

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

111790088

**FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL**

JUL 25 2018

CIRCUIT EXECUTIVE

**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW*

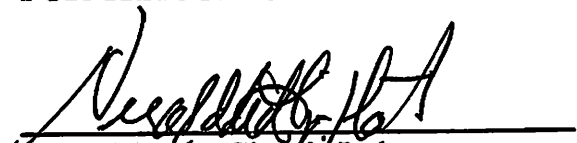
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JULIE CARNES,** and JILL PRYOR, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, RODGERS,** WATKINS, DuBOSE, and HALL, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, William Pryor, Land, and Rodgers, the order of Chief Judge Ed Carnes filed on 17 April 2018, and of the petition for review filed by the complainant on 17 May 2018, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

- * Chief Circuit Judge Ed Carnes did not take part in the review of this petition.
** Circuit Judge Julie Carnes and former Chief District Judge M. Casey Rodgers participated in this decision but are no longer members of the Council.

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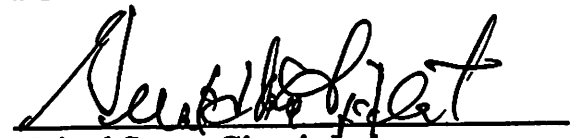
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APR 17 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-17-90088 and 11-17-90089

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judge _____ of 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 Magistrate Judge _____ and United States District Judge _____ (collectively, “the Subject Judges”), 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”).

Background

The record shows that in October 2017 Complainant filed a 28 U.S.C. § 2241 petition for writ of habeas corpus claiming, among other things, that he was entitled to “jail credit” that he had not received. Judge _____ issued an order construing the § 2241 petition as a petition filed under 28 U.S.C. § 2254. Complainant filed objections to the order, which Judge _____ overruled, and there were additional proceedings in the case. Complainant also filed in this Court a petition for writ of mandamus seeking to have his petition considered under § 2241.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that he “do[es] not meet the jurisdictional standing requirements for the application of §2254 to [his] §2241 petition” because his state sentence has expired. He alleges that the Subject Judges “failed to examine or apply the sentence adjudicated by” a state court judge, improperly applied “the procedural barriers [and] mazes of §2254,” and denied him “jail credit” that he was entitled to receive under a state statute and state court order. Complainant states:

The illicit motivation of [the Subject Judges] is to inflict additional "punishment" beyond that ordered by the state court, [and] to cause irreparable injury, due to my status as a sex offender, their dislike for me personally because of that status, and their belief that I have no right to release upon my lawfull sentence expiration date, or a right to swift, summary vindication of my habeas claims under §2241.

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 Judges' findings and orders entered in the case, the allegations are directly related to the merits of the Subject Judges' 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 allegations that the Subject Judges acted with an improper or illicit motive, were biased against Complainant, 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**.



Chief Judge