IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION

CHARLES E. DAVIS,
Petitioner,

vs.

Appeal No. CRC 14-00025 APANO
UCN 522014AP000025XXXXCR

STATE OF FLORIDA,
Respondent.

02586228

Petition for Issuance of a Writ of Prohibition
Addressing an Order Denying
Motion to Disqualify entered
by the Pinellas County Court,
County Judge Kathy McKyton

Christina Walker, Esquire
Office of the Public Defender
Attorney for Petitioner

Elizabeth E. Constantine, Esquire
Office of the State Attorney
Attorney for Respondent

ORDER DENYING PETITION FOR ISSUANCE OF WRIT OF PROHIBITION

PETERS, Judge.

THIS MATTER is before the Court on the Petitioner's, Charles E. Davis, Petition for Issuance of a Writ of Prohibition. This Court denies the petition.

Background

Petitioner, Charles E. Davis, was charged by Misdemeanor Information with Obstructing or Resisting Officer Without Violence. In anticipation of trial, on April 8, 2014 the court heard argument regarding a jury instruction proposed by the State

Attorney. After argument of the parties the trial court made comments concerning the disputed issue. The next day, April 9, 2014, prior to the start of the scheduled trial, Mr. Davis, through his counsel filed a Motion to Disqualify the trial judge. Mr. Davis asserted that based on the comments made by the judge the previous day he had "a well-founded fear that he will not receive a fair trial in this matter." The trial court denied the motion. The present Petition for Issuance of a Writ of Prohibition asks this court to require that the trial judge recuse herself from any further participation in the case.

Writs of Prohibition

A writ of prohibition is a discretionary writ, not a writ of right. "In Florida, the courts have consistently determined, in accord with the historical understanding and background of the writ of prohibition, that it is meant to be very narrow in scope, to be employed with great caution and utilized only in emergencies." *English v. McCrary,* 348 So.2d 293, 296 (Fla. 1977). Prohibition is an appropriate remedy to review the denial of a motion to disqualify the judge. *See Sutton v. State*, 975 So. 2d 1073 (Fla. 2008); *Wal-Mart Stores, Inc. v. Carter*, 768 So. 2d 21 (Fla. 1st DCA 2000); *Pierce v. State,* 873 So2d 618 (Fla. 2nd DCA 2004); *State v. Borrego*, 105 So. 3d 616 (Fla. 3d DCA 2013); *City of Hollywood v. Witt*, 868 So. 2d 1214 (Fla. 4th DCA 2004); *Neal v. State*, 929 So. 2d 59 (Fla. 5th DCA 2006).

Motions to Disqualify

A motion to disqualify is governed by section 38.10, Florida Statutes (2011), and Florida Rule of Judicial Administration 2.330. *See Parker v. State,* 3 So.3d 974, 981 (Fla.2009) (citing *Cave v. State,* 660 So.2d 705, 707 (Fla.1995)). *Krawczuk v. State,* 92 So.3d 195, 200 (Fla. 2012). This statutory provision provides that upon the filing of a

suggestion of disqualification of the trial judge, the Court can proceed no further and the Court is prohibited from making any findings whatsoever as to the truth or falsity of the sworn allegations contained in the suggestion of disqualification.

> When ruling on the motion, the trial judge is limited to determining the legal sufficiency of the motion:
>
> The term "legal sufficiency" encompasses more than mere technical compliance with the rule and the statute. The standard for viewing the legal sufficiency of a motion to disqualify is whether the facts alleged, which must be assumed to be true, would cause the movant to have a well-founded fear that he or she will not receive a fair trial at the hands of that judge. *See* Fla. R. Jud. Admin. 2.330(d)(1). Further, this fear of judicial bias must be objectively reasonable. *See State v. Shaw,* 643 So.2d 1163, 1164 (Fla. 4th DCA 1994). The subjective fear of a party seeking the disqualification of a judge is not sufficient. *See Kowalski v. Boyles,* 557 So.2d 885 (Fla. 5th DCA 1990). Rather, the facts and reasons given for the disqualification of a judge must tend to show "the judge's undue bias, prejudice, or sympathy." *Jackson v. State,* 599 So.2d 103, 107 (Fla.1992); *see also Rivera v. State,* 717 So.2d 477, 480–81 (Fla.1998). Where the claim of judicial bias is based on very general and speculative assertions about the trial judge's attitudes, no relief is warranted. *McCrae v. State,* 510 So.2d 874, 880 (Fla.1987).

Krawczuk, 92 So.3d at 200 -201. Adverse rulings, by themselves, whether they are correct or incorrect, [1] are not legally sufficient grounds upon which to base a motion to disqualify a judge for prejudice or bias. *Housing Authority of City of Tampa v. Burton,* 873 So2d 356 (Fla. 2nd DCA 2004); *Rives v. Logan*, 611 So. 2d 599 (Fla. 2d DCA 1993); *Gieseke v. Grossman*, 418 So2d 1055 (Fla. 4th DCA 1982). "The fact that a judge has previously made adverse rulings is not an adequate ground for recusal. […] Nor is the mere fact that a judge has previously heard the evidence a legally sufficient basis for recusal. […] Likewise, allegations that the trial judge had formed a fixed opinion of the defendant's guilt, even where it is alleged that the judge discussed his opinion with

[1] This court makes no comment on the correctness of the involved comments by the trial judge.

others, is generally legally insufficient to mandate disqualification." *Jackson v. State,* 599 So.2d 103, 107 (Fla. 1992) (internal citations omitted).

Conclusion

This court has reviewed the record in this case and will not issue a Writ of Prohibition.

IT IS THEREFORE ORDERED that the Petition for Issuance of a Writ of Prohibition is denied.

ORDERED at Clearwater, Florida this 30th day of April 2014.

Original order entered on April 30, 2014, by Circuit Judges Michael F. Andrews, Raymond O. Gross, and R. Timothy Peters.

Copies furnished to:
Honorable Kathy McKyton
Christina Walker, Esquire
Office of the State Attorney