

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90177

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAR 17 2021

David J. Smith
Clerk

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States District Judge
_____ of the United States 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 a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in October 2013 a federal grand jury issued a superseding indictment charging Complainant with three counts involving child pornography and one count of possession of ammunition by a convicted felon. The next month, Complainant entered into a written plea agreement in which he agreed to plead guilty to three counts in the superseding indictment and the government agreed to dismiss the remaining count, and the Subject Judge accepted the guilty plea.

In January 2014 the government filed an *ex parte* motion for the court to take account of Complainant’s substantial assistance to the government. The motion set out that: (1) prior to the issuance of the superseding indictment, Complainant shared with his counsel that he witnessed an inmate, _____, solicit a fellow inmate to intimidate and hurt another individual; (2) Complainant testified against _____ at _____ hearing on the violation of his supervised release; and (3) Complainant testified even though he knew that there were connections to a criminal network in federal prison “who violently discipline anyone who ‘snitched.’”

In February 2014 the Subject Judge sentenced Complainant to a total term of 180 months of imprisonment. In a sealed Statement of Reasons, the Subject Judge stated:

It is the court's intent that the defendant be designated to a Bureau of Prisons facility in the Northeastern section of the United States so that there will be a low or minimal chance of the defendant being housed at an institution with members of the _____ or the _____. The court directs the Bureau of Prisons not to house the defendant at the same institution or facility as any member of [those groups]. Additionally, the defendant should not be housed at the same institution or facility with [_____].

The Subject Judge also noted that she considered Complainant's extraordinary assistance to the government in prosecuting a dangerous criminal, which the government acknowledged resulted in a credible threat to Complainant.

In August 2016 Complainant filed a petition to change his legal name to protect him following his testimony against _____, and the Subject Judge denied the motion, stating she did not have authority over the Department of Justice or Bureau of Prisons (BOP) to require a legal name change or otherwise conceal Complainant's identity. After additional proceedings, in July 2019 the case was reassigned to another district judge and the Subject Judge was no longer assigned to the case. Since then, there has been additional activity in the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant asserts the Subject Judge failed to protect him and placed his life in danger in connection with his testimony against _____. Complainant contends that, after he was sentenced, the Subject Judge drafted an "illegal order" instructing the BOP to do something it was not authorized to do, and he takes issue with the Subject Judge's "key words" in the Statement of Reasons, "it is the court's intent" and "the court directs the Bureau of Prisons not to"

Complainant states, "Clearly this is a written order/directive," not a recommendation, and that she had no authority to issue such an order. He contends the statements constitute a "dangerous fabricated deceiving lie" that have caused him anguish and suffering. He states he was sent to a prison with "many dangerous _____ inmates in it" and a "long long way from that Northeastern section of the USA that [the Subject Judge] 'ordered' the BOP to send" him.

Next, Complainant states that the Subject Judge "placed a stop order hold" on him when she found out he was being sent to the place where _____ was sent, and that

the Subject Judge then authorized the BOP to send Complainant to a facility that was not in the Northeastern part of the United States. He asks why the Subject Judge disregarded her own written order in the Statement of Reasons and asks whether she was “trying to get [him] killed.” He states he sought to have his name from the sex offender registry, but the Subject Judge “denied everything.”

Complainant alleges the Subject Judge: (1) engaged in abusive or harassing behavior and criminal misconduct; (2) “was under the influence of something such as drugs/alcohol, that may [have] caused mental deficiency disability”; (3) lied; and (4) engaged in an egregious abuse of authority. He also takes issue with the actions of individuals other than the Subject Judge, and he attached documents to his Complaint.

Supplement

In his supplemental statement, Complainant: (1) asserts certain documents he filed in the district court were not docketed; (2) discusses his fear and depression, as well as the danger he has been in at his places of confinement; (3) asserts the Subject Judge “threw [him] to the wolves” and “failed to responsibly address” the danger he is in; and (4) alleges the Subject Judge and Assistant United States Attorney covered for each other and concealed a crime. He attached various documents to the supplement.

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, rulings, findings, orders, and comments in the Statement of Reasons, 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 lied, engaged in abusive or harassing behavior, committed or sought to cover up a crime, was under the influence of drugs or alcohol, suffered from a disability, abused her authority, sought to cause harm to 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**.

/s/ William H. Pryor Jr.

Chief Judge