FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT

11-18-90073

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

ON PETITION FOR REVIEW*

Before: TJOFLAT, MARCUS, WILLIAM PRYOR, MARTIN, JORDÁN, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, WATKINS, DuBOSE, and HALL, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Marcus, William Pryor, Watkins, and Land, the order of Chief Judge Ed Carnes, filed on 29 October 2018, and of the petition for review filed by the complainant on 13 November 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

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* Chief Circuit Judge Ed Carnes, Judge Charles R. Wilson, Judge Robin S. Rosenbaum, and Chief District Judge Mark E. Walker did not take part in the review of this petition.

FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT

11-18-90074

IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY

ON PETITION FOR REVIEW*

Before: TJOFLAT, MARCUS, WILLIAM PRYOR, MARTIN, JORDÁN, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, WATKINS, DuBOSE, and HALL, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Marcus, William Pryor, Watkins, and Land, the order of Chief Judge Ed Carnes, filed on 29 October 2018, and of the petition for review filed by the complainant on 13 November 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

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* Chief Circuit Judge Ed Carnes, Judge Charles R. Wilson, Judge Robin S. Rosenbaum, and Chief District Judge Mark E. Walker did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 29 2018

David J. Smith
Clerk

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-18-90073 and 11-18-90074

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Circuit Judges _____ and _____ of the U.S. Court of Appeals for the _____ Circuit, 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 Circuit Judges _____ and _____ (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 April 2017 Complainant filed a 28 U.S.C. § 2241 petition for writ of habeas corpus generally challenging certain state court sentences. In the petition, Complainant stated that he was sentenced to three consecutive terms of imprisonment, noted that two of the terms had expired, and argued that the expired terms violated "Constitutional Double Jeopardy" due to their impact on his current term. A couple of months later, a magistrate judge issued a report recommending that the § 2241 petition be dismissed for lack of jurisdiction, finding it was more properly characterized as a § 2254 petition and that it was an unauthorized second or successive § 2254 petition. The next month, the district judge adopted the report and recommendation and dismissed the petition. Complainant filed a motion to alter or amend the judgment, which the district judge denied.

Complainant then filed a notice of appeal and filed in this Court a motion for a certificate of appealability (COA) and a motion to proceed in forma pauperis (IFP). In January 2018 Judge _____ issued an order: (1) denying Complainant's motion for a COA as unnecessary; and (2) denying his IFP motion because he did not have a non-frivolous issue on appeal. The order stated that Complainant was serving a total sentence of life imprisonment and that his current petition was asserting that his sentences violated the Double Jeopardy Clause because he was tried for his offenses twice.

Complainant filed a motion for reconsideration arguing that the order misapprehended and overlooked law and facts, and he asserted that third-degree felonies in the state did not carry a life sentence. In March 2018 a panel comprised of Judges _____ and _____ denied the motion for reconsideration, determining that Complainant offered no new evidence or arguments of merit to warrant relief. After that, the appeal was clerically dismissed for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant asserts that the Subject Judges "displayed a mental defect" because they addressed "issues not presented," and he states that he never raised a double jeopardy claim and is not serving a life sentence. He asserts that the Subject Judges are either "suffering with mental deform[i]ties" that cause them to be "unable to discern issues," or their actions are "purely criminal with intent to violate" the law. Complainant also states that the Subject Judges "agreed to violate" the United States Constitution and "agreed to commit fraud by" stating that he is serving a life sentence and that he raised a double jeopardy claim. He attached documents to his Complaint.

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 issued in his appeal, 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 suffered from a disability, acted with an illicit or improper motive, agreed to commit fraud, 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