

IN THE SUPERIOR COURT OF HALL COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

*


vs.

*

CASE NO. 07-CR-1296C

ALLAN ROBERT DICKIE

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FILED
HALL CO., GA
2009 JAN -6 PM 2:37
CHARLES BAKER, CLERK
SUPERIOR STATE COURT
BY 

ORDER

The above-styled matter having come before this Court by assignment to be heard on defendant's Motion to Recuse the trial judge, and upon consideration of the evidence submitted, the Court finds as follows:

Because of certain behavior and defendant's physical appearance observed by the trial judge during the proceedings in this matter and contained in testimony before the judge, the trial judge *sua sponte* raised the issue of defendant's competency. A hearing was scheduled, and the trial judge received evidence and heard argument from the parties regarding whether or not a competency evaluation would be prudent. Subsequent thereto, the trial judge obtained copies of the jail's inmate diary reports concerning the behavior of defendant.¹ These reports were attached to the trial judge's order for a mental evaluation, and were used in support of the trial judge's finding that such an evaluation was appropriate.

This Court finds no ill-will towards or prejudice against defendant on the part of the trial judge, nor does it appear from the evidence that the trial judge harbors any leanings as to the guilt or innocence of defendant that would interfere with defendant receiving a fair trial in the guilt-innocence or sentencing phases of this case.

1 Although no evidence was presented as to how the trial judge obtained these reports, the State and defendant stipulated that neither party had provided these materials to the trial judge.

“Canon Two of the Code of Judicial Conduct mandates that judges avoid not only actual impropriety, but that they avoid even the appearance of impropriety. The test for the appearance of impropriety is whether the situation would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with impartiality is impaired.”[Punctuation and citations omitted.] Wilson v. McNeely, A08A1307, A08A1308, decided December 1, 2008. In this matter, by relying upon the inmate diary reports in finding that a mental evaluation was necessary, it gives the *appearance* to a “reasonable person” that the trial judge sought out evidence to support such a finding. Therefore, it is hereby

ORDERED, that should any further proceeding arise regarding the mental competency of defendant, the trial judge is hereby recused from participating in those proceedings. As to the balance of the issues remaining in this matter, defendant's Motion to Recuse is hereby denied.

This 5th day of January, 2009.



ERNEST H. WOODS, III
Judge of Superior Court, by designation
State of Georgia