

# Order

October 2, 2018

157513

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

HOWARD ANTHONY MONIZ,  
Defendant-Appellant.

Michigan Supreme Court  
Lansing, Michigan

Stephen J. Markman,  
Chief Justice

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Kurtis T. Wilder  
Elizabeth T. Clement,  
Justices

SC: 157513  
COA: 340768  
Monroe CC: 00-030408-FH  
00-030410-FC

On order of the Court, the application for leave to appeal the March 21, 2018 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

WILDER, J., did not participate.



10924

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 2, 2018

Clerk

Appendix D

Court of Appeals, State of Michigan

ORDER

People of MI v Howard Anthony Moniz

Docket No. 340768

LC No. 00-030408-FH, 00-030410-FC

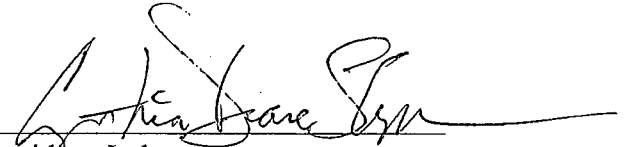
Cynthia Diane Stephens  
Presiding Judge

Karen M. Fort Hood

Michael J. Riordan  
Judges

The Court orders that the motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

  
Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 21 2018

Date

  
Chief Clerk

Appendix C

STATE OF MICHIGAN  
IN THE DISTRICT COURT FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF MICHIGAN  
Plaintiff

VS.

Case No. 00-30408-FH  
00-30410-FC

HOWARD MONIZ  
Defendant

\_\_\_\_\_  
HONORABLE MICHAEL A. WEIPERT  
In Pro Per  
106 E. First St.  
Monroe, MI 48161

\_\_\_\_\_  
HOWARD MONIZ #185778  
In Pro Per  
Kinross Correctional Facility  
4533 Industrial Park Drive  
Kincheloe, MI 49788

**DECISION ON DEFENDANT'S "MOTION TO CHIEF JUDGE REQUESTING  
DISQUALIFICATION OF JUDGE MICHAEL A. WEIPERT"**

At a session of said Court, held in the City of  
Monroe in said Court, State of Michigan, on  
June 30, 2017

In his motion, Defendant alleges that Judge Weipert must be disqualified for the following reasons:

- 1) he was an "attorney for Respondent". (Paragraph 1);
- 2) because of his direct participation...as an attorney of record. (Paragraph 3);
- 3) "...that he is [NOT] impartial and able to remain unbiased" (Paragraph 4);
- 4) he also alleges that his due process rights have been denied.

MCR 2.003 governs disqualification of judges. A trial judge is presumed to be impartial and the party challenging the judge as biased or impartial must overcome the heavy presumption

of judicial impartiality. *People v. Dixon* 403 Mich 106 (1978); *In Re MKK*, 286 Mich App 546 (2009); *People v. Wells* 238 Mich App 383 (1999).

As for the allegation of Judge Weipert being "consulted or employed as an attorney in the matter in controversy", the defendant refers to a **Reply to Petitioner "Motion for Evidentiary Hearing"** and **"Motion to Dismiss Petition for Writ of Habeas Corpus"**. First, Judge Weipert inherited this case from the previous prosecutor who was in office when the case was authorized in 2000. Judge Weipert began his term of office as prosecutor on January 1, 2001. Second, the pleadings referred to by petitioner were not filed in the Monroe County cases. They were filed in a separate action in federal court by the petitioner. It appears from the attachments that petitioner filed a Writ of Habeas Corpus in the United States District Court – Eastern District of Michigan – Southern Division. Civil No. 00-60399. This is a separate action entirely from the state cases in which petitioner seeks to disqualify Judge Weipert. Therefore, Judge Weipert, when acting in his capacity as then Monroe County, Michigan prosecutor, was not "...an attorney in the matter in controversy" or an "...attorney for a party...within the previous two years" in the case attached to petitioner's pleadings in the state cases.

Also, and more importantly, the well settled law is that a prosecutor is not deemed to be "...an attorney in the matter in controversy (MCR 2.003(C)(1)(d)) or "...an attorney for a party...within the preceding two years" (MCR 2.003(C)(1)(E)). *People v. Williams*, 198 Mich App 537, 499 N.W. 2d 404 (1993); *People v. Hampton*, 184 Mich App 434, 459 N.W.2d 309 (1990); *People v. Potter*, 115 Mich App 125, 320 N.W. 2d 313 (1982). *People v. Moran*, 36 Mich App 730, 194 N.W. 2d 555 (1971).

Petitioner's final claim is basically that Judge Weipert is biased and prejudiced against petitioner (MCR 2.003(C)(1)(a)). In his words on page one of his Motion, in paragraph 4, "Defendant disputes Judge Weipert's claim that he is impartial and able to remain unbiased." This requires a showing of actual bias by the moving party. See *People v. Bero* 168 Mich App 545 (1988). Without actual bias or prejudice, a judge will not be disqualified. See *Cain v. Department of Corrections* 451 Mich 470 (1996).

"Disqualification on the basis of bias or prejudice cannot be established merely by repeated rulings against a litigant, even if the rulings are erroneous... [Moreover,][a] generalized hostility toward a class of claimants does not present disqualifying bias. Further, a trial judge's remarks made during trial, which are critical of or hostile to counsel, the parties, or their cases, ordinarily do not establish disqualifying bias." *In re MKK*, 286 Mich App at 566-567 (internal citations omitted).

The United States Supreme Court in *Liteky v. United States*, 510 US 540 (1994) stated:

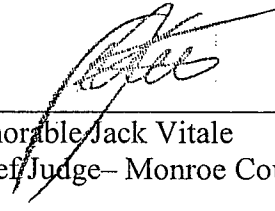
"Thus judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge...[further], not establishing bias or partiality...are, expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women...sometimes display." *Liteky*, supra at 555-556.

Petitioner has failed to carry the burden of proving actual bias or prejudice on the part of Judge Weipert.

The Petitioner also refers to Judge Weipert's actions and rulings as violating his due process right. Crampton v. Michigan Department of State, 395 Mich 347 (1975) is most instructive on the issue. In applying the rule of law set forth in Crampton to the case at bar this court finds that the conduct, statements and rulings of Judge Weipert do not give rise to a constitutional basis for disqualification.

Accordingly, petitioner's Motion to Disqualify Judge Weipert is hereby denied.

Date: June 30, 2017

  
\_\_\_\_\_  
Honorable Jack Vitale  
Chief Judge— Monroe County Courts

JV/bjb

STATE OF MICHIGAN  
IN THE 38<sup>th</sup> CIRCUIT COURT FOR THE COUNTY OF MONROE

PEOPLE OF THE STATE OF MICHIGAN,

MSC No. 154243  
COA No. 334134  
LC Case Nos. 00-30408-FH  
00-30410-FC  
Hon. Michael A. Weipert

Plaintiff,

vs.

HOWARD ANTHONY MONIZ,

Defendant,

A TRUE COPY  
*Sharon D. Chmielewski*  
COUNTY CLERK

**ORDER DENYING MOTION FOR DISQUALIFICATION**

This Court has been directed to address Defendant's Motion for Disqualification and the file has now been returned from the Michigan Supreme Court.

This prosecution was commenced during the tenure of Monroe County Prosecuting Attorney Mr. Edward F. Swinkey. This Judge succeeded Mr. Swinkey while this case was pending. Other than a cursory review of the file, this Court is not familiar with all of the aspects or details of this case, and this matter was tried and handled by an Assistant Prosecutor from the Monroe County Prosecuting Attorney's Office.

This Court has no bias against the Defendant and is able to fairly and judiciously apply the law and rule as the law dictates, either for or against the Defendant. As a side note, while as Prosecutor, the Court is aware that the Prosecutor is responsible for the filings of his assistants,

*Appendix B*

the "scathing Sentencing Memorandum," as referred to by the Defendant, was authored by Assistant Prosecuting Attorney, Mr. Jack F. Simms, Jr., not this Judge.

This Court can handle this matter unbiasedly. Therefore, the Defendant's Motion to Disqualify is **DENIED**. The matter is referred to the Chief Judge of Multiple Courts, Judge Jack Vitale, as directed and per Court Rule *MCR 2.003(D)(3)*.

Dated: May 10, 2017

  
\_\_\_\_\_  
Honorable Michael A. Weipert (P35050)  
38<sup>th</sup> Judicial Circuit Court Judge