

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

INES COLLEEN ROBINSON,

Petitioner,

v.

Case No. 5D19-2372

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed August 28, 2019

Petition for Writ of Prohibition,
Howard M. Maltz, Respondent Judge.

William Mallory Kent, of Kent & McFarland,
Jacksonville, for Petitioner.

Ashley Moody, Attorney General,
Tallahassee, and L. Charlene Matthews,
Assistant Attorney General, Daytona
Beach, for Respondent.

PER CURIAM.

Ines Colleen Robinson seeks a writ of prohibition following the denial of her motion to disqualify the judge presiding over her case. Prohibition is the proper procedure for appellate review to test the validity of a motion to disqualify. Time Warner Entm't Co. v. Baker, 647 So. 2d 1070, 1071 (Fla. 5th DCA 1994). The trial court denied Robinson's motion to disqualify as legally insufficient in an eight-page order. That was error. As the Florida Supreme Court held in Bundy v. Rudd, 366 So. 2d 440, 442 (Fla. 1978):

Regardless of whether respondent ruled correctly in denying the motion for disqualification as legally insufficient, our rules clearly provide, and we have repeatedly held, that a judge who is presented with a motion for his disqualification “shall not pass on the truth of the facts alleged nor adjudicate the question of disqualification.” When a judge has looked beyond the mere legal sufficiency of a suggestion of prejudice and attempted to refute the charges of partiality, he has then exceeded the proper scope of his inquiry and on that basis alone established grounds for his disqualification.

(Citations omitted).

The trial court’s order denying Robinson’s motion to disqualify establishes that the judge failed to limit his inquiry to a determination of the sufficiency of the motion to disqualify. This requires his disqualification. Accordingly, we grant Robinson’s petition for writ of prohibition.

PROHIBITION GRANTED.

ORFINGER, LAMBERT and EISNAUGLE, JJ., concur.