

NORTH CAROLINA
BEAUFORT COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: 93 CRS 3201

2011 AUG 17 PM 4:10
BEAUFORT COUNTY, C.S.C.

STATE OF NORTH CAROLINA,)
)
)
VS.)
)
TERRY LEE BALL)
Defendant.)

ORDER OF RECUSAL

THIS MATTER, coming on before the undersigned upon Motion by the Defendant to recuse the Honorable Thomas D. Haigwood from further hearing or decision of any matters raised in the Defendant's Motion for Appropriate Relief, and the Court, after consideration of the record proper, the Motion to Recuse, and after hearing arguments from both parties in open Court on August 4, 2011, hereby makes the following:

FINDINGS OF FACT

1. This is a Capital case in post conviction.
2. That on October 26, 1993, the Beaufort County Grand Jury indicted the Defendant for one count of Assault With a Deadly Weapon With Intent to Kill Inflicting Serious Bodily Injury, two counts of Robbery With a Dangerous Weapon, one count of First Degree Burglary, and one count of First Degree Murder of Laura Krantz.
3. That the Defendant was tried Capitally on January 24, 1994, in Beaufort County Criminal Superior Court, with the Honorable William C. Griffin, Jr., as the Judge presiding. That the Defendant was represented at trial by John Skinner and Maynard Harrell.
4. That on January 27, 1994, the jury found the Defendant guilty of First Degree Burglary, Assault With a Deadly Weapon with Intent to Kill, Attempted Robbery With a Dangerous Weapon of Laura Krantz, Attempted Robbery With a Dangerous Weapon of Tony Krantz, and First Degree Murder of Laura Krantz based upon both pre-meditation and deliberation and under the Felony Murder Rule.

5. That after a sentencing proceeding, the jury recommended, on February 3, 1994, the Death Penalty for the First Degree Murder of Laura Krantz, and the trial Court imposed that sentence.
6. That the Defendant appealed to the North Carolina Supreme Court, which on September 6, 1996, unanimously found no error in either phase of the Defendant's Capital trial. That the United States Supreme Court denied Certiorari review.
7. On February 17, 1998, Defendant's post conviction counsel, Thomas R. Sallenger and Darrell G. Smith, filed State post conviction Motion for Appropriate Relief claims.
8. That on December 7, 2009, the Honorable Thomas D. Haigwood heard arguments by the parties on the State's Motion for Denial on the Pleadings as to certain claims made in the MAR.
9. That of the 28 claims, 25 of them were denied by Judge Haigwood by Order dated March 12, 2010. That Judge Haigwood found in the same Order, that three claims, all involving ineffective assistance of counsel, required evidentiary hearing.
10. That at no time during the pendency of these claims and in any hearing before Judge Haigwood did the Defendants raise any issues of conflict or move to recuse Judge Haigwood.
11. That on April 29, 2010, the Defendant filed his Third Amendment to his Motion for Appropriate Relief, which included a claim of prosecutorial misconduct, related to forensic testing performed by the State Bureau of Investigation. Judge Haigwood has not ruled on this claim.
12. That in 2009 the North Carolina General Assembly passed the Racial Justice Act, allowing Defendants to use statistics to show that race was a significant factor in a prosecutor's decision in seeking the death penalty. The RJA specifically allows statistical evidence to be considered on the State, Division, District and County level.
13. That on August 18, 2010, the office of the North Carolina Attorney General issued a report concerning serology evidence, and such report included Defendant's case and reported that certain evidence had been mis-reported by the SBI. That on January 31, 2011, Defendant filed a Motion for Post Conviction discovery regarding the SBI, and that discovery is being provided to the Defendant by the State.

14. In addition, said request for post conviction discovery seeks information from the SBI regarding evidence of undue prosecutorial influence over SBI forensic analysts.
15. That Judge Haigwood served as the elected District Attorney for District 3 and later 3A for approximately 15 years, and was an elected District Attorney at the same time of the Defendant's trial in Beaufort County. In addition, while District Attorney, Judge Haigwood prosecuted two Defendants currently on Death Row and prosecuted three other Capital Defendants who have since been executed.
16. That the three remaining claims of Defendant do not involve any Racial Justice Act claims and the defendant has not shown that Judge Haigwood must be disqualified because he is prejudiced against the Defendant, or in favor of the State, or any other reason which would render him unable to perform the completion of the Defendant's original claims.
17. That the Defendant's Third Amendment to his MAR, which involves a claim of prosecutorial misconduct related to forensic testing performed by the SBI, and the theory and obvious claim to be made after receipt of post conviction discovery concerning undue prosecutorial influence over SBI agents, places Judge Haigwood in a position in which his impartiality may reasonably be questioned, although this Court finds that the Defendant has offered no direct evidence that Judge Haigwood has been the subject of either of the actions claimed in these two additional grounds for appropriate relief.
18. That although unknown at this time, the Defendant asserts that Judge Haigwood could possibly be a witness in the Defendant's claims concerning alleged prosecutorial influence over SBI forensic results.
19. That as to the Defendant's Third Amendment to his MAR which includes the claim of prosecutorial misconduct related to forensic testing, and the Defendant's possible claim of undue prosecutorial influence over SBI agents, the Defendant has not shown that Judge Haigwood is prejudiced against either party. However, the possible involvement of Judge Haigwood in the determination of either of the Defendant's Third Amendment claim or undue prosecutorial influence claim, out of an abundance of caution, constitute other reasons in which Judge Haigwood may be unable to perform the duties required of him in an impartial manner in this case pursuant to N.C.G.S. §15A-1223(b)(4).

Wherefore, based on the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. That the Defendant has not shown that Judge Haigwood is prejudiced against the Defendant or in favor of the State in this matter.
2. That because of the Defendant's Third Amendment to the Motion for Appropriate Relief, and the undue prosecutorial influence claim, there exists a reason for which Judge Haigwood may be unable to perform the duties required of him in an impartial manner, and in addition, could possibly be a witness in the determination of such claims.
3. That the determination of such other reasons and judicial efficiency require that the remaining three original claims for which the Defendant has been granted an evidentiary hearing, and the hearing of the Defendant's Third Amendment to the MAR and other claims related to the SBI activities, be handled by a Superior Court Judge who is free from any possibility of claim of disqualification.

NOW, THEREFORE, the Defendant's Motion to Recuse Judge Thomas D. Haigwood is hereby **GRANTED**, and the undersigned will retain jurisdiction on the remaining claims pending determination of the successor Superior Court Judge to hear such matters.

This the 17th day of August, 2011



Wayland J. Sermons, Jr.
Senior Resident Superior Court Judge
Second Judicial District