

SUPREME COURT OF LOUISIANA

No. 2020-KK-01021

STATE OF LOUISIANA

VS.

DENNIS JEROME BARTIE

On Supervisory Writ to the 14th Judicial District Court, Parish of Calcasieu

CRICHTON, J., would grant and assigns reasons:

I would grant the State’s writ application in this matter, as I find there are no grounds for recusal in this instance. La. C.Cr.P. art. 671 provides that in a criminal case, a judge shall be recused when he is “biased, prejudiced, or personally interested in the cause to such an extent that he would be unable to conduct a fair and impartial trial” or “[w]ould be unable, for any other reason, to conduct a fair and impartial trial.” Moreover, the United States Supreme Court has recently held that “recusal is required when, objectively speaking, “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.” *Rippo v. Baker*, 137 S.Ct. 905, 907, 197 L.Ed.2d 167 (2017) (citing *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975) and *Williams v. Pennsylvania*, 579 U.S. —, —, 136 S.Ct. 1899, 1905, 195 L.Ed.2d 132 (2016) (“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” (internal quotation marks omitted))).

In its granting the motion to recuse Judge Canaday, the trial court failed to mention either *Rippo* or La. C.Cr.P. art. 671, instead ruling as follows:

. . . Judge Canaday is able, intelligent, and extremely thorough. I have total respect for Judge Canaday, so much respect I know he won’t take it personally. But in this case, considering everything that’s gone on,

all of the rulings he's made and the Third Circuit has made and the motion to unseal that should not have been signed probably without a hearing, a fresh set of eyes seem appropriate. If it was a capital case, it'd be easy, because death is different.

This is a life case, so we're supposed to make it harder, but I have – I've read a lot, I've thought a lot. And a new judge would clear the air, and I think that's appropriate, so I'm granting the motion to recuse.

A “fresh set of eyes” and “clearing the air” are not any standards by which a judge should be recused in any case, as emphasized by the statute and jurisprudence set forth above. Nor is a series of adverse rulings against one party a basis upon which a judge may be recused. Thus, I agree with the State's position that while another court may have ruled differently on the defendant's ex parte motion to unseal portions of the record, this does not form the basis of recusal of Judge Canaday. *See State v. Harris*, 18-686 (La. 6/15/18), 245 So.3d 1036 (this Court finding the trial court's ex parte proceeding regarding defendant's expert funding not appropriate, noting that a defendant's bare assertion that it would be unfair to compel him to reveal his “mitigation strategy” to the state is not sufficient to warrant ex parte proceedings) (Crichton, J., concurring). Consequently, I would grant the State's application and reverse the trial court's ruling recusing Judge Canaday.