

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2016 IL App (4th) 140489-U

NO. 4-14-0489

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

July 8, 2016  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
PERRY E. HAMPTON,	)	No. 09CF1903
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd and
	)	Thomas J. Difanis,
	)	Judges Presiding.

JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not err in dismissing defendant's motion for substitution of judge without holding a hearing on the merits of that motion.
- ¶ 2 In November 2005, defendant, Perry E. Hampton, was charged, by information, with one count of residential burglary (count I) (720 ILCS 5/19-3 (West 2004)) and one count of armed violence (count II) (720 ILCS 5/33A-2(a) (West 2004)). Following a February 2010 jury trial, defendant was found guilty of count I and not guilty of count II. In March 2010, the trial court sentenced him to 29 years' imprisonment. Defendant appealed, and this court remanded with directions to vacate a fine and to apply presentence credit. *People v. Hampton*, 2012 IL App (4th) 100219-U. In November 2012, defendant filed a postconviction petition, which the trial court summarily dismissed in May 2012. This court affirmed the trial court's dismissal. *People v. Hampton*, 2014 IL App (4th) 120527-U.

¶ 3 On November 4, 2013, defendant filed a section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)). On November 7, 2013, three days later, the trial court dismissed defendant's petition. This court, upon agreement by the parties, summarily remanded defendant's case back to the court in accordance with *People v. Laugharn*, 233 Ill. 2d 318, 909 N.E.2d 802 (2009). *People v. Hampton*, No. 4-13-1055 (Feb. 25, 2014) (agreed summary remand). Following remand, defendant filed a motion for substitution of judge, alleging bias by Judge Heidi N. Ladd. Defendant's motion was transferred to Judge Thomas J. Difanis, who denied defendant's motion without a hearing. The State filed a motion to dismiss defendant's section 2-1401 petition, which the court later granted.

¶ 4 Defendant appeals, arguing the trial court erred by failing to hold a hearing on the merits of his motion for substitution of judge. We affirm.

¶ 5 I. BACKGROUND

¶ 6 The facts prior to the section 2-1401 petition are succinctly stated in *Hampton*, 2012 IL App (4th) 100219-U, and *Hampton*, 2014 IL App (4th) 120527-U. We discuss only the proceedings following defendant's filing of the section 2-1401 petition for relief from judgment.

¶ 7 In November 2013, defendant filed a section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)). On November 7, 2013, three days later, Judge Ladd dismissed defendant's petition. This court summarily remanded the cause to the trial court with directions to wait 30 days before taking any action, in accordance with *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805. *Hampton*, No. 4-13-1055 (Feb. 25, 2014) (agreed summary remand). After remand, defendant filed a proof of service with an affidavit attached (725 ILCS 5/114-5(d) (West 2014)). The petition was mailed 7 days later and filed 13 days after remand. In his motion, defendant alleged Judge Ladd exhibited bias against him by "quickly" dismissing

his section 2-1401 petition (three days after filing). According to defendant, this swift dismissal tended to show bias and required substitution. Judge Ladd transferred the matter to Judge Difanis. Judge Difanis, after reviewing "the avalanche of filings attributed to defendant," dismissed defendant's motion, finding it "totally without merit." The State later filed a motion to dismiss defendant's section 2-1401 petition, arguing the petition lacked merit. The court (Judge Ladd) granted the State's motion to dismiss.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues the trial court erred by failing to hold a hearing on the merits of his motion for substitution of judge. The State argues defendant's motion was properly dismissed because it (1) was void *ab initio*, as it was based on a repealed statute; (2) was improper and untimely; and (3) lacked specific allegations of bias.

¶ 11 A. Standard of Review

¶ 12 This case presents undisputed facts and questions of law, which are reviewed *de novo*. *In re D.G.*, 144 Ill. 2d 404, 408-09, 581 N.E.2d 648, 649 (1991).

¶ 13 B. Form of the Motion

¶ 14 The State argues defendant's motion "had no valid basis in law and was void *ab initio*." In particular, the State argues defendant's motion should be construed as having its basis in section 122-8 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/122-8 (West 2014)), which was repealed. See 725 ILCS 5/122-8 (West 2014) (repealed by Pub. Act 96-1200, § 3 (eff. July 22, 2010)). Defendant argues the motion and affidavit, although labeled ambiguously, tend to allege substitution under section 114-5(d) of the Code (725 ILCS 5/114-5(d) (West 2014)). We agree with defendant.

¶ 15 The statute for the substitution of judges should be liberally construed to promote substitution. *People v. Kostos*, 21 Ill. 2d 451, 454, 173 N.E.2d 469, 471 (1961). Liberal interpretation is necessary as a "fail-safe measure" to preserve the impartiality of the judicial process and the right to a fair hearing. *People v. Jones*, 197 Ill. 2d 346, 355, 757 N.E.2d 464, 469 (2001). "Additionally, this court has emphasized a motion's content determines its character, not the title or label asserted by the movant." *People v. Smith*, 371 Ill. App. 3d 817, 821, 867 N.E.2d 1150, 1154 (2007) (citing *People v. Harper*, 345 Ill. App. 3d 276, 284, 802 N.E.2d 362, 369 (2003)). "[A] court should not take it upon itself to rule against an ambiguous motion for substitution by construing it in a way that necessarily defeats the requested substitution." *People v. Langford*, 246 Ill. App. 3d 460, 467, 616 N.E.2d 628, 633 (1993).

¶ 16 Defendant's "proof and certificate of service" mentioned its statutory basis was section 122-8, which was repealed before the filing of the motion. See 725 ILCS 5/122-8 (West 2014) (repealed by Pub. Act 96-1200, § 3 (eff. July 22, 2010)). The same page included the title "motion for substitution of judge" as well as "different judge to consider." The former heading is for section 114-5 and the latter is the heading for section 122-8. Compare 725 ILCS 5/114-5 (West 2014) with 725 ILCS 5/122-8 (West 2014) (repealed by Pub. Act 96-1200, § 3 (eff. July 22, 2010)). The affidavit attached to defendant's "proof and certificate of service" illustrates it was filed as "required by 725 ILCS 5/114[-5](d)." Although defendant mentions section 122-8 one additional time, the main contents of the affidavit allege bias under section 114-5. The judge denied defendant's "motion to substitute[] Judge Ladd for cause," indicating how the motion was interpreted under section 114-5. Based on the motion's content, judges' interpretations, and headings, defendant filed a section 114-5 motion for substitution of judge.

¶ 17 C. Timeliness of the Motion

¶ 18 The State argues defendant's motion was properly denied because it was not made at the earliest practical moment after the alleged bias was discovered. According to the State, "Judge Ladd had been the presiding trial court judge since proceedings began against defendant in 2009 \*\*\* [and] had issued multiple substantive rulings." Defendant argues his motion was made when the alleged bias was discovered after this court's summary remand. We agree with defendant.

¶ 19 A motion for substitution must be timely. *Jones*, 197 Ill. 2d at 356, 757 N.E.2d at 470. This rule "prevent[s] defendants ' "from first ascertaining the attitude of the trial judge on a hearing relating to some of the issues of the cause, and then, if the court's judgment is not in harmony with counsel's theory, to assert the prejudice of the court." ' " *Id.* (quoting *People v. Taylor*, 101 Ill. 2d 508, 518, 463 N.E.2d 705, 710 (1984) (quoting *People v. Chambers*, 9 Ill. 2d 83, 89, 136 N.E.2d 812, 815 (1956)). However, the supreme court explained that a motion for substitution "must be made at the earliest *practical* moment *after* any potential prejudice is discovered. [Citation.] We cannot require a defendant to file a motion for substitution for cause *prior* to the alleged bias." (Emphases in original.) *Id.* A substitution motion is not "*per se* untimely when it is made following a substantive ruling when the alleged cause arises *after* the substantive ruling." (Emphasis in original.) *Id.* at 357, 757 N.E.2d at 470.

¶ 20 The alleged bias occurred when Judge Ladd, *sua sponte*, dismissed defendant's section 2-1401 motion three days after it was filed. According to this court, this dismissal was procedurally improper according to *Laugharn. Hampton*, No. 4-13-1055 (Feb. 25, 2014) (agreed motion for summary remand). Although Judge Ladd had presided over the trial and issued significant substantive rulings, the alleged bias did not arise until the dismissal of defendant's section 2-1401 petition. 735 ILCS 5/2-1401(b) (West 2014); see *Jones*, 197 Ill. 2d at 355, 757

N.E.2d at 469 (motion for substitution of judge was timely even after substantive rulings were made because the alleged bias only arose after that time). Defendant alleged the earliest practical moment the prejudice was discovered was when Judge Ladd's dismissal was summarily reversed and remanded. Defendant filed his section 114-5(d) motion at the earliest practical moment (13 days) after the alleged prejudice was discovered. The motion was actually mailed on March 4, 2014, seven days after remand. Therefore, defendant's motion was timely.

¶ 21 D. Substance of the Motion

¶ 22 The State argues defendant's motion "failed to include specific allegations that adequately substantiated his claims of prejudice" and was properly dismissed. Defendant argues his allegations were not mere conclusions of law but provided specific allegations of bias. We agree with the State.

¶ 23 "A defendant's right to a substitute judge for cause is not absolute \*\*\*." *People v. Moore*, 199 Ill. App. 3d 747, 768, 557 N.E.2d 537, 552 (1990). "[C]ase law requires that motions [for substitution of judge for cause] contain specific allegations" and, "[i]f the allegations are not sufficient, [a] defendant is not entitled to a hearing before a different judge." *People v. Johnson*, 159 Ill. 2d 97, 123, 636 N.E.2d 485, 496 (1994). Those allegations must not be conclusory in nature. *Jones*, 197 Ill. 2d at 355, 757 N.E.2d at 469. "Substantiation of such a claim insures that defendant's allegations of prejudice are not frivolously made." *People v. Amos*, 204 Ill. App. 3d 75, 86, 561 N.E.2d 1107, 1116 (1990) (citing *People v. Marshall*, 165 Ill. App. 3d 968, 975, 521 N.E.2d 538, 542 (1987)).

¶ 24 In this case, defendant's motion lacked specific allegations of bias. His entire argument is predicated on his claim Judge Ladd demonstrated her prejudice against him "by dismissing [his] [section 2-1401] petition within [three] days." According to defendant, his

allegations of bias were supported by this court's "quick[]" reversal of Judge Ladd's dismissal.

¶ 25           However, a claim of bias or prejudice in a substitution-of-judge-for-cause context must normally stem from an extrajudicial source. *In re Estate of Wilson*, 238 Ill. 2d 519, 554, 939 N.E.2d 426, 447 (2010). Indeed, "[a] judge's previous rulings almost never constitute a valid basis for a claim of judicial bias or partiality." *Id.*; see also *People v. Butler*, 137 Ill. App. 3d 704, 720, 484 N.E.2d 921, 933 (1985); *People v. Massarella*, 80 Ill. App. 3d 552, 565, 400 N.E.2d 436, 447 (1979). Moreover, "a judge's previous ruling adverse to [a] defendant does not alone disqualify that judge or require him to recuse himself from further proceedings." *People v. Antoine*, 335 Ill. App. 3d 562, 572, 781 N.E.2d 444, 453 (2002) (citing *Moore*, 199 Ill. App. 3d at 768, 557 N.E.2d at 552).

¶ 26           Here, defendant's motion contained no allegations of bias or prejudice not involving judicial rulings. Our review of the record reveals no other arguable instances of potential impartiality or bias. As such, defendant's motion for substitution of judge fails as a matter of law to substantiate a claim Judge Ladd was prejudiced against him. Because defendant's motion contained insufficient allegations of bias, defendant's motion was properly denied without a hearing. See *People v. Klein*, 2015 IL App (3d) 130052, ¶ 85, 40 N.E.3d 720 (finding an evidentiary hearing was unwarranted where the pleadings were insufficient to demonstrate prejudice); *Marshall*, 165 Ill. App. 3d at 975, 521 N.E.2d at 542 ("Lack of specificity in a motion for substitution is a valid reason for denial even in the absence of a hearing.").

¶ 27           Finally, we note, although Judge Ladd in this case did in fact refer the matter to a different judge, a trial judge may deny a motion to substitute without such a referral where, *inter alia*, the cause alleged in the motion lacks specificity. *Wilson*, 238 Ill. 2d at 561, 939 N.E.2d at

451.

¶ 28 In sum, the trial court did not err in dismissing defendant's motion for substitution of judge without holding a hearing on the merits of that motion.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 31 Affirmed.