

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

**11-21-90031**

**FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL**

**OCT 04 2021**

**CIRCUIT EXECUTIVE**

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

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**ON PETITION FOR REVIEW**

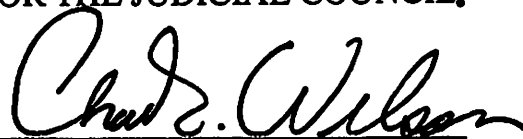
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Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges;  
COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioner's complaint filed on April 13, 2021, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on July 1, 2021, and the petition for review filed by petitioner on August 9, 2021. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

The Judicial Council Review Panel hereby **AFFIRMS** the disposition of this matter by Chief Judge Pryor. The petition for review is **DENIED**.

**FOR THE JUDICIAL COUNCIL:**



**United States Circuit Judge**

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUL 01 2021

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-21-90031**

**IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_**

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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.

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**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”).

Background

The record shows that in June 2018 a federal grand jury issued an indictment charging Complainant with, among other things, producing child pornography (Count Two) and enticing a minor to engage in sexual activity (Count Three). Complainant was initially represented by retained counsel. In October 2018 Complainant pleaded guilty to Counts Two and Three pursuant to a written plea agreement in which he admitted to the facts set forth in an attached “Factual Basis” that generally described the offenses.

At a change-of-plea hearing that same month, Complainant testified under oath as to various matters, including that he: (1) had the opportunity to read and understand the plea agreement; (2) had not been threatened or intimidated into pleading guilty; (3) had not been made any additional promises other than what was in the plea agreement to cause him to enter the plea; (4) was satisfied with his attorney’s representation; (5) understood that the terms of the plea agreement were merely recommendations and that the court could sentence him up to the maximum penalty without allowing him to withdraw his plea; (6) wished to plead guilty; and (7) did not have any disagreement or objections to the statement of facts in the plea agreement. The Subject Judge found Complainant intelligently, freely, and voluntarily waived his rights in entering the plea, found there was a factual basis for the plea, and accepted the plea. After that, a magistrate judge entered an order appointing counsel to represent Complainant.

In March 2019 the government filed a sentencing memorandum arguing Complainant should receive a term of life imprisonment. The next day, Complainant, through counsel, filed a motion to withdraw his guilty plea in which he stated, among other things: (1) after entry of his plea, the government disclosed evidence that he had been engaged in a “murder-for-hire” plot to kill the minor accusing witness in the case; (2) his previous attorney told him he would receive either probation or house arrest in exchange for his assistance in an investigation into foreign interference in a presidential election; (3) despite his testimony at the plea hearing, he never actually read the plea agreement; and (4) he signed the plea agreement without reading it because his counsel told him to and told him he would be released from custody after he pled guilty. Later that month, the Subject Judge issued an order denying the motion to withdraw the plea.

At a hearing in April 2019, the Subject Judge read his order denying Complainant’s motion to withdraw his guilty pleas. The Subject Judge stated that: (1) Complainant not only claimed to have committed perjury at the plea hearing, but also accused his attorney of suborning perjury; (2) there was “no doubt” Complainant intelligently, freely, and voluntarily waived his rights in entering the plea and there was a factual basis for the plea; and (3) Complainant’s claims in his motion were not credible. After that, Complainant argued he had been coerced to make the statements he made at the plea hearing, the evidence was insufficient for him to be found guilty of the underlying offenses, and his attorney at the plea hearing had a conflict of interest. The Subject Judge again found that Complainant entered his plea intelligently, freely, and voluntarily and that there was a clear and unambiguous factual basis for the plea.

The Subject Judge then stated he was going to rely primarily and exclusively on the facts agreed to in the plea agreement and that if there was anything additional the government intended the court to rely on, it would have to provide evidence at the hearing. In discussing the objections to the Presentence Investigation Report (PSI), Complainant’s counsel withdrew an objection to a sentencing enhancement for a pattern of conduct because he did not raise it within a certain time and was not seeking leave to raise it, and the Subject Judge responded that it was a “strategic decision on your part.” The government then called two law enforcement officers who testified as to various aspects of the offenses and Complainant’s efforts to have the minor victim murdered. Complainant also testified on his own behalf, and the Subject Judge then ruled on various objections to the PSI.

After the victim made a statement to the court and counsel made sentencing arguments, the Subject Judge sentenced Complainant to a total term of life imprisonment. Complainant filed a notice of appeal, as well as additional motions in the district court that, which the Subject Judge denied. In April 2020 this Court issued an opinion affirming the district court’s denial of Complainant’s motion to withdraw his guilty pleas.

## Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first contends that the indictment was defective, contained no facts found by the grand jury, and charged no crime against the United States. He alleges the Subject Judge's review of the plea agreement fell below the acceptable standards under Fed. R. Crim. P. 11, there was insufficient evidence in the stipulated factual basis to show that the crimes were committed, the Subject Judge constructively amended the indictment, the government had no standing, and the court lacked jurisdiction.

Complainant asserts that certain evidence was fabricated, subpoenas would prove no such evidence existed or that the evidence was fabricated, and that he has evidence to "disprove" certain matters "but the indigent situation prevents him to make copies." He alleges that the Subject Judge knew and "did not care" that there was no evidence that he committed the crimes at issue, knew there was no evidentiary foundation for certain material, and knew a conviction based only on self-serving testimony could not be sustained. He also contends the Subject Judge abused his power by holding a hearing in the absence of jurisdiction.

Next, Complainant states that the night before his sentencing hearing, his appointed counsel visited him, "threatened [him] with message of His Honor," and warned him that if he did not agree to withdraw all his objections to the PSI and seek mercy from the court, "His Honor threatened me with life sentence." He asserts that video footage would provide corroborating circumstantial evidence and that what transpired at the sentencing hearing also corroborates the incident.

Complainant then contends that the Subject Judge: (1) "erroneously made conclusory findings" in denying the motion to withdraw the plea; (2) admonished him at sentencing for using perjury as a reason to withdraw his plea; (3) abused his power by failing to hold an evidentiary hearing; and (4) knew Complainant's counsel violated his constitutional rights by accusing him of perjury to support withdrawal of his plea. He alleges the Subject Judge's order denying the motion to withdraw his plea was the result of "bias and improper motive." Complainant states the Subject Judge seemed "disgusted" when he claimed innocence, despite the "common fact" that most individuals plead guilty despite being innocent on the advice of counsel. He alleges the Subject Judge "improperly vouched" for appointed counsel when he stated counsel made a strategic decision to withdraw a certain objection, and he asks why the Subject Judge would want to protect counsel's "scurrilous acts."

Complainant then alleges the Subject Judge: (1) "made question[ ]able rulings on enhancements, eventually standing true to its threats sent via counsel"; (2) failed to resolve certain issues; (3) failed to allow the defense to make arguments on objections, which violated his constitutional rights; (4) stated he would rely on the facts in the plea

agreement, but considered matters outside of the agreement; (5) sustained an enhancement based on unsupported fact-finding; (6) made an “unavailing and unreasoned” assessment that Complainant attempted to provide assistance of the government; (7) “preemptively trusts” government witnesses; (8) improperly interjected himself into the sentencing hearing by stating that the court had performed its duties appropriately; and (9) “pretend[ed]” to be an honest judge.

Complainant states the Subject Judge’s “ethics and ability to adjudicate impartially must be evaluated” and the “investigation must also inquire into political alliances of His Honor and any contributions what so ever.” He also alleges his appointed counsel had a conflict of interest and provided deficient representation, that he was convicted based on a plot by others to silence him, and the government breached the plea agreement. Finally, he takes issue with the actions of individuals other than the Subject Judge.

### 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, rulings, and orders in the above-described case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge acted with an illicit or improper motive, abused his power, was biased against Complainant or in favor of the government, threatened Complainant, improperly vouched for counsel or sought to protect counsel, was not impartial, 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