

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90006

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 24 2019

David J. Smith
Clerk

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Circuit Judge for 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 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”).

Background

The record shows that in 1997 a jury found Complainant guilty of a drug-related offense, and he was sentenced to a term of imprisonment. After various additional proceedings, in October 2015 his sentence was reduced under 18 U.S.C. § 3582(c)(2). In April 2018 he filed a 28 U.S.C. § 2255 motion, raising various challenges to his conviction and sentence. The next month, a magistrate judge issued a report recommending that the § 2255 motion be summarily dismissed for lack of jurisdiction as an unauthorized second or successive motion to vacate. Over Complainant’s objections, the district judge adopted the report and recommendation, summarily dismissed Complainant’s § 2255 motion, and denied him a certificate of appealability (COA).

Complainant appealed and moved for a COA and for leave to proceed in forma pauperis (IFP). In January 2019 the Subject Judge entered an order denying Complainant’s motion for a COA as unnecessary and denying his IFP motion, determining that any appeal would be frivolous because the district court correctly found that his § 2255 motion was impermissibly second or successive. In a footnote, the Subject Judge stated that Complainant’s 2015 sentence reduction did not constitute an intervening judgment rendering his § 2255 motion not second or successive. Complainant filed a motion for reconsideration, and a two-judge panel that included the Subject Judge denied the motion. In March 2019 this Court clerically dismissed the appeal for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge's January 2019 order "was designed to 'obstruct' the COA process, and to improperly influence" the Judicial Council's decision in another Complaint of Judicial Misconduct or Disability matter that was filed against the district judge. Complainant asserts that the Subject Judge ruled that his appeal was frivolous in a "demonstrably egregious and hostile manner" and "misrepresented the law and facts" of his case by stating that his 2015 sentence reduction did not constitute an intervening judgment. Complainant contends that the Subject Judge's previous orders in other appeals demonstrate that his § 2255 motion did not rely on the 2015 intervening judgment.

Complainant also alleges that the Subject Judge retaliated against him "by changing [his] 'newly discovered evidence' of September 2017 to the district court's 'intervening judgment' of October 2015" in order to rule that his appeal was frivolous and "to punish" him for filing a Complaint of Judicial Misconduct or Disability against the district judge. Complainant asserts the Subject Judge conspired with the district judge and prosecutors to deny him access to the COA process and acted to "conceal and cover-up" his "illegal sentence and conviction." He attached various documents to his Complaint.

Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, "Allegations Related to the Merits of a Decision or Procedural Ruling," provides in part that "[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." The "Commentary on Rule 4" states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge's decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling 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, and orders in Complainant's appeal, 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 sought to

influence the Judicial Council's decision in another Complaint of Judicial Misconduct or Disability matter, treated him in a demonstrably egregious and hostile manner, retaliated against him, was part of a conspiracy, 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