

**SUPERIOR COURT OF THE VIRGIN ISLANDS
APPELLATE DIVISION OF ST. CROIX**

PEOPLE OF THE VIRGIN ISLANDS,

**PLAINTIFF / RESPONDENT ON
REVIEW,**

V.

CHRIS GEORGE,

**DEFENDANT / PETITIONER ON
REVIEW.**

SX-16-RV-002

**On Petition for Review from the
Magistrate Division**

**Re: Case Nos. SX-15-MV-2974 and SX-
15-MV-2975**

Appearances:

CLAUDE E. WALKER, Esq.

Attorney General of the Virgin Islands

CYNTHIA B. MOORE, Esq.

Assistant Attorney General

U.S. Virgin Islands Department of Justice

6040 Estate Castle Coakley

Christiansted, VI 00820

Attorneys for Respondent People of the Virgin Islands

CHRIS GEORGE, *pro se*

Frederiksted, VI 00840

WILLOCKS, HAROLD W.L., Administrative Judge

MEMORANDUM OPINION AND ORDER OF RECUSAL

THIS MATTER comes before the Court *sua sponte*. For the reasons stated below, the undersigned will recuse himself from this review and return the case to the Clerk for reassignment. This memorandum provides the basis for the Court's recusal.

BACKGROUND

On October 7, 2015, Virgin Islands Police Officer Keisha Benjamin issued two citations to Chris George. Officer Benjamin was on duty with the bike unit in Christiansted at the time and noticed a truck turning from Hospital Street onto Company Street, without a current registration sticker affixed

to the windshield. She stopped the vehicle, driven by Mr. George, and asked for his driver's license, registration, and proof of insurance. The registration and the insurance that Mr. George provided had expired. Mr. George could not produce current documentation. So, Office Benjamin issued two citations.

Citation number 220548 charged Mr. George with operating an unregistered motor vehicle on public roads, a violation of Section 331 of Title 20 of the Virgin Islands Code. Citation number 220549 charged Mr. George with operating an uninsured motor vehicle on public roads, a violation of Section 712 of Title 20 of the Virgin Islands Code. Both citations were filed in the Superior Court of the Virgin Islands on October 16, 2015. The Traffic Division of the Clerk's Office docketed both citations, opened new cases assigned case numbers SX-15-MV-2974 and SX-15-MV-2975 respectively, and assigned both cases to the same Superior Court magistrate judge.

Trial was initially calendared for February 25, 2016, but continued because Mr. George filed a motion to strike and dismiss the criminal complaints. His motion, filed January 13, 2016, challenged the jurisdiction of the Magistrate Division, disputed whether there was a case or cause of action pending, and rejected the People of the Virgin Islands as a proper party. Mr. George also alleged that he was not engaged in commerce at the time when Officer Benjamin issued the citations, so no law of the Virgin Islands was violated. Further, he alleged that the motor vehicle licensing laws of the Virgin Islands interfered with—and unconstitutionally deprived him—of the right to travel on the Territory's public roads. “[T]he [L]egislature does not have the power to abrogate the [c]itizen's [r]ight to travel upon the public roads, by passing legislation forcing the citizen to waive his [r]ight and convert that [r]ight into a privilege,” Mr. George argued. (Def.'s Mot. 22, filed Jan. 13, 2016, *People of the V.I. v. Mr. George*, SX-15-MV-2974.) The Magistrate Court continued trial until May 5, 2016 to allow the People time to respond to the motion to dismiss. The People filed its response in opposition on May 4, 2016 and Mr. George filed his reply the same day.

The Magistrate Court heard argument on the motion to dismiss on May 5, 2016 and, after denying it from the bench, proceeded with trial. Officer Benjamin appeared and testified on behalf of the People. Mr. George did not call any witnesses or testify. From the bench the court announced that it had found Mr. George guilty on both charges and was imposing a fine of \$100.00 and \$250.00, respectively, as well as \$75.00 in court costs for each case. Four days later, on May 9, 2016, Mr. George filed a petition for review. Because the Magistrate Court did not reduce its judgment to writing until November 15, 2016, Mr. George's review was not deemed file in the Appellate Division until then. *See* Super Ct. R. 322.1(b)(2)(C) (“[A] petition for review . . . filed after an oral decision but before entry of a written order or judgment . . . is deemed filed as of the date of the written order or judgment appealed from.”). Thus, even though Mr. George had filed a petition on May 9, 2016, per the rules governing the Appellate Division, his review was not before this Court, in its appellate capacity, until the final order Mr. George is appealing was reduced to writing.

In the interim, Mr. George took steps to further his internal appeal. He requested a transcript of the May 5, 2016 trial, which was completed on June 15, 2016. He also included a request in his May 9, 2016 petition to have the briefing requirement waived. After additional time passed and a written judgment still had been not entered, this Court—by order dated October 13, 2016 and entered October 14, 2016—granted Mr. George's request to waive *his* requirement to file a brief, but not the People's right to file a brief. Instead, the Court gave the People fourteen days to file a brief or forfeit the right to be heard on review without further order. The Court also ordered the Magistrate Court to issue a judgment in writing in thirty days.

The People failed to file a brief. The Magistrate Court issued its written judgment on November 15, 2016. Both before and after the judgment issued, Mr. George sent a number of letters to the Court, objecting to what he believes has been a delay in deciding his review. While Mr. George's second letter, dated October 7, 2016 and docketed October 11, 2016, is what prompted this Court to issue its

October 14, 2016 Order, his third letter, dated January 12, 2017 and docketed January 18, 2017, gave the Court until the end of February 2017 to decide his internal appeal. When that had not occurred, Mr. George sent another letter. In his fourth and final letter, dated March 1, 2017, Mr. George wrote the following:

I am disheartened that you did not render a decision on my appeal by February 2017, neither have you informed me in writing as to why you could not render your decision by that date as I have requested, I perceive that I you [sic] are stalling with this case.

....

Because you have dishonored me, you've left me with no other alternative but to launch a campaign to openly and publicly protest you until you render a decision on my appeal according to law and I will utilize my truck as I have all rights to do." (Letter 1, filed Mar. 1, 2017.)

Recently, the undersigned learned from employees within the Superior Court that Mr. George either called into, or was a guest on, a local radio talk station where he complained on air about the Magistrate Division and the amount of time his appeal has been pending. The Court also learned that Mr. George announced that he was planning a protest outside the Superior Court on St. Croix within the next few days.

DISCUSSION

"Rule 2.11(A)(1) of the Code of Judicial Conduct adopted by th[e Supreme] Court provides that a judge shall [recuse] himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." *People of the V.I. ex rel. M.R & W.V.*, 64 V.I. 333, 353 n.6 (2016) (per curiam). Like other persons in the United States, Mr. George has the right to assemble and to peaceably protest, a right guaranteed by the Constitution of the United States of America, *see* U.S. Const. amend. I, as extended to the Virgin Islands through the Revised Organic Act. *See* 48 U.S.C. § 1561. This Court respects those rights. This Court also understands the frustrations that some lay persons (and perhaps even a few lawyers) may have with the process of how courts decide cases and the pace at which they decide cases. But those frustrations do not justify nor legitimize the avenue Mr. George has taken here. That avenue—giving the Court an ultimatum and calling into a radio station and planning a public

protest outside the courthouse—has now created an environment in which this Court finds itself in the proverbial position of “damned if you do, damned if you don’t.” In other words, this Court has now been placed in a position where its impartiality can be questioned. However this Court rules—whether against Mr. George and in favor of the People of the Virgin Islands or in favor of Mr. George and against the People—an objection may be raised that the Court’s ruling was based in part on Mr. George’s actions. If the Court were to rule in favor of the People, Mr. George could argue that the Court ruled against him because he exercised his constitutional right to protest. If the Court ruled in favor of Mr. George, the People could argue that the Court’s ruling was based partly because Mr. George took to the airways and the street to protest what he perceives as a delay in deciding this review.

It is imperative that all parties before the court feel comfortable that their cases are being handled devoid of any other concerns than how the law applies to the facts at issue in that case. This does not mean that all litigants will agree with or even like the outcome in their cases, or with that court’s interpretation of the law. It is for this very reason that legislatures grant the right of appeal, *cf. Xavier v. Treasure Bay V.I. Corp.*, SX-09-CV-450, 2017 V.I. LEXIS 31, *16-17 (Super. Ct. App. Div. Feb. 23, 2017); *see also Antoine v. Hess Oil V.I. Corp.*, SX-05-CV-508, 2017 V.I. LEXIS 44, *13 (Super. Ct. Mar. 10, 2017) (“Should a judge err through inadvertence or otherwise, a party’s remedy is through appellate processes” (quotation marks and citation omitted)), a right the Legislature of the Virgin Islands has extended to all cases heard by the Superior Court of the Virgin Islands. *See* 4 V.I.C. § 32(a)-(c); *id.* § 125. But public perception must—in every instance—be that civil actions and criminal cases (whether before the trial court or the appellate court) are decided based solely on the governing law and the relevant facts, and no other factor. “An independent, fair and impartial judiciary is *indispensable* to our system of justice. . . . [J]udges, individually and collectively, must respect and honor the judicial office as *a public trust* and strive to maintain and enhance confidence in the legal system.” V.I. Code of Judicial Conduct, pmbl (2010) (emphasis added).

Based upon the environment recently created, public perception may be otherwise if this Court were to continue to preside over this review. This is not to say that Mr. George, by his actions, has somehow disqualified the undersigned judge from handling this matter. He has not. "[R]ecusal and disqualification are not the same. . . . Recusal refers to a judge or justice deciding to stand down *voluntarily*, while disqualification refers to instances involving the statutorily or constitutionally mandated removal of a judge or justice upon the request of a moving party or its counsel." *People of the V.I. v. de Jongh*, 64 V.I. 53, 67-68 (Super. Ct. 2016) (emphasis added) (quotation marks, brackets, and citation omitted)). However, this Court has decided voluntarily to stand down from this case out of an abundance of caution and to avoid even the slightest appearance of impropriety or bias in favor of or against either party. It is for this reason only that the Court has decided to recuse itself.

Accordingly, for the reasons stated above, it is hereby

ORDERED that the undersigned **RECUSES** himself from this review, pursuant to Rule 2.11 of the Code of Judicial Conduct and Section 284(4) of Title 4 of the Virgin Islands Code, and **RETURNS** the matter to the Clerk of the Court for reassignment to another judge in the Appellate Division. It is further

ORDERED that a copy of this Memorandum Opinion and Order be served on both parties.

DONE and so ORDERED this 22nd day of March, 2017.

ATTEST:

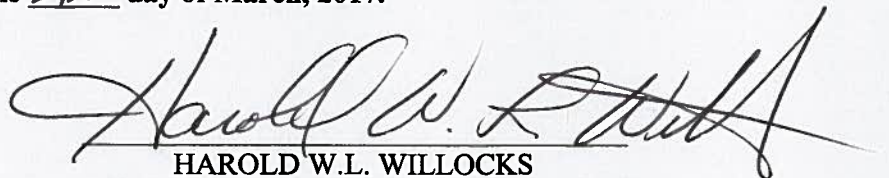
Estrella H. George
Clerk of the Court

By: _____

Court Clerk Supervisor

Dated: _____

3/22/17


HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court