

JAN 26 2022

CIRCUIT EXECUTIVE

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

11-21-90101

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


ON PETITION FOR REVIEW

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 September 16, 2021, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on November 8, 2021, and the petition for review filed by petitioner on November 23, 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
NOV 08 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-21-90101

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”).

Background

The record shows that in June 2010 a federal grand jury issued a superseding indictment charging Complainant and three codefendants with multiple crimes. The indictment set out that: (1) the _____ (“the Vessel”) was a cargo ship registered in _____; (2) Complainant performed classification surveys and issued certifications to ships registered in _____ on behalf of the government of _____; (3) the United States is a party to an international treaty that regulates the discharge of oil from vessels at sea, the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (MARPOL); (4) a statute makes it a crime for any person to knowingly violate MARPOL; and (5) _____ was a party to MARPOL and the “flag state” of the Vessel. The indictment specifically charged Complainant in Count 27 with knowingly violating MARPOL by failing to conduct a complete survey of the Vessel, and in Count 28 with knowingly making a false official statement that the Vessel complied with MARPOL.

The case proceeded to trial, and at the conclusion of trial, a jury found Complainant guilty of Counts 27 and 28. Complainant and another defendant filed a joint motion for judgment of acquittal, which the Subject Judge denied. In December 2010 the Subject Judge sentenced Complainant to a total term of five years of probation. Complainant appealed, and in August 2012 this Court affirmed his convictions.

The record shows that in April 2018 Complainant filed a Petition for a Writ of Error Coram Nobis in which he argued, among other things, that: (1) he had received ineffective assistance of counsel at trial; (2) fraud had been committed; (3) evidence had been fabricated or omitted; (4) the government engaged in malicious prosecution; and (5) the government knowingly presented perjured testimony at trial. In June 2018 the Subject Judge issued an order denying Complainant's petition, finding he offered no sound reasons for failing to seek relief earlier.

The record also shows that in November 2019 Complainant filed another Petition for a Writ of Error Coram Nobis in which he argued that the government fraudulently alleged that the Vessel was operating under the authority of _____ when it knew the Vessel was operating under the authority of _____. The Subject Judge entered an order denying the petition, finding Complainant had not advanced any additional grounds to grant the extraordinary relief sought.

In December 2019 Complainant filed another Petition for a Writ of Error Coram Nobis in the case. The Subject Judge entered an order denying the petition and warning Complainant that further abusive litigation could result in sanctions. Complainant appealed the denial of this third petition, and this Court later granted the government's motion for summary affirmance, holding Complainant failed to present sound reasons for failing to seek relief earlier and failed to demonstrate any fundamental error that made his prosecution irregular and invalid.

In January 2021 in the original criminal case, Complainant filed a motion for leave to file a *coram nobis* petition, arguing that exculpatory evidence had been withheld that caused a "jurisdictional error" in the case. Later that month, the Subject Judge issued an order denying the motion for leave to file and directing Complainant to show cause why sanctions should not be imposed. In February 2021 the Subject Judge entered an order imposing sanctions on Complainant and directing the clerk not to accept further pleadings pertaining to his convictions unless signed by a member of the court's bar.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally contends that he was not guilty of the charged crimes, alleging the Subject Judge and others "refused to disclose the Permanent Ship Flag State Registration over MARPOL," and that it was undisputed that he "was not a _____ surveyor over MARPOL." Complainant asserts it is "undisputed" that prosecutors engaged in misconduct in his case by, among other things, falsifying facts and failing to disclose exculpatory evidence, which caused the process to be "irregular or invalid." He contends the Subject Judge refused, without good cause, to investigate the prosecutorial misconduct.

Complainant states the record shows there was a “multi-judge corruption scheme” and a “bribery crime scheme.” He alleges the Subject Judge acted with an illicit or improper motive, abused his power, had a personal bias or prejudice against Complainant, had personal knowledge of disputed evidentiary facts, denied Complainant a fair trial, violated his oath of office “by lying and cheating the jury,” and misrepresented the applicable statutes and rules. Complainant contends the superseding indictment was unconstitutional, the court lacked jurisdiction, and the statute was void for vagueness. He also takes issue with the actions of individuals other than the Subject Judge, and he attached documents to his Complaint.

Previous Complaint

In March 2021 Complainant filed a Complaint of Judicial Misconduct or Disability against the Subject Judge, No. _____. In that complaint, Complainant alleged that the Subject Judge: (1) knew that the Vessel was “flagged and operating under _____ rather than _____ at the time of MARPOL violation” and “knowingly and willfully altered” the Vessel’s country; (2) committed a fundamental error that made his prosecution irregular and invalid; (3) refused to cooperate in the investigation of a complaint; and (4) failed to disclose exculpatory evidence, rendered a void judgment, and lacked jurisdiction in the case.

Complaint No. _____ was dismissed in May 2021. Complainant filed a petition for review, and the Judicial Council Review Panel affirmed the dismissal and denied the petition for review in August 2021.

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.

Furthermore, when a complaint repeats allegations of a previously dismissed complaint, it is appropriate to dismiss those allegations and address only any allegations that have not previously been considered. *See* JCDR 11(c)(2).

Complainant's claims concerning the Subject Judge's alleged falsification of facts, refusal to cooperate in an investigation, and failure to disclose exculpatory evidence have already been considered in connection with his earlier Complaint of Judicial Misconduct or Disability. To the extent Complainant raises allegations that have not previously been considered, the allegations that concern the substance of the Subject Judge's official actions, rulings, findings, and orders in the above-described cases 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, was biased, accepted a bribe, 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