

JAN 09 2017

David J. Smith
Clerk

CONFIDENTIAL

**BEFORE THE ACTING CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT**

Judicial Complaint No. 11-16-90117

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. District Judge for
the U.S. District Court for the _____ District of _____, under the Judicial
Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against United States
District Judge _____ (the “Subject Judge”), pursuant to Chapter 16 of Title 28
U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of
the Judicial Conference of the United States (“JCDR”).

As an initial matter, after Complainant filed his Complaint, he filed three
supplemental statements. The filing of the supplemental statements is permitted. See
11th Cir. JCDR 6.7.

Background

The record shows that in April 2013 a federal grand jury indicted Complainant on
six counts of theft of government property, six counts of aggravated identity theft, one
count of conducting an unlawful monetary transaction, and one count of obstructing a
criminal investigation. After a trial, the jury found Complainant guilty on all counts, and
the Subject Judge granted the government’s motion to dismiss one count of aggravated
identity theft as a matter of law. After a sentencing hearing in October 2013, the Subject
Judge sentenced Complainant to a total term of 102 months of imprisonment.
Complainant appealed. In June 2015 this Court affirmed Complainant’s convictions and
sentences, holding in part that the district court did not err at sentencing in determining
the amount of loss or the number of victims.

In December 2015 Complainant filed an amended 28 U.S.C. § 2255 motion to
vacate, set aside, or correct sentence in which he argued, among other things, that the
district court violated his constitutional rights in the criminal case, “double counted [his]
prison sentence,” and improperly determined the amount of loss at sentencing. In July
2016 the Subject Judge denied the § 2255 motion, finding that his claims either had been

decided against him by this Court, were not cognizable, had been procedurally defaulted, or lacked merit.

Complainant then filed multiple motions seeking various types of relief, including a motion for a certificate of appealability in which he argued in part that a fraud on the court had been committed in connection with a government exhibit. In August 2016 the Subject Judge denied the motion, finding that Complainant failed to make a substantial showing of the denial of a constitutional right. After that, Complainant filed a motion to recuse the Subject Judge in which he alleged that she was racially biased and had sentenced a “white man” with the same amount of loss “to a term of house arrest / probation.” The Subject Judge denied the motion to recuse, stating that she did not have a racial bias and that Complainant had not shown that her impartiality might reasonably be questioned.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge allowed the government and the Internal Revenue Service (“IRS”) to increase his loss amount “without any explanation or sanction.” He alleges that the Subject Judge showed favoritism to the government and the IRS and is “racially biased against minorities.” Complainant then generally takes issue with his convictions and sentences, and he alleges that the Subject Judge ignored: (1) the law and the United States Sentencing Guidelines in imposing his sentence; (2) that a bank returned a certain amount of money, which should have been credited against the amount of loss; and (3) the fabrication of evidence by the government in an exhibit.

Next, Complainant states that he “observed the [Subject Judge] sentence a white man with the same loss as the complainant to house arrest / probation,” and that she sentenced “the white man co-defendant to a term of 102 months of imprisonment (Hispanic American).” Finally, he alleges that the Subject Judge refused to dismiss certain counts that the prosecutor had agreed to dismiss, which constituted “gross incompet[e]nce.” He attached various documents to his Complaint.

Supplements

After he filed his Complaint, Complainant filed three supplemental statements. In the first, Complainant states that the Subject Judge “all but ignored” and violated his constitutional rights, and he complains that she sentenced him to the statutory maximum. In the second supplement, Complainant contends that the Subject Judge “double counted” his term of imprisonment. In the third supplement, Complainant reiterates his claim that the Subject Judge “sentenced a white man with the same amount of loss as the complainant to house arrest / probation.” In an attached document, Complainant alleges

that the Subject Judge has a racial bias, shows favoritism to “white people,” and “does not like black people.”

Discussion

Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include “an allegation that is directly related to the merits of a decision or procedural ruling.” The Rule provides that “[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” *Id.* The “Commentary on Rule 3” states in part:

Rule 3(h)(3)(A) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations “[d]irectly related to the merits of a decision or procedural ruling.” This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge’s ruling. Any allegation that calls into question the correctness of an official action of a judge—without more—is merits-related.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, rulings, and orders entered in the cases, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judge was not impartial, is racially biased, is incompetent, or otherwise engaged in misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B), and the Complaint “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists,” JCDR 11(c)(1)(D). For those reasons, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and (iii), and Rule 11(c)(1)(B) and (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Acting Chief Judge