

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

DARYL BLYDEN,

Petitioner,

v.

GOVERNMENT OF THE VIRGIN ISLANDS; KENNETH E. MAPP, Governor; CLAUDE WALKER, Attorney General; RICK MULLGRAV, Director, Virgin Islands Bureau of Corrections; MILDRED TROTTER, Warden, Golden Grove Correctional Facility; HAROLD W. CLARKE, Director, Wallens Ridge State Prison; LESLIE FLEMING, Warden, Wallens Ridge State Prison,

Respondents.¹

SX-13-CV-327

Re: Case No. SX-05-CR-399

MEMORANDUM OPINION

THIS MATTER is before the Court on Petitioner Daryl Blyden's motion for the recusal of Honorable Harold W.L. Willocks as the presiding judge in the matter sub judice pursuant to Title 4 V.I.C. § 284, filed on August 11, 2016 (hereinafter, "Motion for Recusal").

¹ In *Blyden v. Gov't of the V.I.*, 2016 V.I. LEXIS 47, n. 1 (Super. Ct. May 3, 2016), the Court noted that:

Although Blyden's petition originally named Governor John P. deJongh, Attorney General Vincent Frazer, Director Julius Wilson, and Warden Basil Richards as respondents in their official capacity, these officials are no longer in office. In accordance with the Supreme Court [of Virgin Islands'] March 3, 2016 Opinion, the caption of this case has been updated to reflect the succession of these offices. *Blyden v. Gov't of the V.I.*, 2016 V.I. Supreme LEXIS 5, n. 1 (V.I. 2016) ("Although Blyden originally named Governor John P. deJongh, Attorney General Vincent Frazer, Director Julius Wilson, and Warden Basil Richards in his petition, these officials are no longer in office. Accordingly, this Court automatically substituted them with their successors in office under Supreme Court Rule 34(c)").

On May 24, 2016, Blyden filed an improperly verified second amended petition with the Court. The improperly verified second amended petition indicated that Blyden was confined at Wallens Ridge State Prison and named the following parties as respondents: Kenneth E. Mapp, Governor; Claude Walker, Attorney General; Rick Mullgrav, Director of Virgin Islands Bureau of Corrections; Mildred Trotter, Warden of Golden Grove Correctional Facility; Harold W. Clarke, Director of Wallens Ridge State Prison; and Leslie Fleming, Warden of Wallens Ridge State Prison.

On August 8, 2016, in response to the Court's order directing Blyden to properly verify his second amended petition by oath pursuant to Title 5 V.I.C. § 1302(3), Blyden filed a properly verified second amended petition (hereinafter, "Verified Second Amended Petition"). However, the caption was changed back to the originally named respondents—John P. deJongh, Governor; Vincent Frazer, Attorney General; Julius Wilson, Director of Virgin Islands Bureau of Corrections; and Basil Richards, Warden of Golden Grove Correctional Facility. Additionally, although the Verified Second Amended Petition indicated that Blyden is confined at Red Onion State Prison, Red Onion State Prison is not named as a respondent. As noted in the Court's August 10, 2016 order, the caption of the Verified Second Amended Petition is clearly defective and not in compliance with requirements of Title 5 V.I.C. § 1302(1). The Court ordered Blyden to file the Verified Second Amended Petition with an amended caption page that correctly reflects the succession of the offices in the U.S. Virgin Islands and the proper custodial respondent of Blyden within one week from August 11, 2016 (the date of entry of the August 10, 2016 order).

To date, the Court has not received the Verified Second Amended Petition with an amended caption page. Accordingly, the Court will use this current caption until the Court receives the Verified Second Amended Petition with an amended caption page.

BACKGROUND²

In August 2013, Blyden filed a motion for writ of mandamus ad testificandum with the Superior Court and a new civil case was created with the civil case number SX-13-CV-327. This civil case was assigned to the undersigned. In January 2014, Blyden filed an amended petition for a writ of habeas corpus³ pursuant to section 1301 of Title 5 of the Virgin Islands Code (hereinafter, “Amended Petition”). The Court subsequently denied Blyden’s Amended Petition and thereafter, Blyden filed a timely notice of appeal with the Supreme Court of the Virgin Islands (hereinafter, “Supreme Court”).

The Supreme Court affirmed in part and reversed in part the Court’s denial of Blyden’s Amended Petition and remanded the matter to the Superior Court with directions to “issue the writ and conduct further proceedings as dictated by chapter 91 of title 5 of the Virgin Islands Code.” *Blyden v. Gov’t of the V.I.*, 2016 V.I. Supreme LEXIS at 22. In response to the Supreme Court’s mandate, on May 3, 2016, the Court entered a memorandum opinion explaining that “Blyden’s Amended Petition presents a prima facie case for habeas corpus relief that is not procedurally barred as to his firearm fabrication claim and the ineffective assistance of counsel claim” and thus, “Blyden is entitled to a writ of habeas corpus without delay.” *Blyden*, 2016 V.I. LEXIS 47 at *15. The accompanying order directed Blyden to file a second amended petition to rectify defects in the Amended Complaint—namely, name the proper custodial respondent and verify the second amended petition pursuant to Title 5 V.I.C. § 1302—and deemed the second amended petition granted upon filing.

On May 24, 2016, Blyden filed an improperly verified second amended petition with the Court. Thus, the Court entered an order directing Blyden to properly verify the second amended

² This opinion recites the factual background only to the extent necessary to explain the present issues and the bases of the Court’s decision.

³ It is unclear from the record whether Blyden filed an initial petition prior to filing this Amended Petition or the Amended Petition was simply intended to amend Blyden’s motion for writ of mandamus ad testificandum.

petition by oath pursuant to Title 5 V.I.C. § 1302(3) and file the verified second amended petition with the Court. In response, on August 8, 2016, Blyden filed a properly verified second amended petition (hereinafter, "Verified Second Amended Petition"). However, as noted above, the caption of the Verified Second Amended Petition was defective and not in compliance with requirements of Title 5 V.I.C. § 1302(1).⁴ Thus, the Court entered another order ordering Blyden to file the Verified Second Amended Petition with an amended caption page that correctly reflects the succession of the offices in the U.S. Virgin Islands and the proper custodial respondent of Blyden.⁵

On August 11, 2016, Blyden filed this instant Motion for Recusal.

STANDARD OF REVIEW

In the Virgin Islands, Title 4 V.I.C. § 284 "establishes the substantive standard for recusal of Superior Court judges" and Title 4 V.I.C. § 286 "controls the procedure by which a complaining party may bring a motion for recusal." *Walters v. Walters*, 60 V.I. 768, 782-83 (V.I. 2014).

Title 4 V.I.C. § 284 provides in relevant part:⁶

No judge or justice shall sit or act as such in any action or proceeding:

- (3) When in the action or proceeding or in any prior action or proceeding involving the same issues, he has been of counsel for any party to the action or proceeding; or
- (4) When it is made to appear probable that, by reason of bias or prejudice of such judge, a fair and impartial trial cannot be had before him.

Title 4 V.I.C. § 286 requires the complaining party to file a motion for recusal in writing and the motion must be made first before the judge that the party seeks to disqualify. *Walters*, 60 V.I. at 783; *Benjamin v. AIG Ins. Co. of P.R.*, 56 V.I. 558, 569 (V.I. 2012).

DISCUSSION

In his Motion for Recusal, Blyden argued that the undersigned should recuse himself from this matter pursuant to Title 4 V.I.C. § 284(3) and § 284(4). More specifically, Blyden argued:

⁴ *Supra*, fn. 1.

⁵ *Id.*

⁶ In his Motion for Recusal, Blyden only cited to Title 4 V.I.C. § 284(3) and § 284(4) as grounds for recusal.

3. That, the Hon. Harold W. Willocks, presided over the Petitioner's initial habeas appeal before the Superior Court in Super. Ct. Civ. SX-13-CV-327. This appeal was denied by Hon. Willocks on the premise that the Petitioner failed to set forth sufficient allegations to warrant a habeas.
4. The Petitioner successfully appealed that decision to the Virgin Islands Supreme Court in S. Ct. Civ. No. 2014-0044 and the matter was remanded for the hearing.
5. That, the Superior Court ostensibly assigned this case to Hon. Willocks.
6. The assignment of this matter to the Hon. Willocks is in direct contravention to [Title] 4 V.I.C. § 492.⁷ (Motion for Recusal, p. 2)

Here, Blyden, the complaining party, met the procedural requirements pursuant to Title 4 V.I.C. § 286, *to wit*: Blyden filed a motion for recusal in writing before the undersigned. The Court will now address whether Blyden met the substantive requirements pursuant to Title 4 V.I.C. § 284.

A. Recusal Pursuant to Title 4 V.I.C. § 284(3)

In *Hodge v. McGowan*, 50 V.I. 296, 310 (V.I. 2008), the Supreme Court noted that the case law as to the disqualification of a judge under Title 4 V.I.C. § 284(3) (hereinafter, "Section 284(3)") is lacking in this jurisdiction. The Supreme Court reckoned that "[p]erhaps, the reason for this lack of case laws stems from the common sense notion that a judge who has previously represented a party, or its predecessor in interest, in a matter relating to the same basic subject matter should disqualify himself from hearing the new case." *Id.*

Here, Blyden implied in his Motion for Recusal that the undersigned should recuse himself pursuant to Section 284(3) because the undersigned presided over his initial writ of habeas corpus proceeding. However, there is a major flaw in Blyden's argument, namely it is based on Blyden's erroneous interpretation of Section 284(3). Under Blyden's interpretation, Section 284(3) would illogically require a judge to recuse himself whenever the judge presided over previous motions/petitions in the same case. Blyden is clearly mistaken because Section 284(3) only requires a judge to recuse himself "[w]hen in the action or proceeding or in any prior action or proceeding involving the same issues, *he has been of counsel* for any party to the action or proceeding."

⁷ The Court believes this was a typographical error and instead, it should read "Title 4 V.I.C. § 284."

(Emphasis added) In this instance, the undersigned did not represent a party, or its predecessor in interest, with regard to Blyden's initial writ of habeas corpus. As Blyden acknowledged in his Motion for Recusal, the undersigned simply presided over his initial writ of habeas corpus in this instant matter.⁸ (Motion for Recusal, p. 2) Accordingly, the Court will deny Blyden's Motion for Recusal pursuant to Section 284(3).

B. Recusal Pursuant to Title 4 V.I.C. § 284(4)

The Supreme Court has not yet held directly that the complaining party has the burden of showing bias or prejudice under Title 4 V.I.C. § 284(4) (hereinafter, "Section 284(4)"). This Court, like the court in *People of the Virgin Islands v. de Jongh*, ST-15-CR-308, ST-15-CR-310, 2016 V.I. LEXIS 8, *20-22 (Super. Ct. 2016), finds that both binding and persuasive precedent and the substantive law supports the conclusion that the complaining party has the burden of showing bias or prejudice. *See, e.g., Benjamin*, 56 V.I. at 569 (V.I. 2012) ("before a judge is required to recuse him or herself based on bias, *the facts alleged by the party arguing for disqualification* must reflect a clear probability that the judge is biased against that party" (internal quotations and citation omitted) (emphasis added)); *Walters*, 60 V.I. at 783-84 (*quoting Benjamin*, 56 V.I. at 569); Title 4 V.I.C. § 284 ("No judge or justice shall sit or act as such in any action or proceeding...[w]hen it is made to appear probable that, by reason of bias or prejudice of such judge, a fair and impartial trial cannot be had before him." (emphasis added)); Title 4 V.I.C. § 286 ("*the party objecting to competency* may, in writing, file with the judge his objection, stating the grounds." (emphasis added)); *see also, Walters*, 60 V.I. at 793 (Swan, J., concurring) ("The law assumes judicial impartiality. Therefore, a party

⁸ Perhaps Blyden meant, instead, that the undersigned should recuse himself because Blyden considered the initial writ of habeas corpus proceeding to be a separate "prior case" and reasoned that the undersigned is biased and prejudiced against him in this current "new case" as a result of the fact that the undersigned presided over the "prior case." This argument is wholly without merit. The initial writ of habeas corpus was filed in this instant civil case, SX-13-CV-327, and thus, it is not considered a separate "prior case." Even assuming *arguendo* that initial writ of habeas corpus proceeding was a separate "prior case" as Blyden implied, "the fact that a judicial officer previously presided over a case involving the same party is not grounds for recusal." *In the Matter of Disbarment of Rogers*, 60 V.I. 293, 302 n.1 (V.I. 2013) (per curiam).

claiming judicial bias has a heavy burden” (internal citation and quotation omitted)). Thus, the Court holds that the party moving for recusal pursuant to Section 284(4)—Blyden—has the burden of proof. Although the Supreme Court has yet to specify the level of proof necessary to carry this burden, the Supreme Court indicated in *Benjamin* that “the facts alleged by the party arguing for disqualification must reflect a clear probability that the judge is biased against that party” before a judge is required to recuse him or herself based on bias or prejudice under Section 284(4). 56 V.I. at 569 (internal quotations and citation omitted).

Here, Blyden argued in his Motion for Recusal that the assignment of this matter to the undersigned after the Supreme Court’s remand was a direct violation of Section 284(4). (Motion for Recusal, p. 2) Blyden implied that the undersigned is biased and prejudiced against him because the undersigned had previously denied Blyden’s initial writ of habeas corpus and the denial was subsequently reversed in part by the Supreme Court. (Id.) However, this fact alone does not reflect any probability of bias and prejudice against Blyden. *See e.g., Benjamin*, 56 V.I. at 568 (The Supreme Court denied the defendant’s request to reassign the case on remand and pointed out that the defendant “fails to cite to any action, to anything said, written, or done, by the trial judge which would form the factual basis for the alleged ‘pervasive bias’ or ‘deep-seated favoritism or antagonism’ for disqualification.”). It is typical for a case in the Superior Court to be assigned to the same judge from the beginning to the end, minus instances where recusals are justified. Thus, when the Supreme Court remanded this case to the Superior Court for further proceedings, the case simply went back to the judge that the case was originally assigned to. The judicial function of the Superior Court would be severely limited if a judge has to recuse him or herself every time his or her ruling is reversed by the Supreme Court and the case is remanded back to the Superior Court. Blyden has provided no facts that would permit the inference or the conclusion that the undersigned was biased or prejudiced against him in anyway. Instead, Blyden simply made naked allegations without any support other than the argument of his counsel. *See e.g., Walters*, 60 V.I. at 783-84 (The Supreme

Court found the motion for recusal to be "wholly without merit, if not frivolous" and affirmed the trial court's denial of motion for recusal because the complaining party "simply made a naked claim" of bias "supported solely by unsubstantiated allegations.") Accordingly, the Court will deny Blyden's Motion for Recusal pursuant to Section 284(4).

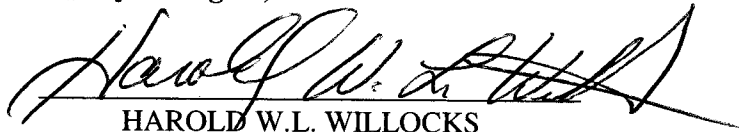
CONCLUSION

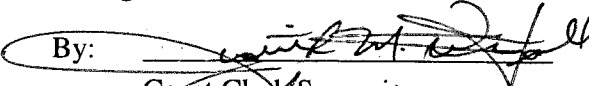
Based on the foregoing, the Court finds that Blyden has not met the substantive requirements pursuant to Title 4 V.I.C. § 284. Thus, the Court will deny Blyden's Motion for Recusal. An Order consistent with this Memorandum Opinion will follow.

DONE and so ORDERED this 22nd day of August, 2016.

ATTEST:

Estrella H. George
Acting Clerk of the Court


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

By: 

Court Clerk Supervisor

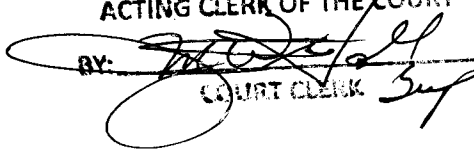
Dated: 8/23/16

CERTIFIED A TRUE COPY

DATE: 8/23/16

ESTRELLA H. GEORGE

ACTING CLERK OF THE COURT

BY: 

COURT CLERK