

Appendix A

IN THE COURT OF CRIMINAL APPEALS

STATE OF OKLAHOMA

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB - 6 2024

JOHN D. HADDEN
CLERK

CHRISTOPHER J. BARNETT

PETITIONER

FEB 6 2024 9:44

v.

OCCA CASE NUMBER:

JUDGE DAVID GUTEN

RESPONDENT

TULSA COUNTY CASE NUMBER CF-2019-3495

EMERGENCY WRIT OF MANDAMUS TO RECUSE JUDGE DAVID GUTEN AND STAY PROCEEDINGS AND WRIT OF PROHIBITION ASKING THIS COURT TO PROHIBIT JUDGE GUTEN FROM PROCEEDING DURING RULE 15, and UNTIL RULE 15 IS EXHAUSTED. JURY TRIAL IS SET TO BEGIN FEBURARY 05, 2024.

EMERGENCY APPLICATION TO ASSUME ORGINIAL JURISDICTION

I, Christopher J. Barnett hereby apply for the Oklahoma Court of Criminal Appeals to assume original jurisdiction. On January 19, 2024 I filed a request for in camera hearing for the purpose of recusing Judge David Guten due to new information I received that proves bias. Trial is set in this case for Feburuary 5, 2024. Your petitioner knows that if he does not raise these issues, they cannot be raised afterwards.

Your petitioner did not receive the Rule 15 hearing and then asked Judge David Guten on the record to recuse. Judge David Guten denied both with no hearing. Your petitioner filed same day, through standby counsel Greg Lavender a motion for rehearing. Judge David Guten did not follow the rule 15 procedure and accused your petitioner of stalling, lashed out at him and much more. These allegations are without merit and proves the bias of the court. Judge Guten instead chose to continue to rule and continue proceedings, despite Rule 15 holding that it is not discretionary and when there are motions to recuse pending, the trial court must stay proceedings until Rule 15 has been exhausted. Your petitioner previously filed to this court to compel Judge David Guten through a Writ of Mandamus to stay proceedings and comply with Rule 15.

Your petitioner brings this emergency application to assume original jurisdiction because on 02-01-2024 Judge Dawn Moody held a hearing, and denied the rehearing and again, accused your petitioner of delaying. Your petitioner made a record and urged Judge Moody to comply with Rule 15 and stay proceedings. Judge Moody declined. Your petitioner followed the same steps that he has previously to recuse Judge David Guten. Your petitioner is not stalling, delaying or bringing any motion in bad faith. Your petitioner has not even bellow allowed to speak at hearings before Judge Guten. It is requested, for these reasons, that this court assume original jurisdiction under the 14th amendment due process clause of the United States Constitution. Your petitioner also cites as authority Clark v. Board of Education of Independent School District No. 89 of Oklahoma ..., 32 P.3d 851, 2001 OK 56 (Okla. 2001) and Miller Dollarhide, P.C. v. Tal, 163 P.3d 548, 2007 OK 58 (Okla. 2007). Jury Trial is set for February 05, 2024. Please stay proceedings until this issue has been resolved. This is denying your petitioner due process.

Your petitioner also seeks that this matter be transferred to another county due to the apparent conflict of interest and all of the due process violations. Your petitioner has filed for relief, but Judge David Guten has refused to provide to him certified court orders showing that Judge Guten denied the motion to change the venue.

Statement of the Case

On January 19, 2024 I filed a request for in camera hearing for the purpose of recusing Judge David Guten due to new information I received that proves bias. Trial is set in this case for February 5, 2024. Your petitioner knows that if he does not raise these issues, they cannot be raised afterwards.

Your petitioner did not receive the Rule 15 hearing and then asked Judge David Guten on the record to recuse. Judge David Guten denied both with no hearing. Your petitioner filed same day, through standby counsel Greg Lavender a motion for rehearing. Judge David Guten did not follow the rule 15 procedure and accused your petitioner of stalling, lashed out at him and much more. These allegations are without merit and proves the bias of the court. Judge Guten instead chose to continue to rule and continue proceedings, despite Rule 15 holding that it is not discretionary and when there are motions to recuse pending, the trial court must stay proceedings until Rule 15 has been exhausted. Your petitioner previously filed to this court to compel Judge David Guten through a Writ of Mandamus to stay proceedings and comply with Rule 15.

Your petitioner is extremely confused as he was denied the in camera hearing by Judge David Guten, see attached certified court order and the rehearing was denied by Judge Dawn Moody. Your petitioner brings this writ of mandamus to recuse Judge David Guten, despite no in camera hearing being granted or a rehearing.

Your petitioner was not allowed to bring any of his issues in. Your petitioner raises these issues and new issues.

In support of this petition, the petitioner states the following:

1. I brought to the attention of Judge Guten on December 20, 2024 and the state admitted that they searched my cellular phones with no warrant. The State said they did not use any of the information from the cell phones to convict me, but I can prove that is not true. A fourth amendment violation is just that, a violation. I was deprived of a fair trial due to this withholding of evidence. The State finally told me, some 4.5 years after the conviction that they searched my phones. The State had a copy of my phones, but did not turn it over or reveal that they copied and searched the phones with no warrants. The Tulsa County District Attorney's Office sent the phones down to the Sapulpa Police Department so that it could be concealed that the phones were illegally searched. Judge Guten took issue with your petitioner trying to inquire further because it will lead to post-conviction relief. Judge Guten will not do anything. He is biased.

2. I filed a motion in CF-2019-3495 to suppress the evidence of the cell phones, because the arrest was made in this case. Judge Guten suppressed the evidence of the cell phones but would not allow me to inquire to make a record. Judge Guten said I was trying to use it for post conviction relief. I admit, yes I am. I am not entitled to a hearing for Post-Conviction Relief. The State did wrong and I wanted to make a complete record.

3. I then proceeded to a hearing on 01-16-2024 where the state was admitting evidence for the purpose of trial. I learned for the first time that the State had evidence in their possession, provided to them by The University of Tulsa in the other case I was wrongfully convicted in, CF-2019-3570. This evidence was withheld and suppressed by the State, but showed that The University of Tulsa had accused someone else of making Facebook post and hiding behind me. The State used evidence, provided by the University of Tulsa to convict me and told the jury that I was planning to shoot and kill a process server, based on evidence presented by The University of Tulsa. The State did not turn over the impeachment evidence where the same place providing the evidence, The University of Tulsa, had previously accused someone else of making the Facebook post and hiding behind me. This was impeachment evidence under Giglio and Brady.

4. I filed a motion seeking to stay proceedings and Judge Guten denied it. Judge Guten told me on the record that the conviction in CF-2019-3570 was not a wrongful conviction and that I confessed in that case. I did no such thing. My defense, and it has always been the same was self defense under Oklahoma's stand your ground law.

5. Judge Guten denied the motion to stay, based on his misunderstanding of the case.

6. Judge Guten then went on to tell me after I raised the issue of the State denying me due process by intentionally withholding and suppressing the favorable material evidence that the trials were separate and the State can withhold evidence if they want to. We know this isn't true by any means.

7. The same day of this hearing, former trial counsel, Brendan McHugh provided an affidavit to the court regarding the court withholding evidence that was material, favorable and exculpatory. This affidavit received no consideration. This issue goes to the state withholding evidence of the illegal search of the phones.

8. The reason I requested the stay is the State of Oklahoma used the information from The University of Tulsa to obtain the wrongful conviction in CF-2019-3570 and withheld key information that would have changed my trial strategy and I certainly would not have waived my right to self-incrimination if the State had made this evidence available. I would never have been convicted had this information been turned over. 3570 was used as probable cause to support the arrest in 3495, but now there are issues since the State withheld this evidence. If I go to trial in 3495 before the issues in 3570 have been resolved, I will be denied due process due to the states intentional withholding.

9. I further brought to the attention of Judge David Guten that the State is in possession of evidence that is favorable to me, such as my cell phones. The State is accusing me of threatening an act of violence and they are using Facebook post and things they found on the internet. At the hearing for the admission of evidence, the State presented a woman who admitted she has never met me. The Judge allowed the evidence to be admitted based on this woman's testifying to the court that she believed me to be making the facebook post because my picture and name is attached. A majority of the post have no date or time and the state never subpoenaed any social media companies.

ACTUAL BIAS

- Judge Guten is biased towards me because I have challenged the State every step of the way.
- I have told Judge Guten that the state is withholding evidence favorable to me and he told me the State does not have to turn it over.
- I told Judge Guten that my conviction was wrongfully obtained in 3570 and Judge Guten told me that I confessed, which I did not.
- I told Judge Guten that I needed my cell phones to prove my innocence because the State is claiming I was at The University of Tulsa, and the pictures will clearly show that I was out of the country or in places other than The University of Tulsa. Judge Guten denied this request because he will have to deal with the issue of the State suppressing the evidence of the illegal unconstitutional search of my cell phones with no warrant. Steve Kunzeweiler won't be able to avoid the inevitable. They did wrong and did anything to obtain a conviction at all cost.
- Judge Guten is under the belief that the State is allowed to withhold favorable evidence that proves a person is innocent. This flies in the face of the fourteenth amendment and *Brady v. State of Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)

- Due to Judge Guten's apparent bias and beliefs, I have been denied due process every step of the way in both cases, CF-2019-3495 and CF-2019-3570.
- In my post conviction proceedings, I told Judge Guten that the State withheld my cell phone evidence that was favorable, the State told Judge Guten that since I knew about the evidence it wasn't Brady material. I actually did not know about it, former counsel Brendan McHugh brought it to my attention.
- During a hearing on July 19, 2023 Judge Guten told me on the record that he believes I am threatening and harassing Judges. I deny this.
- In the denial of post-conviction relief for July 19, 2023 Judge Guten said that I made threats against The University of Tulsa which creates the picture of bias and that he has already found me guilty before trial.
- The most troubling issue and the reason I brought the Request for In Camera hearing is because of an article I found on the internet that has similarities to mine. I'm citing articles from www.theokagle.com and an article regarding Rosario Chico. See attached.
- In this article, the bias of Judge David Guten is very apparent, and it is also apparent, as I was concerned with, that as an elected Tulsa County District Court Judge, Judge David Guten will not hold the Tulsa County Elected District Attorney accountable for obtaining a wrongful conviction in violation of the federal constitution and under the 14th amendment due process clause.
- Judge Guten is too close to Steve Kunzeweiler and made it clear, he will never grant your petitioner post-conviction relief despite your petitioner being denied due process and not receiving a fair trial due to the suppression and withholding of evidence.
- In the case of Mrs. Chico, she had her children taken away and the attorney representing her mother-in law, N. Scott Johnson represents the wife of Judge David Guten who recused but then reinserted himself back into the case.
- Steve Kunzeweiler contributed to the election campaign of Judge David Guten.
- There was also a Miranda Violation in the 3570 case, where I was under arrest, in handcuffs and the police officer-initiated questioning. All Statements were used against me at trial and I was not mirandized for three days. The body cam footage proves this. Judge Guten gave me no consideration. He is biased towards me.
- Judge Guten allows the State to write his denial of Post-conviction relief and he just rubber stamps them. Judge Guten is too close to the TCDAO.
- The Judges in my case, granted me a 1 million dollar bond and issued an order that I stay off Facebook, despite me running for US Senate. The similarities of the story of Ms. Chico and your petitioner is similar. The Tulsa County District Attorney's Office sought to silence the petitioner by keeping him off Facebook and from running for office. The TCDAO also moved to revoke the bond, which they were successful in doing. Your petitioner had no criminal record. Your petitioner did not receive due process.

- There is evidence of corruption in both the Tulsa County District Court and the Tulsa County District Attorney's Office. This led to my wrongful conviction and I cannot even get due process. The state keeps doing wrong. This is 2024, not the dark ages. PLEASE ACT.
- In the case of 3570, Judge Guten has never provided a certified court order showing he denied the Rule 15. I filed another motion seeking that, but he has ignored me. Judge Guten did not memorialize the decision to not recuse and continue proceedings. This is an ongoing problem. Judge Guten knows he is wrong, that is why he is trying to get rid of me and wrongfully convict me again. Judge Guten is escaping Judicial Review by not performing his plain legal duty in my 3570 case.
- I filed for relief citing *Pierce v. Pierce*, 2001 OK 97, 39 P.3d 791 (Okla. 2001) where the court held

¶ 13 A judge "should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. . . ." 5 O.S.Supp.2000, Ch. 1, App. 4, Code of Judicial Conduct, Canon 3(E)(1).6 We have said that when circumstances and conditions surrounding litigation are of such a nature that they might reasonably cast doubt and question as to the impartiality of any judgment the trial judge may pronounce, said judge should certify his or her disqualification. *Johnson v. Board of Governors of Registered Dentists of State of Oklahoma*, 1996 OK 41, ¶ 32, 913 P.2d 1339, 1348, quoting, *Sadberry v. Wilson*, 1968 OK 61, ¶ 12, 441 P.2d 381, 384. We have also said that in disqualification proceedings the courts must be sensitive to the appearances of possible impropriety as well as to actual occurrences. *Holloway v. Hopper*, 1993 OK 56, 852 P.2d 711, 713. The question of a judge's appearance of impartiality is determined by an objective standard. *Johnson v. Board of Governors of Registered Dentists of State of Oklahoma*, 1996 OK 41, 913 P.2d at 1348.

¶ 14 May a trial judge's impartiality be reasonably questioned when that judge receives campaign contributions and campaign assistance from a lawyer during litigation where that lawyer is appearing before that judge? We have required a judge to disqualify when one of the parties to an action had previously distributed the judge's campaign literature, actively campaigned for the judge and other candidates on behalf of the judge, and had previously attended political conventions with the judge. *State ex rel. Larecy v. Sullivan*, 1952 OK 290, 207 Okla. 128, 248 P.2d 239, 243. The Oklahoma Judicial Ethics Advisory Panel has issued an advisory opinion stating that a lawyer's campaign assistance of a minimal nature and a campaign contribution of \$50 for a judge's campaign do not require that judge to disqualify when the lawyer subsequently appears before the judge. 2001 OK JUD ETH 5.7 We also note that a judge or judicial candidate should not personally solicit campaign funds, but instead relies upon committees of responsible persons acting on behalf of the judge or candidate. 5 O.S. Supp.1998, Ch. 1, App. 4, Code of Judicial Conduct, Canon 5(C)(2).8 We [39 P.3d 798] make reference to this Canon not for the purpose of showing that any violation occurred, but to illustrate the importance our Code of Judicial Conduct gives to the solicitation of judicial campaign funds. We further note that during the time at issue campaign contributions to

judge were statutorily limited to \$5,000. 21 O.S.Supp. 1997 § 187.1. Similarly, the rules of the Ethics Commission limited certain campaign contributions to \$5,000 per family. 74 O.S.Supp.1997 & 1998, Ch. 62, App., Rule 257:10-1-2. *Pierce v. Pierce*, 2001 OK 97, 39 P.3d 791 (Okla. 2001)

In this case, I did not understand why the State kept getting away with all the wrong doing. I did not understand why my Rule 15 was denied and Judge Guten has refused to memorialize the decision or give me a certified court order from the Rule 15 on July 19, 2023 in CF-2019-3570. Judge Guten denied me access to the courts and this court denied me relief because I could not get a certified court order. On July 19, 2023 Judge Guten denied me post-conviction relief, but there were a lot of errors and issues. One of the biggest issues is, Judge Guten did not follow the Rule 15 procedure and told me that there is no way to recuse a Judge for post-conviction purposes. I disagree. Judge Guten continued ruling with a Rule 15 in place and denied me due process.

In the present case in CF-2019-3495, I have been told that the Tulsa County District Attorney's Office wants to get this matter closed. I thought there were issues and I filed the in camera request to address these issues with Judge David Guten. I have maintained that the State of Oklahoma is withholding evidence that falls under Brady. Well I sued the US MARSHALLS SERVICE and obtained information from that lawsuit of information the State had, but withheld that was exculpatory.

Judge Guten is bias due to the campaign contributions from Tulsa County District Attorney Steve Kunzeweiler, his attitude towards me, him denying my motions, accusing me of making frivolous motions and of course telling me the State can withhold evidence. With the way the Tulsa County District Court is behaving, I'm on to something. I am begging and pleading with the OCCA to issue an emergency stay. I have filed to change the venue and I've been denied every step of the way. There are issues with this case. Judge David Guten is protecting Steve Kunzeweiler. This could open up the flood gates. How many wrongful convictions has the state obtained by violating the due process rights of people in Tulsa County?

CLEAR LEGAL RIGHT TO THE RELIEF SOUGHT

Petitioner has a clear legal right under the 5th and 14th amendments to a non-biased cold detached neutral judge. See *Clark v. Board of Education of Independent School District No. 89 of Oklahoma* ..., 32 P.3d 851, 2001 OK 56 (Okla. 2001) and *Miller Dollarhide, P.C. v. Tal*, 163 P.3d 548, 2007 OK 58 (Okla. 2007). I am denied this due to Judge David Guten's bias and his conflict of interest being that I was prosecuted by Steve Kunzeweiler directly. Steve Kunzeweiler withheld evidence to obtain a wrongful conviction. 32 years. This was a self defense, stand your ground case. Steve Kunzeweiler played favorites to The University of Tulsa. This was political.

To be more clear, the petitioner is clearly entitled to the relief sought under the laws of the federal constitution and the laws of Oklahoma to have Judge David Guten Recuse/Disqualify because his bias is clear as day. If he doesn't recuse, this will no doubt lead to another wrongful conviction and it'll cost me years of my life, until I'm able to file for Federal Habeas relief.

The Tumey Court concluded that the Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has "a direct, personal, substantial, pecuniary interest" in a case. *Ibid.* This rule reflects the maxim that "[n]o man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity." *The Federalist No. 10*; p. 59 (J. Cooke ed.1961) (J. Madison); see Frank, [556 U.S. 877] *Disqualification of Judges*, 56 Yale L.J. 605, 611–612 (1947) (same). Under this rule, "disqualification for bias or prejudice was not permitted"; those matters were left to statutes and judicial codes. *Lavoie*,*supra*, at 820, 106 S.Ct. 1580; see also Part IV, *infra* (discussing judicial codes). Personal bias or prejudice "alone would not be sufficient basis for imposing a constitutional requirement under the Due Process Clause." *Lavoie*, *supra*, at 820, 106 S.Ct. 1580.

As new problems have emerged that were not discussed at common law, however, the Court has identified additional instances which, as an objective matter, require recusal. These are circumstances "in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Withrow*, 421 U.S., at 47, 95 S.Ct. 1456. To place the present case in proper context, two instances where the Court has required recusal merit further discussion. *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252, 173 L.Ed.2d 1208, 556 U.S. 868, 77 USLW 4456 (2009)

It is axiomatic that "[a] fair trial in a fair tribunal is a basic requirement of due process." *Murchison*,*supra*, at 136, 75 S.Ct. 623. As the Court has recognized, however, "most matters relating to judicial disqualification [do] not rise to a constitutional level." *FTC v. Cement Institute*, 333 U.S. 683, 702, 68 S.Ct. 793, 92 L.Ed. 1010 (1948). The early and leading case on the subject is *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927). There, the Court stated that "matters of kinship, personal bias, state policy, remoteness of interest, would seem generally to be matters merely of legislative discretion." *Id.*, at 523, 47 S.Ct. 437. *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252, 173 L.Ed.2d 1208, 556 U.S. 868, 77 USLW 4456 (2009)

Due process guarantees "an absence of actual bias" on the part of a judge. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955). Bias is easy to attribute to others and difficult to discern in oneself. To establish an enforceable and workable framework, the Court's precedents apply an objective standard that, in the usual case, avoids having to determine whether actual bias is present. The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, "the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'" *Caperton*, 556 U.S., at 881, 129 S.Ct. 2252. Of

particular relevance to the instant case, the Court has determined that an unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case. See *Murchison*, 349 U.S., at 136–137, 75 S.Ct. 623. This objective risk of bias is reflected in the due process maxim that "no man can be a judge in his own case and no man is permitted to try cases where he has an interest [136 S.Ct. 1906] in the outcome." *Id.*, at 136, 75 S.Ct. 623. *Williams v. Pennsylvania*, 136 S. Ct. 1899, 195 L. Ed. 2d 132 (2016)

Okla. Const. art. 2, § 6 provides:

"The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice." Judge David Guten is ruling with Prejudice to protect and cover up for the elected Tulsa County District Attorney Steve Kunzeweiler. This is wrong.

A fundamental requirement of due process is a fair and impartial trial. A neutral and detached judiciary is imperative to ensure procedural fairness to individual litigants⁹ and to preserve public confidence in the integrity of the judicial process. Every litigant is entitled to nothing less than the cold neutrality of an impartial judge. *Clark v. Board of Education of Independent School District No. 89 of Oklahoma* ..., 32 P.3d 851, 2001 OK 56 (Okla. 2001)

A challenge to an assigned judge for want of impartiality presents an issue of constitutional dimension which must be resolved and the ruling memorialized of record after a meaningful evidentiary hearing. The quest for recusal may not be ignored, nor is a judge free to proceed with the case until the challenge stands overruled of record following a judicial inquiry into the issue. Want of a record ruling upon this critical issue subjects the moving party to a trial before a judge whose challenged impartiality goes untested. The challenger is hence entitled to a new trial before a judge who is unchallenged or found not to be disqualified. *Clark v. Board of Education of Independent School District No. 89 of Oklahoma* ..., 32 P.3d 851, 2001 OK 56 (Okla. 2001)

1. "In its conclusions of law, the district court accurately stated that this Court has held that, " '[t]he Oklahoma Constitution guarantees a defendant a right to a fair, impartial trial not tainted by the personal bias or prejudice of the trial court.' " *Welch v. State* , 2000 OK CR 8, ¶ 37, 2 P.3d 356, 372 (quoting *Fitzgerald v. State*, 1998 OK CR 68, ¶ 10, 972 P.2d 1157, 1163). See also Okla. Const. art. 2, § 6. The federal due process clause requires the same. *In re Murchison* , 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process."). See also *Marshall v. Jerrico, Inc.* , 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases."); U.S. Const. amend. V, XIV. *Fort v. State*, 516 P.3d 690 (Okla. Crim. App. 2022)

The district court added, in its conclusions of law, that, "[i]n order to maintain and foster proper respect and

confidence of the people in the courts, the courts must be presided over by unprejudiced, unbiased, impartial, and disinterested judges and all doubt and suspicion to the contrary must be jealously guarded against."

Castleberry v. Jones , 68 Okla. Crim. 414, 424, 99 P.2d 174, 179 (1940). It further noted that, "even if there is no showing of actual bias ... due process is denied by circumstances that create the likelihood or the appearance of bias." Peters v. Kiff , 407 U.S. 493, 502, 92 S.Ct. 2163, 33 L.Ed.2d 83 (1972). See also Williams v. Pennsylvania , 579 U.S. 1, 8, 136 S.Ct. 1899, 195 L.Ed.2d 132 (2016) (a showing of actual subjective bias is not required to establish a due process violation). Rather, as the district court noted, "there are objective standards that require recusal when 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.' " Caperton v. A.T. Massey Coal Co., Inc. , 556 U.S. 868, 872, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009) (quoting Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975)). The district court found that the facts of the present case present the unconstitutional potential for bias admonished against in Caperton .

¶9 Based upon the forgoing findings of fact and conclusions of law, the district court concluded that Fort was denied his constitutional right to due process. The court stated that, "[a] new trial is the only adequate remedy to redress [Fort's] denial of due process of law. Also, a new trial is necessary in order to preserve the integrity and reputation of our criminal justice system." Fort v. State, 516 P.3d 690 (Okla. Crim. App. 2022)

Every person accused of crime is entitled to nothing less than the cold neutrality of an impartial judge, and where the circumstances are of such a nature as to cause doubts as to the impartiality of a judge, the error, if any, should be made in favor of the disqualification rather than against it...." State ex rel. Vahlberg v. Crismore , 90 Okla. Crim. 244, 247, 213 P.2d 293, 295 (1949). The Code of Judicial Conduct requires judges to "uphold and promote the independence, integrity, and impartiality of the judiciary" and to "avoid impropriety and the appearance of impropriety." Code of Judicial Conduct, 5 O.S.2011, Ch. 1, App. 4, Canon 1. A judge is required to disqualify "himself or herself in any proceeding in [516 P.3d 694] which the judge's impartiality might reasonably be questioned," including cases where the "judge has a personal bias or prejudice concerning a party or a party's lawyer[.]" Code of Judicial Conduct, 5 O.S.2011, Ch. 1, App. 4, Rule 2.11(A)(1).4 Fort v. State, 516 P.3d 690 (Okla. Crim. App. 2022)

PLAIN LEGAL DUTY NOT INVOLVING THE EXERCISE OF DISCRETION

Judge Guten is required to recuse when there is evidence of bias and there is evidence of bias. Judge Guten claims he is not biased but he is. Judge Guten had money donated to him by the Tulsa County Elected District Attorney Steve Kunzeweiler. To ignore the fact that the State searched the cell phones of your petitioner and the State withheld evidence to obtain a wrongful conviction, its crazy. This supports clear bias. I should have at least got a hearing. The appearance of bias in this case exists and Judge David Guten must recuse. Judge Guten has a duty to recuse due to his bias, especially with him stating that he believes I am threatening Judges and him receiving

campaign contributions from his friend Steve Kunzeweiler, the elected Tulsa County District Attorney, as well Judge Guten saying on the record that the State can withhold evidence. A miscarriage of justice is and has taken place. **Judge Guten has a plain legal duty under the laws of Oklahoma and the Federal Constitution to recuse due to his bias.** Recusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decision-maker is too high to be constitutionally tolerable." *Rippo v. Baker*, 137 S. Ct. 905, 197 L.Ed.2d 167 (2017)

In *Tumey v. Ohio*, 273 U.S. 510, 512, 47 S.Ct. 437, 71 L.Ed. 749 (1927), the first major U.S. Supreme Court case linking due process with judicial impartiality, Chief Justice Taft held that a "trial before a tribunal financially interested in the result of its decision constitutes a denial of due process of law." *Bracy v. Gramley*, 520 U.S. 899, 905, 117 S.Ct. 1793, 138 L.Ed.2d 97 (1997) (the Due Process Clause requires a "fair trial in a fair tribunal" before a judge who has no "actual bias" against the accused) (citations omitted) (internal quotations omitted); *Liljeberg v. Health Services Acquisition Corporation*, 486 U.S. 847, 864-70, 108 S.Ct. 2194, 2205-07, 100 L.Ed.2d 855 (1988); *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 827-28, 106 S.Ct. 1580, 1588-89, 89 L.Ed.2d 823 (1986) (the Due Process Clause is violated where a judge acts as a judge in his own case or where he reaps a tangible financial benefit by deciding the case in a certain way); *Mayberry v. Pennsylvania*, 400 U.S. 455, 465-66, 91 S.Ct. 499, 504-505, 27 L.Ed.2d 532 (1971) (in vacating the contempt convictions and remanding the cause for a trial before a different judge, the Court said that a judge, "vilified as was this... judge, necessarily becomes embroiled in a running bitter controversy" and "[n]o one so cruelly slandered is likely to maintain that calm detachment necessary for fair adjudication"); *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955) (due process requires that hearings take place before an impartial tribunal). *Clark v. Board of Education of Independent School District No. 89 of Oklahoma* ..., 32 P.3d 851, 2001 OK 56 (Okla. 2001)

THE ASSIGNED JUDGE'S FAILURE TO RULE ON THE TEACHER'S RECUSAL QUEST NOT ONLY DENIED HER A VALUABLE CONSTITUTIONAL RIGHT BUT ALSO EFFECTIVELY CLOSED HER DOOR TO TRIGGERING FURTHER RELIEF QUEST UNDER THE RULE-PRESCRIBED RECUSAL PROCEDURES *Clark v. Board of Education of Independent School District No. 89 of Oklahoma* ..., 32 P.3d 851, 2001 OK 56 (Okla. 2001)

Where there are circumstances of such a nature as to cause doubts as to a judge's partiality, it is the judge's duty to disqualify notwithstanding the judge's personal belief that the judge is unprejudiced, unbiased, and impartial.¹³ When such circumstances exist, the error, if any, should be made in favor of the disqualification rather than against it.¹⁴ Justice must satisfy the appearance of justice, even though this stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.¹⁵

¶ 18 In *Pierce v. Pierce*, 2001 OK 97, ¶ 19 and ¶ 21, 39 P.3d 791 we addressed the burden of proof and standard of review for judicial disqualification procedures. We noted that:

... The common law contains a presumption that a judge is not biased, and a party must point to some fact to overcome the presumption to require disqualification because of bias.... Similarly, a party must point to some fact to substantiate a claim that the appearance of a fair trial is not present, or that the judge's impartiality might reasonably be questioned. . . . When an order of a judge in a civil proceeding denies a disqualification application that order will not be reversed on appeal unless a clear abuse of discretion is shown.... Generally, a clear abuse of discretion occurs when the decision challenged is against, or not justified by, reason and evidence. (Citations omitted). *Miller Dollarhide, P.C. v. Tal*, 163 P.3d 548, 2007 OK 58 (Okla. 2007)

The terms of Art. 2, § 7, Okl. Const., are:

No person shall be deprived of life, liberty, or property, without due process of law.

"The questions presented are whether: 1) a trial judge's continued participation in a cause while motions for disqualification are pending deprive the movant of a fundamental right to due process; and 2) the trial judge abused his discretion when he declined to disqualify. We hold that: 1) a trial judge's continued participation while motions to disqualify are pending results in a deprivation of due process; and 2) the refusal to disqualify was an abuse of discretion." *Miller Dollarhide, P.C. v. Tal*, 163 P.3d 548, 2007 OK 58 (Okla. 2007)

A fundamental requirement of due process is a fair and impartial trial. A neutral and detached judiciary is imperative to ensure procedural fairness to individual litigants and to preserve public confidence in the integrity of the judicial process. Every litigant is entitled to nothing less than the cold neutrality of an impartial judge. A challenge to an assigned judge for want of impartiality presents an issue of constitutional dimension which must be resolved and the rule memorialized of record after a meaningful evidentiary hearing. The quest for recusal may not be ignored, nor is a judge free to proceed with the case until the challenge stands overruled of record following a judicial inquiry into the issue (citations omitted, emphasis added). *Miller Dollarhide, P.C. v. Tal*, 163 P.3d 548, 2007 OK 58 (Okla. 2007)

ADEQUACY OF WRIT AND INADEQUACY OF OTHER RELIEF

Because this is a Rule 15, and I've been denied access to the courts by Judge David Guten, Mandamus is appropriate and is required by statute. I am being denied due process by Judge Guten not even allowing the In Camera Hearing and then by Judge Dawn Moody denying the rehearing all together. This is strange that the court is avoiding this. Perhaps they heard my phone calls from the jail where I was talking about this issue. I had the in-camera hearing, Judge Guten denied me relief. I had the rehearing and the presiding Judge denied me relief. The only relief to me is now before the Oklahoma Court of Criminal Appeals and that relief is Mandamus. No other relief is available to me. This also explains why Judge Guten has allowed the TCDAO to get away with all these due process and constitutional violations. The District Attorney and State of Oklahoma has been allowed to lie and violate my constitutional rights to obtain the first wrongful conviction in CF-2019-3570 and they are trying to do the same in CF-2019-3495. Mandamus is the only relief available to me. I should not be forced to go to trial before a challenged Judge who is so conflicted.

The article that your petitioner is referencing is attached. Your petitioner seeks an EMERGENCY STAY due to these issues. Your petitioner was denied all due process and has not been allowed to speak.

Conclusion: Until this WRIT OF MANDAMUS has been decided, please issue an EMERGENCY STAY

WRIT OF PROHIBITION ASKING THIS COURT TO PROHIBIT JUDGE DAVID GUTEN FROM PROCEEDING DURING RULE 15, and UNTIL RULE 15 IS EXHAUSTED AND TO STOP THE TRIAL

Petitioner has established clearly that Judge David Guten is exercising judicial and quasi-judicial power that he does not have. Judge Guten is ruling in violation of Rule 15, to hurry up and convict your petitioner of a crime he denies committing.

The Exercise of that power is unauthorized by law under Clark v. Board of Education of Independent School District No. 89 of Oklahoma ..., 32 P.3d 851, 2001 OK 56 (Okla. 2001) and Miller Dollarhide, P.C. v. Tal, 163 P.3d 548, 2007 OK 58 (Okla. 2007). The Supreme Court of Oklahoma had held that in both criminal and civil proceedings that the court must stay proceedings when a motion to recuse is pending. The Court has refused to stay proceedings and believes they have the authority to continue proceedings. Under Clark, The Oklahoma Supreme Court held "The Clark Court explained that failing to rule on a quest for recusal bars further access to the relief afforded by the Rule 15 procedure and that without a memorialized ruling, a movant can neither proceed to the third or final Rule 15 stage. Under the teachings of Clark, when a trial court is presented with a request to disqualify, it is not a matter of discretion to refrain from presiding over the case until the disqualification ruling is memorialized and the movant

has, at the movant's option, exhausted the Rule 15 procedure. "Miller Dollarhide, P.C. v. Tal, 163 P.3d 548, 2007 OK 58 (Okla. 2007)

The exercise of said power will result in an injury for which there is no other adequate remedy. The Petitioner will be deprived of due process and this will lead to a wrongful conviction. Your petitioner has been retaliated every step of the way by the Tulsa County District Court. Your petitioner is wrongfully convicted and it seeks that this court issue an injunction or stay until this mandamus can be decided. The Court does not have the authority to continue proceedings while a Rule 15 is pending.

Conclusion: Your petitioner was not even allowed to have the in-camera hearing and suspects it was because of his phone calls where he talked about this. Something is up with this and your petitioner has an absolute right to due process. Your petitioner was also denied the rehearing. Your petitioner was accused of delay, but you can see, the concerns are real and grave, especially with others also alleging the same thing that has happened to me, happening to them. It is so concerning that Steve Kunzeweiler contributed to Judge David Guten's campaign. So much wrong has taken place.

Please disqualify Judge David Guten. I have no access to transcripts but the transcripts will clearly show bias and that everything I've said is true. Please Grant this Writ of Prohibition and order that proceedings be stayed and the trial be stopped.

Respectfully Submitted

Christopher J. Barnett, Petitioner, pro se
300 North Denver Avenue
Tulsa, Oklahoma 74103

Chris Barnett

Signature of Petitioner

2-7-2024

Date

Certificate of Service/Mailing/Affidavit/Verification

I, Christopher J. Barnett swear under the penalties of perjury that everything in this motion/petition is true and correct and I mailed a copy of the foregoing postage prepaid to:

Tulsa Court Clerk 500 South Denver Avenue Tulsa Oklahoma 74103

Judge David Guten 500 South Denver Avenue Tulsa, Oklahoma 74103

The Oklahoma Court of Criminal Appeals 2100 North Lincoln Blvd, OKC OK 73105

On 2-1-2024 postage prepaid by placing in the mailbox at David L. Moss.



Christopher J. Barnett Pro-Se
300 North Denver Avenue
Tulsa, Oklahoma 74103

2-1-2024

Date

Form 13.2 Affidavit in Forma Pauperis

I, Christopher J. Barnett, state that I am a poor person without funds or property or relatives willing to assist me in paying for filing the within instrument. I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Signed this 1 day of Feb, 2024 at DLM 300 N Denver Ave
 TULSA OK 74103

Signature of Affiant

Christopher J. Barnett
300 North Denver Avenue
Tulsa, Oklahoma 74103

Victims Allege Corruption In Tulsa Criminal Justice System

OCTOBER 5, 2023

- On July 17, Chico and 20 other protesters rallied and spoke at a rally for criminal justice reform in front of the Tulsa County Courthouse against corruption in the Tulsa judicial system and for reforms in the system.

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[Tulsa Race Massacre Survivor Hughes Van Ellis Passes](#)

LOCAL & STATE

Jeremy Kuzmarov

Contributor, The Oklahoma Eagle

Illustration The Oklahoma Eagle

In January 2022, Rosario Chico, a television producer and chair of the criminal justice committee for the Tulsa branch of the National Association for the Advancement of Colored People (NAACP) took her three children, 12, 7, and 6, to a battered woman's shelter in Arkansas to escape her husband, Christian Vietti, a nurse whom she said physically and sexually abused her and her children and issued threats against her.

ROSARIO CHICO speaks at rally outside Tulsa County courthouse on Monday
July 17, 2023. PHOTO JEREMY KUZMAROV[PIN IT](#)

But in a bizarre twist of circumstance, Chico has been arrested on felony child-stealing charges by Arkansas police and will be the defendant in a jury trial that begins on Sept. 18 in Tulsa. Vietti tipped off the police, Chico alleges. Tulsa County District Attorney Steven Kunzweiler is prosecuting the case against her. Tulsa officials dropped domestic assault and battery charges without Chico having the opportunity to testify or her being informed, Chico has told *The Oklahoma Eagle*. If accurate, the circumstances would be a violation of Marsy's Law. Marsy's Law is a legal statute resulting from a national movement that seeks to ensure that victims of crime have meaningful and enforceable constitutional rights in the criminal justice system. Oklahoma voters passed Marsy's Law in November 2018 as a ballot initiative. Many other states have also passed the statute.

Chico told her perspective on the case in detailed interviews with *The Oklahoma Eagle*. She feels she is a victim of corruption in the Tulsa legal system. Several other cases underscore her allegations that her case is not isolated but part of a pattern of corruption in the Tulsa judicial system.

On July 17, Chico and 20 other protesters rallied and spoke at a rally for criminal justice reform in front of the Tulsa County

Courthouse against corruption in the Tulsa judicial system and for reforms in the system.

LISA WOOLLEY speaks at July 17, 2023 rally. PHOTO JEREMY KUZMAROV[PIN IT](#)

During the rally, Chico said that there were “too many cases at the Tulsa Court where there was a lack of due process; defendants in some cases were denied court reporters; evidence in many cases was not being properly reviewed; attorneys, judges and Guardian ad Litem (GALs) sometimes colluded together and did not act in the interests of justice, and some prosecutions appeared to be malicious.”

Chico also said that “victims of domestic violence and their kids were not being protected, and the D.A.’s office was turning those victims into defendants.”

Chico says that she had filed for a protective order against her husband, and her legal team contacted local law enforcement and the U.S. Attorney’s office, which advised her to go to the Mexican Consulate in Little Rock, Ark., near the shelter where local police apprehended and arrested her. Chico has said that forensic evidence confirms that Vietti sexually assaulted her children.

Since her arrest, Chico has lost custody of her children, whom she can only see under supervised visitation for four hours per week. The children live with their paternal grandmother, Jackie Vietti, a former education professor and president of Butler Community College whose attorney, Jordan Dagleish, according to Chico, worked for the campaign that got Kunzweiler elected.

Vietti’s attorney, N. Scott Johnson, represents the wife of Judge David Guten, who initially recused himself from the case but then reinserted himself. Kunzweiler contributed to Judge

Guten's election campaign, Chico alleges. The Guardian ad Litem (GAL) in the custody case, Catherine Welsh, gave money to Kunzweiler's election campaign, and Becki Murphy, the GAL's attorney, worked for the DA's office.

Because of this unsettling web of personal connections, Chico is concerned that she won't get a fair trial and believes she is being unfairly prosecuted. She says that Kunzweiler has ignored exculpatory evidence in her case. She is worried that she could go to jail and be deported and never see her children again because she is not a U.S. citizen (and is a green card holder).

JUSTICE REFORM ADVOCATE attends rally outside Tulsa County courthouse on Monday July 17, 2023. PHOTO JEREMY KUZMAROV[PIN IT](#)

Chico and Others Speak Out

During the July 17 rally in downtown Tulsa, Chico said that hope lies in a growing movement, cutting across Democratic and Republican Party divides, which is demanding change. "This is our courthouse, funded by taxpayers, and it is supposed to work for us. Many people know about the problem and are intimidated from speaking out, but more and more people are beginning to do so."

After the rally, Steve Kunzweiler's office issued a statement saying that they were "proceeding forward with [Chico's case] and that it was "improper for any party to try a case in front of the camera. That is what judges and courtrooms are for."

Some protesters at the rally held signs demanding Kunzweiler's resignation and that of Assistant Prosecuting Attorney Ashley Nix.

Francetta Mays, president of the NAACP's Oklahoma Branch, referred to the current criminal justice system in Tulsa County as being broken. However, she said she was encouraged that

“more and more people are speaking out against an old problem.”

Lisa Woolley, another speaker at the rally, shared that she went through personal hell after she and her husband, Bill, were falsely accused of killing their grandson in 2018, who died of sudden infant death syndrome (SIDS). After being acquitted of murder charges in 2021, the Woolley’s are trying to regain custody of their only living grandson, who is stuck in the foster care system, where he has been subject to abuse.

Woolley said that her experiences have caused her to see how judges don’t actually review the evidence in cases they preside over but make predetermined decisions based on the judgments of Department of Human Services (DHS) experts, even when they prove to be false, and that the best interest of kids is not often considered.

Horror Stories of Rally Goers

Other participants in the rally told of their personal experiences that correlated with what Woolley and the others were saying.

Amber Goldschmidt, a Tulsa real estate agent, said that she was threatened with a protective order by Assistant District Attorney Ashley Nix after she began posting on social media about how Nix had ensured that her ex-husband got a suspended sentence after he had repeatedly assaulted her; Goldschmidt said she believes that the light sentence stems from the fact that Nix’s best friend is the niece of her ex-husband’s attorney.

Nix is the target of a federal lawsuit by Attorney Dan Smolen, who represents Timothy Hankins, a computer specialist who was falsely accused of rape by Nix and acquitted in court. Nix is responsible for rape prosecutions and was amazingly promoted

and received an award despite having falsely accused Hankins as part of a scheme to cover up her sexual indiscretions.

Acquanita Martin, a substitute teacher and health care technician, held a photo at the rally of her son, Myron Martin, who died at the age of 40 while in solitary confinement at the Mac Allen Center in Atoka County in Springtown, Okla., on Nov. 21, 2022.

Martin was a former University of Tulsa basketball player who his mother said fell in with the wrong crowd and got a 12-year prison sentence on robbery charges. It is unknown to her why he was sent to solitary confinement. His mother said that her son “wasn’t a violent person. He was always smiling. Even in his booking photo.”

Prison authorities claim that Martin died of a methamphetamine overdose. Yet it is unclear how somebody in solitary confinement could get methamphetamines. The warden told her that the drugs had come into the jail from drones.

SEE ALSO

[Bill Addressing Illegal Medical Marijuana Operations Heads To Full Senate](#)

Martin was found brutally beaten and had been pepper sprayed. Ms. Martin sent photos of her son to Fox 23 News, showing him bruises all over his body and head. She believes it is possible that prison authorities planted drugs on him to cover up for his murder.

However, the Oklahoma Department of Corrections has said that “foul play” was not suspected in Martin’s death and that they were “waiting for a cause of death determination from the medical examiner.”

Shelly Ware runs a prison ministry in Broken Arrow. She wore a t-shirt at the rally spotlighting the case of Channen Ray Ozell Smith, who is serving a life sentence at Dick Conner Correctional facility in Hominy, Okla., even though another

man, Arlen Young, confessed to the crime on his deathbed in January 2017 and said that Smith was wrongfully convicted.

Since Young's confession, four men have come forward to corroborate it. Smith's then-girlfriend also confirmed that Smith was 30 miles away from where the shooting that resulted in his conviction had taken place.

Another alleged miscarriage of justice occurred in the case of Angelo Vallejo, a 36-year-old Tulsan woman whose twin daughters were put in the care of her ex-husband, who physically attacked her and caused her to have a miscarriage. Vallejo fears that her kids are being continuously abused.

The same is true of another woman who attended the rally, Tara Barton, a 32-year-old Door Dash employee whose eight-year-old daughter was placed in the custody of her father, Steven Christian, who Barton says sexually molested the child.

Barton says that a doctor testified about this abuse. However, the judge in the case in Okmulgee did not acknowledge that her grandson was good friends with Christian, which may have led her to side with him.

Barton says that her daughter's father and stepmom continuously abuse the child, and she fears for her child's safety.

Barton's case provides another excellent example of a criminal justice system that punishes victims and children too often. People need to become aware of abuses of power taking place and should join forces with others to institute needed reforms.

Editor's Note: Jeremy Kuzmarov is a Tulsa-based writer and editor. This article is the part of an occasional series Kuzmarov is reporting and writing for the Oklahoma Eagle.

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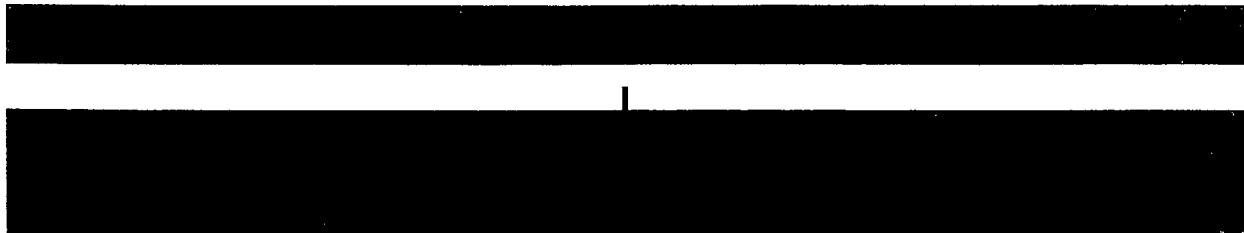
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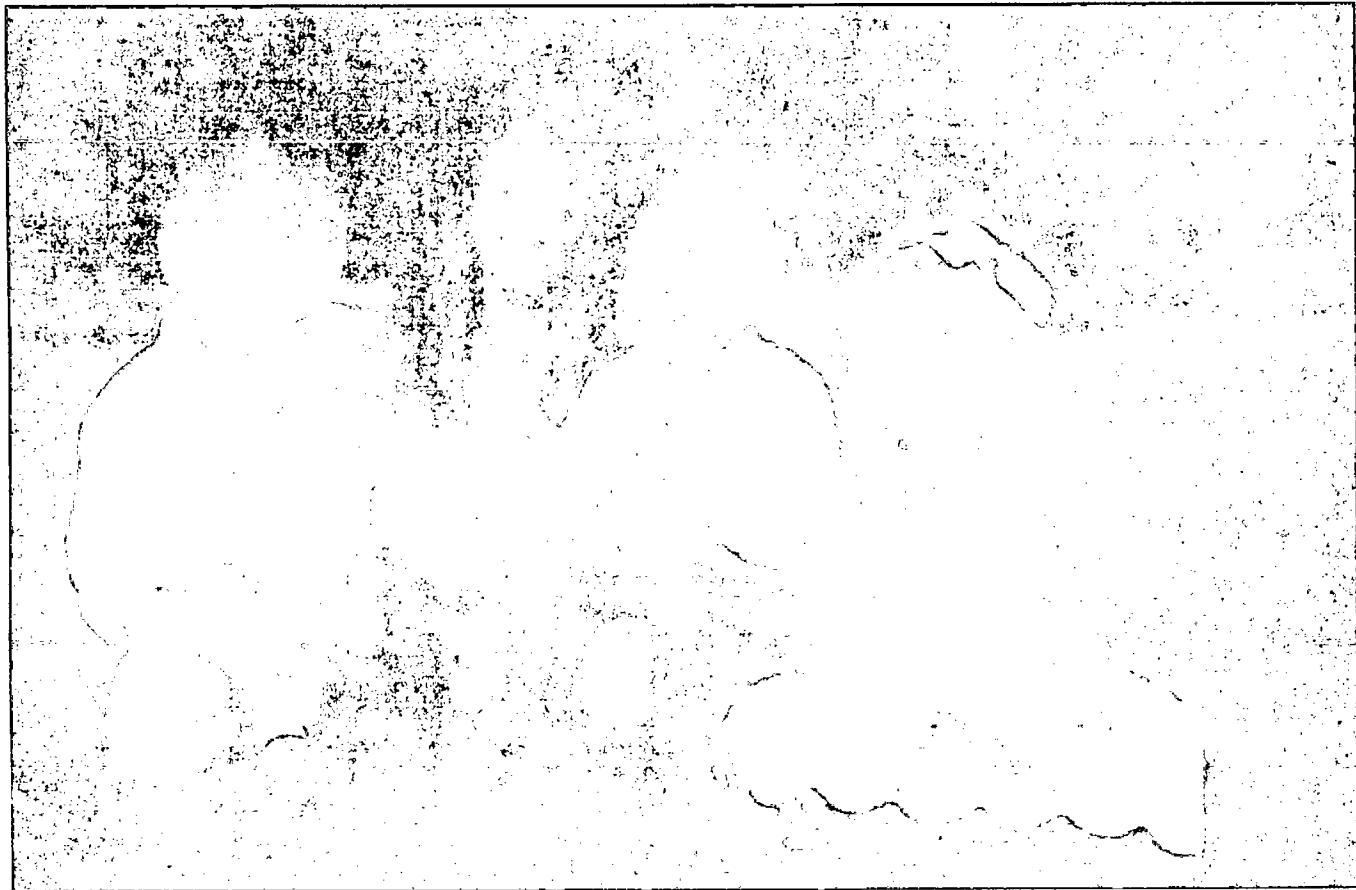
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https://www.fox23.com/news/tulsa-child-stealing-case-sent-to-creek-county-per-oklahoma-supreme-court-order/article_81ac62fa-d3b0-59d1-9071-f16318cf5cd3.html

Tulsa child stealing case sent to Creek County per Oklahoma Supreme Court order

Feb 3, 2023



Rosario and her three children ages, 12, 7 and 5.

UPDATE | 2/2/2023: According to court documents, the Supreme Court of Oklahoma ordered Maria Rosario Chico's child stealing case to be transferred from Tulsa County to Creek County.

Creek County District Judge Douglas Golden will now oversee Chico's criminal case.

In the Motion to Remand for Conflict Free Preliminary Hearing court document, it states that the same attorney who represented Chico's husband also represented divorce. Judge Guten was the presiding judge over this case in 2022.

In the same court document it continues, "As any citizen accused, Ms. Chico is entitled to a competent, unbiased judge who obeys the law. In this instance, Judge Guten acknowledged a potential conflict and refused on his own motion because of the appearance of impropriety."

Chico is now being represented by attorney, Richard O'Carroll.

O'Carroll issued the following statement regarding Chico's case.

"We sought and obtained an out-of-county judge because the State has listed Judge Kurt Glassco as a witness. Thus, the previous Tulsa Co. judge on the criminal case recused citing her relationship with her colleague finding it might appear she was biased in controlling the manner of my cross-examination of Judge Glassco. It is notable that in the hearing which gives rise to the charges against my client, her lawyer attending (she was not there) asked for a court reporter. Judge Glassco declined which in this case, per statute 20 O.S. 20-106.4, means that Ms. Chcio was "denied due process."

-Richard O'Carroll

FOX23 reached out to District Attorney Kuzweiler for a statement regarding this development in this case and has not received a response. This story will be updated should FOX23 hear back from the Tulsa District Attorney's Office.

A complex custody case could end up getting a Tulsa mom deported.

Maria Rosario Chico was in a Tulsa County Courtroom today for a hearing to request Child Stealing charges against her be dropped.

FOX23 was in the courtroom as Judge Dawn Moody denied the request.

Tulsa County District Attorney Steven Kunzweiler offered Chico a plea deal to drop the criminal charges to a misdemeanor, Chico said she is not accepting that deal as she could still face deportation either way.

Kunzweiler issued the following statement regarding her case:

Without the Child Stealing charge dropped or a plea deal, Chico will now face a jury and criminal trial sometime next year. If found guilty, she could be deported to Mexico even though she came here as a child and was approved for Deferred Action for Childhood Arrivals (DACA).

In 2020, Chico received legal permanent residency through the Violence Against Women's Act [VAWA] which allows noncitizens who have been abused by their U.S. citizen or lawful permanent resident relative the ability to independently petition for legal residency themselves.

"To be able to qualify for [VAWA] and to be granted it, you also must be deserving of it. Again, no criminal record, nothing, nothing serious. Prove that you have suffered this extreme cruelty or abuse and then it gives you lawful permanent residence and lawful permanent residence," said Lorena Rivas, the immigration attorney representing Chico. "Certainly, those criminal charges that she has pending do put her at risk of being deported."

"Even though with everything that has happened, even though I'm facing criminal charges, I mean the only hope and I still have that hope is that this case will truly be investigated... that the children will be listened to," Chico explains. "I still believe in justice, like even with all of this, I still full-heartedly believe in justice. I'm an immigrant in this country. I'm protected by the Violence Against Women Act. I was given relief by the federal government because I'm a victim of domestic violence by my children's father. Whether I'm successful or not in protecting my children or recovering my children, my children will know I tried. I tried everything to protect them."

Chico will be back in court for her arraignment hearing Oct. 18.



Tulsa child stealing case sent to Creek County per Oklahoma Supreme Court order
Feb 3, 2023

Appendix B

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHRISTOPHER J. BARNETT,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 19 2024

JOHN D. HADDEN
CLERK

No. MA-2024-94

ORDER DENYING APPLICATION TO ASSUME ORIGINAL JURISDICTION

On February 6, 2024, Petitioner, *pro se*, filed a writ of mandamus/writ of prohibition with this Court's clerk, requesting this Court assume original jurisdiction in Tulsa County District Court Case No. CF-2019-3495, disqualify the Honorable Judge David Guten and order the proceedings in this matter be stayed.

On January 25, 2024, a hearing was conducted, and Judge Guten denied Petitioner's Motion to Recuse. Judge Guten stated Petitioner has attempted to disqualify the trial court approximately ten (10) times prior which have either been withdrawn or denied. Furthermore, the trial court ruled Petitioner's motion was frivolous, without merit, and filed solely for the purpose of delaying trial.

On February 1, 2024, Presiding Judge, Judge Dawn Moody, entered an order denying Petitioner's Motion to Recuse Judge Guten stating Petitioner has attempted to disqualify Judge Guten numerous times and the trial court has ruled on and denied these motions previously. Judge Moody also ruled that it appears this latest attempt by Petitioner to disqualify Judge Guten is a delay tactic as Petitioner's case is currently set for trial. Petitioner has now filed this original proceeding of mandamus or prohibition to disqualify Judge Guten in Case No. CF-2019-3495. *See Rule 1.2(D)(3), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2024); 20 O.S.2011, § 1403; Rule 15, Rules for District Courts of Oklahoma.*

For a writ of prohibition, Petitioner has the burden of establishing that (1) a court, officer, or person has or is about to exercise judicial or quasi-judicial power; (2) the exercise of said power is unauthorized by law; and (3) the exercise of said power will result in injury for which there is no other adequate remedy. *Rule 10.6(A), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2024).*

For a writ of mandamus, Petitioner has the burden of establishing that (1) he has a clear legal right to the relief sought; (2) the respondent's refusal to perform a plain legal duty not involving

the exercise of discretion; and (3) the adequacy of mandamus and the inadequacy of other relief. Rule 10.6(B), *Rules, supra*. Petitioner has not shown that Judge Guten exercised judicial or quasi-judicial power unauthorized by law, nor has he shown a clear legal right to the relief sought.

The Oklahoma Constitution guarantees a defendant a right to a fair, impartial trial not tainted by the personal bias or prejudice of the trial court. Okla. Const. art. 2, § 6. Rule 2.11 of the *Code of Judicial Conduct* directs that a judge “shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.” 5 O.S.2011, Ch.1, App.4, Rule 2.11. The test stated by other courts and that we find helpful is:

“Would a person of ordinary prudence in the judge’s position knowing all the facts known to the judge find that there is a reasonable basis for questioning the judge’s impartiality?” The question is not whether the judge was impartial in fact, but whether another person, knowing all of the circumstances, might reasonably question the judge’s impartiality - whether there is an appearance of impropriety.

Ex parte Sanders, 659 So.2d 1036, 1038 (Ala.Crim.App. 1995)(citation omitted).¹ In order to establish entitlement to relief based upon the

¹ While not binding on this Court we find the Alabama Court’s language clear

judge's bias or partiality, a defendant must show the trial court's prejudice against him materially affected his rights at trial, and the defendant must be prejudiced by the trial court's actions. *Fitzgerald v. State*, 1998 OK CR 68, ¶ 10, 972 P.2d 1157, 1163. The decision to recuse is within the discretion of the trial court and the denial of a recusal motion is reviewed for abuse of discretion. *Id.*

It is Petitioner's responsibility to ensure a sufficient record is filed with the Clerk of this Court, which shall include, among other things, "[t]he original transcript of any proceedings conducted on the petition, if applicable." Rule 10.2(C)(4), *Rules supra*. See also Rule 10.5(5), *Rules supra* (to perfect a petition for an extraordinary writ, "[t]here shall . . . be filed a certified copy of the original record *and either the original or certified copy of the transcript, where appropriate.*" (Emphasis added)).

In this matter, Petitioner has failed to present any evidence to substantiate the claims of bias on the part of Judge Guten. We find, based upon the record presented, Petitioner has not established that Judge Guten or Judge Moody abused their discretion in denying the

and fully explanatory to the reader.

motion to recuse. See *Fitzgerald*, 1998 OK CR 68, ¶ 10, 972 P.2d 1157, 1163; Okla. Const. art. 2, § 6. We find nothing in the record suggesting that Judge Guten would be anything less than fair and impartial in this case.

Furthermore, the record shows the trial court has ruled the Petitioner has filed voluminous motions that have been reviewed and found to be frivolous, lacking in good faith, and intended to frustrate and delay the judicial process. The Petitioner was ordered by the trial court to cease all frivolous and malicious filings immediately.

IT IS THEREFORE THE ORDER OF THIS COURT that the petition for writ of mandamus/writ of prohibition to disqualify Judge Guten in Case No. CF-2019-3495 in the District Court of Tulsa County should be and is hereby **DENIED**. Petitioner's request for stay or injunction or mandamus filed February 22, 2024, in Tulsa County District Court Case No. CF-2019-3495 is **DENIED**.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

19 day of March, 2024.

Rule 15. Disqualification of Judges in Civil and Criminal Cases

OK ST DIST CTS Rule 15 Oklahoma Statutes Annotated [Title 12, Civil Procedure (Approx. 2 pages)]

Oklahoma Statutes Annotated

Title 12. Civil Procedure (Refs & Annos)

Chapter 2.—Appendix. Rules for District Courts of Oklahoma (Refs & Annos)

T. 12, Ch. 2, App., Rule 15**Rule 15. Disqualification of Judges in Civil and Criminal Cases**

Currentness

a. Before filing any motion to disqualify a judge, an in camera request shall first be made to the judge to disqualify or to transfer the cause to another judge. If such request is not satisfactorily resolved, not less than ten (10) days before the case is set for trial a motion to disqualify a judge or to transfer a cause to another judge may be filed and a copy delivered to the judge.

b. Any interested party who deems himself aggrieved by the refusal of a judge to grant a motion to disqualify or transfer a cause to another judge may re-present his motion to the Chief Judge of the county in which the cause is pending or, if the disqualification of a Chief Judge is sought, to the Presiding Judge of the administrative district by filing in the cause within five (5) days from the date of said refusal a written request for re-hearing. A copy of the request shall be mailed or delivered to the Chief Judge or Presiding Judge, to the adverse party and to the judge who entered the original order. If the hearing before the second judge results in an order adverse to the movant, he shall be granted not more than five (5) days to institute a proceeding in the Supreme Court or the Court of Criminal Appeals for a writ of mandamus. Neither the Supreme Court nor the Court of Criminal Appeals will entertain an original proceeding to disqualify a judge or to direct a judge to transfer a cause to another judge unless it is shown that the relief sought was previously denied by the judge to whom the matter was re-presented in accordance with this rule. An order favorable to the moving party may not be reviewed by appeal or other method.

c. An original proceeding in mandamus to disqualify a judge in a civil action or proceeding shall be brought in the Supreme Court; an original proceeding in mandamus to disqualify a judge in a criminal case or proceeding shall be brought in the Court of Criminal Appeals. If mandamus is not brought in the appellate court designated as proper by this rule, the case will be transferred to the proper court either on motion or *sua sponte*. Art. VII, § 4 Okla. Const.

Notes of Decisions containing your search terms (0)[View all 16](#)**District Courts Rule 15, 12 O. S. A. Ch. 2, App., OK ST DIST CTS Rule 15**

Current with amendments received through February 15, 2024. Some rules may be more current, see credits for details.

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