two is overruled.

Lack of a Formal Hearing

In his first issue, Watson complains the trial court abused its discretion by failing to conduct a hearing that would have allowed him to further develop the record to support his complaints that Judge Walker should not have presided over the proceedings in cause number 12-14962. Other than Judge Walker, Watson does not indicate who he might have called as witnesses, and the record contains no evidence to show what such witnesses might have said in support of his claim for habeas relief. The record of the sentencing hearing reflects that it is unlikely that Judge Walker would have testified in such a hearing that he considered matters regarding the alleged burglary when sentencing Watson on the charge of theft.

Watson insists that a formal hearing in which he could have called witnesses was required. However, courts conducting habeas hearings have discretion over the extent to which a habeas record needs to be developed to allow the trial court to rule. For instance, section 6(b) of article 11.072 provides that in making its

determination on a writ, the habeas court “may” order the parties to participate in several methods of discovery designed to establish the facts relevant to the claims raised by an applicant’s writ. Thus, the statutory procedures for section 11.072 writs do not mandate that a formal evidentiary hearing is always required. Tex. Code Crim. Proc. Ann. art. 11.072, § 6(b); *see* 43B George E. Dix & John M. Schmolesky, *Texas Practice: Criminal Practice and Procedure* § 58.33 (3d ed. 2011) (noting that in proceedings under article 11.072, “[a] hearing may be held but is not required, since the court may rely on affidavits, depositions, interrogatories, or the court’s personal recollection[.]”); *see also Ex parte Davila*, 530 S.W.2d 543, 545 (Tex. Crim. App. 1975) (op. on reh’g) (noting that in habeas proceedings governed by article 11.07, which applies to criminal convictions, formal hearings in cases not involving the death penalty are not required, and the standard used to review whether the habeas court employed proper fact-finding tools is whether the fact-finding procedure used by the habeas court was adequate for the habeas court to reach a reasonably correct result).

Watson contends that in *Ex parte Cherry*, 232 S.W.3d 305 (Tex. App.—Beaumont 2007, pet. ref’d), we mandated that formal evidentiary hearings be conducted in article 11.072 writ proceedings. However, in *Cherry*, we reversed and remanded the habeas court’s ruling for further proceedings because the information before the habeas court in that case, when considered with that court’s findings, did

not allow this Court “to accurately identify the basis of [the habeas court’s] ruling.” *Id.* at 307. Although we remanded *Cherry* to allow the habeas court to conduct further proceedings, we did not mandate that the habeas court conduct a formal evidentiary hearing on remand; instead, we left the manner in which the record should be further developed to the habeas court’s discretion. *Id.* at 308.

Unlike the record before us in *Cherry*, Judge West developed a sufficient record to show whether Judge Walker relied on the information he learned as a result of his extrajudicial contact with witnesses to an alleged burglary, and she then rendered findings that provide sufficient detail to be sufficient to allow appellate review of her findings and her conclusions on appeal. The evidence before Judge West included the transcripts of the relevant hearings in cause number 12-14962, and these transcripts allowed Judge West to reasonably conclude that Judge Walker did not rely on any facts regarding Watson’s arrest for burglary. While Judge West might have decided to use a formal evidentiary hearing to further develop the record for the purpose of hearing Watson’s application for habeas relief, she was not required to assume that Judge Walker would contradict the transcripts from the hearings in cause number 12-14962, and she was entitled to exercise her discretion by concluding that the transcripts of the hearings were the best evidence to indicate what Judge Walker considered at the hearings in issue. We conclude that Judge West developed a record that is

sufficient for the purpose of deciding the matters raised by Watson’s application for habeas relief. *See Davila*, 530 S.W.2d at 545 (quoting *Townsend v. Sain*, 372 U.S. 293 (1963)) (“[T]he proper standard in such cases as the one before us is whether ‘the fact-finding procedure there employed was . . . adequate for reaching reasonably correct results.’”). Therefore, we hold that Judge West did not abuse her discretion by failing to develop the record further with other procedures available to her. Having overruled all of Watson’s issues, the habeas court’s order denying Watson’s writ is affirmed.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on November 10, 2015
Opinion Delivered March 9, 2016
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.