

SUPREME COURT OF OHIO

State v. Cope

143 Ohio St. 3d 1237 (Ohio 2015) · Decided March 11, 2015

SUMMARY

The Ohio Supreme Court denied Douglas Cope’s affidavit seeking disqualification of the remaining judges of the Twelfth District Court of Appeals. The court held that Cope provided only vague and unsupported allegations of association, fraud, and prosecutorial misconduct, and had not shown that the underlying appeal required assessment of Judge Robin N. Piper’s professional conduct as a former prosecutor.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Maureen O'Connor, C.J.
JURISDICTION	Ohio
DECIDED	March 11, 2015
DISPOSITION	other
PROCEDURAL POSTURE	Douglas Cope filed an affidavit seeking disqualification of the judges of the Twelfth District Court of Appeals from hearing his appeal. The Supreme Court of Ohio considered whether the affidavit established a legally sufficient basis to disqualify the remaining judges.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion addressing the sufficiency of affidavits seeking judicial disqualification.
PARTIES	Douglas Cope v. State of Ohio

TOPICS

[appellate procedure](#) [criminal procedure](#) [post-conviction relief](#)

PRACTICE AREAS

[appellate procedure](#) [judicial disqualification](#) [criminal procedure](#) [post-conviction relief](#)

QUESTIONS PRESENTED

1. Whether Cope's affidavit established specific allegations and supporting facts sufficient to disqualify the remaining judges of the Twelfth District Court of Appeals.

2. Whether the remaining appellate judges should be disqualified merely because they were associated with Judge Piper, who had previously served as the prosecutor in Cope's case.

HOLDINGS

1. An affidavit seeking judicial disqualification must set forth specific allegations of interest, bias, prejudice, or disqualification and facts supporting each allegation; vague and unsubstantiated assertions are insufficient.
2. The remaining judges were not disqualified because Cope did not allege that the underlying appeal required an assessment of Judge Piper's credibility, competency, or professional conduct as the former prosecuting attorney.

KEY QUOTATIONS

“ “[V]ague, unsubstantiated allegations of the affidavit are insufficient on their face for a finding of bias or prejudice.” ” (¶ 5)

“ If the underlying case would require the judges on the court of appeals to assess the professional conduct of Judge Piper while he served as prosecuting attorney, then Cope may have a better argument.” (¶ 6)

FACTUAL BACKGROUND

Judge Robin N. Piper had served as the Butler County Prosecuting Attorney during Cope's 2009 trial and was allegedly involved in the prosecution. Piper recused himself from the underlying appeal, and Judge Robert Hendrickson also recused himself because he knew Cope. Cope offered only generalized assertions that the remaining judges were associated with Piper and that his conviction was founded upon fraud, without alleging that the underlying appeal required evaluation of Piper's credibility, competence, or professional conduct.

PROCEDURAL HISTORY

Cope was appealing a trial court order denying his request for certain documents and records. He filed an affidavit under R.C. 2501.13 and 2701.03 alleging that Judge Robin N. Piper had previously prosecuted his case and that the other judges were disqualified because of their association with Piper. Piper and Judge Robert Hendrickson recused themselves, but the remaining three judges found no reason to recuse. The Supreme Court of Ohio denied the affidavit as to the remaining judges and allowed the underlying appeal to proceed.

DISPOSITION

other

REMAND INSTRUCTIONS

The affidavit of disqualification was denied, and the underlying case was permitted to proceed before the remaining judges of the Twelfth District Court of Appeals.

CASES CITED

- In re Disqualification of Walker, 36 Ohio St. 3d 606, 522 N.E.2d 460 (1988)
- In re Disqualification of Crawford, 81 Ohio St. 3d 1204, 688 N.E.2d 510 (1996)

OPINION

CONNOR, J.

O'Connor, C.J. {¶ 1} Defendant-appellant Douglas Cope has filed an affidavit with the clerk of this court under R.C. 2501.13 and 2701.03 seeking to disqualify the judges of the Twelfth District Court of Appeals from hearing the above-captioned case. {¶ 2} Cope claims that Judge Robin N. Piper, one of the judges on the court of appeals, was the Butler County Prosecuting Attorney at the time of his 2009 trial, was “instrumental in the prosecution” of the case, and is therefore disqualified from hearing the underlying matter.

Cope argues that all other judges on the Twelfth District should be disqualified because they are associated with Judge Piper. Additionally, Cope alleges that his conviction was “founded upon fraud” because, among other reasons, the prosecutor may have coerced jurors. {¶ 3} Bennett Manning, the court administrator for the Twelfth Appellate District, has submitted a written response on behalf of the entire court.

Manning indicates that Judge Piper remembers Cope’s case and has decided to recuse himself. Additionally, Judge Robert Hendrickson has recused himself because he knows of Cope. The remaining three judges on the court, however, see no reason to recuse themselves from the underlying case. {¶ 4} For the following reasons, no basis has been established to order the disqualification of the remaining judges on the court of appeals. {¶ 5} Under R.C.

2701.03(B), an affiant must set forth “specific allegations on which the claim of interest, bias, prejudice, or disqualification is based and the facts to support each of those allegations.” Here, Cope has not set forth specific reasons why the remaining judges on the court of appeals should not preside over this appeal. Cope claims only that the other judges are associated with Judge Piper and that his conviction was based on fraud. “[V]ague, unsubstantiated allegations of the affidavit are insufficient on their face for a finding of bias or prejudice.” In re Disqualification of Walker, 36 Ohio St.3d 606, 522 N.E.2d 460 (1988). {¶ 6} If the underlying case would require the judges on the court of appeals to assess the professional conduct of Judge Piper while he served as prosecuting attorney, then Cope may have a better argument.

For example, in In re Disqualification of Crawford, 81 Ohio St.3d 1204, 688 N.E.2d 510 (1996), the chief justice disqualified all judges of a common pleas court from ruling on a postconviction-relief petition alleging that the state’s trial attorney — who, at the time of the petition, was employed as a magistrate for the common pleas court — had *1239engaged in prosecutorial misconduct by intentionally concealing evidence.

Disqualification was appropriate, according to the chief justice, because in deciding the claim of prosecutorial misconduct, the trial court would be required to assess the professional abilities of a judicial officer of that court. But Cope has not made any similar claim that the underlying case requires assessment of the credibility, competency, or professional conduct of Judge Piper while he served as prosecuting attorney.

Indeed, although Cope makes vague allegations of possible prosecutorial misconduct, he is appealing only a trial court order denying his request for certain documents and records. {¶ 7} Accordingly, the affidavit of disqualification is denied.

The case may proceed before the remaining judges of the Twelfth District Court of Appeals.