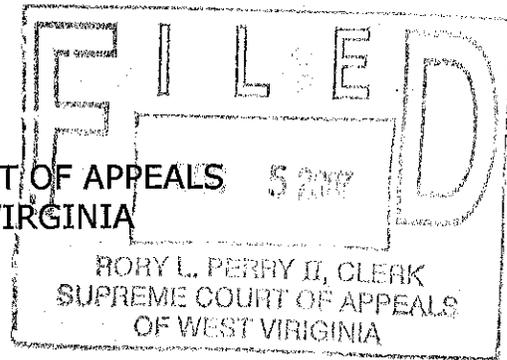


IN THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA



STATE OF WEST VIRGINIA *ex rel*
RODGER MITCHELL,
Petitioner,

vs.

//

NO. 33714

HONORABLE THOMAS C. EVANS, III
JUDGE OF THE CIRCUIT COURT OF
JACKSON COUNTY,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF MANDAMUS

Thomas C. Evans, III, Judge of the Fifth Judicial Circuit, the Respondent in the above-entitled matter, for response to the Petition for Writ of Mandamus, and rule issued thereon, respectfully represents and says as follows:

1. The relator, Rodger Mitchell, is the petitioner in a Habeas Corpus case that is pending in the Circuit Court of Jackson County, W. Va. The case number is Civil Action No. 06-C-08. The assigned Judge is the undersigned Respondent.

2. The Petition for Writ of Mandamus incorrectly states that the pending motion to withdraw as counsel is pending in Case No. 02-F-2 of the Jackson County Circuit Court. The 2002 case is the felony case wherein Rodger Mitchell was convicted and sentenced for having committed several felony crimes, and it is that conviction which is the subject of the 2006

Habeas Corpus case.

There is nothing at all pending in 02-F-2. Appeals were exhausted some time ago.

The motion to withdraw as counsel is pending, but it is pending in the 2006 Habeas Corpus case.

3. The undersigned Judge has appointed 4 successive lawyers for Rodger Mitchell in the Habeas Corpus case. The current attorney, Michael D. Payne, filed a Motion to Withdraw on May 30, 2007. This is the motion that Rodger Mitchell wants ruled on.

4. By Order entered June 11, 2007, the undersigned Judge scheduled a hearing on Mr. Payne's "*Motion to Withdraw*" as counsel for Rodger Mitchell. The hearing date fixed was July 9, 2007.

Prior to that time, Rodger Mitchell had filed a "*Motion to Replace or Compel Current Counsel to Follow the Laws and Rules or Appoint Alternate Counsel.*" The court set that motion for hearing at the same time as counsel's motion to withdraw.

5. On July 3, 2007, Rodger Mitchell filed, in the habeas case, his "MOTION FOR DISQUALIFICATION OF JUDGE."

This motion was filed less than seven (7) days prior to the date fixed for the hearing on counsel's motion to withdraw.

6. On or about July 7, 2007, the undersigned Judge forwarded the disqualification motion filed by Rodger Mitchell to the Chief Justice under

cover letter of the same date.

Therein, the undersigned Judge stated that he did not resist the motion for disqualification.

7. Pursuant to *Tr. Ct. Rule 17.01(e)*, as of July 7, 2007, the undersigned judge took no further action in the Habeas Case, being of the opinion that he no longer had authority to proceed as presiding Judge.

8. On July 13, 2007, by Administrative Order, the Chief Justice recused the undersigned judge and provided that that the case be reassigned to Chief Judge David W. Nibert.

It appears that this Administrative Order was not filed in the Circuit Clerk's office until December 4, 2007.

HAVING FULLY ANSWERED, the Respondent Judge prays that the Petition for Writ of Mandamus be denied and overruled.



THOMAS C. EVANS, III, Respondent
Judge, Fifth Judicial Circuit
State of West Virginia

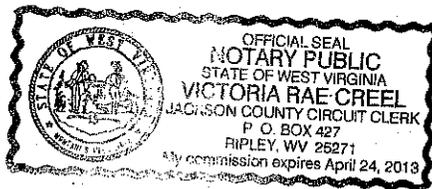
VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF JACKSON, TO-WIT:

Thomas C. Evans, III, the Respondent, whose name is signed to the foregoing and hereto annexed **RESPONSE TO PETITION FOR A WRIT OF MANDAMUS**, being by me first duly sworn, did depose and say that the facts and representations therein contained are true and correct, to the best of his knowledge and belief.

Dated this the 4th day of ^{Dec.}~~November~~, 2007.



Victoria Rae Creel

Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 4, 2007, he did serve the foregoing and hereto annexed **RESPONSE TO PETITION FOR A WRIT OF MANDAMUS** upon the Petitioner, Rodger Mitchell, by delivering true and correct copies thereof, by first class mail, to the Petitioner, in an envelope addressed as follows:

Rodger D. Mitchell
Mt. Olive Correctional Complex
1 Mountainside Way
Mount Olive, WV 25185

Thomas C. Evans III

Thomas C. Evans, III
Circuit Judge

ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

RE: REASSIGNMENT OF A JUDGE IN THE FIFTH JUDICIAL CIRCUIT TO PRESIDE IN THE FOLLOWING PROCEEDING STYLED SER RODGER MITCHELL V. THOMAS MCBRIDE, WARDEN, MOUNT OLIVE CORRECTIONAL COMPLEX, JACKSON COUNTY CASE NO. 06-C-8

WHEREAS, By letter dated July 7, 2007, the Honorable Thomas C. Evans, III, Judge of the Fifth Judicial Circuit, advised the Chief Justice of the Supreme Court of Appeals of a motion filed for his disqualification from presiding in the above-styled proceeding; and

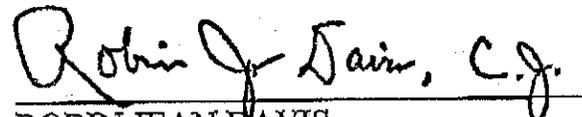
WHEREAS, Judge Evans has further advised the Chief Justice that he can be fair and impartial to the petitioner in the above-styled proceeding; however, because of reasons stated in the Judge's letter, he does not resist the motion for disqualification; and

WHEREAS, Upon review of said motion, and in accordance with Trial Court Rule 17.01(c), the Chief Justice has determined that there is no reason to doubt the sincerity or credibility of Judge Evans in his ability to fairly sit on this case; however, under specific facts of this case, in order to avoid even an appearance of impropriety, Judge Evans should step aside;

IT IS THEREFORE ORDERED, That the above-styled proceeding be remanded to the Fifth Judicial Circuit, a multi-judge circuit, for the Honorable David W. Nibert, Chief Judge of the Fifth Judicial Circuit, to be assigned to the referenced matter; and

IT IS FURTHER ORDERED, That the Circuit Clerk of Jackson County record this Order in the Office of the said Clerk and provide copies of the same to all parties of record or their counsel.

ENTERED: JULY 13, 2007


ROBIN JEAN DAVIS
Chief Justice