

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

JAN 04 2022

David J. Smith
Clerk

Judicial Complaint Nos. 11-21-90128 through 11-21-90130

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge _____ and United States District Judge _____ of the United States District Court for the _____ District of _____ and United States Circuit Judge _____ of the United States 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 Magistrate Judge _____, United States District Judge _____, and United States Circuit Judge _____ (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 September 2016 a federal grand jury issued an indictment charging Complainant with seven counts of distributing a controlled substance outside the usual course of professional practice and for other than legitimate medical purposes, in violation of 21 U.S.C. § 841(a)(1). The indictment also contained a forfeiture provision that included citations to subsections of 21 U.S.C. § 853, which is entitled “Criminal forfeitures.” After various proceedings, Complainant filed a motion *in limine* to allow him to be referred to as a “doctor” during trial, and Judge _____ granted the motion during the first day of trial. In June 2018 a jury found Complainant guilty as charged in the indictment.

At the sentencing hearing in September 2018, after Complainant’s attorney argued for a downward variance, Judge _____ stated, “I think your client is a monster. I think your client knowingly and willfully profited on the addiction and the misery of others.” Judge _____ later stated, “I stand by my statement that I believe your client is a monster, but not just a monster, an arrogant monster.” Judge _____ ultimately sentenced Complainant to a total term of 235 months of imprisonment, which was the low end of his guideline range.

Complainant appealed, and in October 2020 a panel of this Court that included Judge _____ sitting by designation issued an opinion affirming his convictions and sentences. The panel held, among other things, that: (1) the district court did not improperly calculate his sentencing guidelines range in violation of the *ex post facto* clause; (2) the court did not err in applying an obstruction-of-justice enhancement; (3) Judge _____ statement that Complainant was an arrogant monster may have been harsh, but appropriately characterized the feeling of the community harmed by his misbehavior; and (4) the 235-month sentence was not substantively unreasonable.

In March 2021 Complainant filed a motion to reduce his sentence pursuant to the First Step Act based on his “terminal medical condition.” He also filed a motion for the appointment of counsel, and Judge _____ denied the motion, generally finding he did not establish entitlement to the appointment of counsel. In May 2021 Judge _____ issued an order denying the motion for a sentence reduction, finding in part that Complainant did not establish an extraordinary and compelling circumstance justifying release. The order stated that the indictment charged Complainant with seven counts of unlawfully distributing a controlled substance “in violation of 21 U.S.C. § 853(a)(1) and (2).”

Complainant filed a notice of appeal and a motion for leave to proceed *in forma pauperis* (IFP) on appeal. Judge _____ issued a report recommending that the motion be denied, finding Complainant had not demonstrated that his issues on appeal were non-frivolous. In July 2021 Judge _____ entered an order adopting the report and recommendation and denying the IFP motion. In setting out the background, the order quoted from the Judge _____ previous order, including the statement that Complainant was charged with violating “21 U.S.C. § 853(a)(1) and (2).”

After that, Complainant filed another motion to proceed IFP on appeal and a motion to appoint counsel. Judge _____ then issued a report recommending that the IFP motion be denied and an order denying the motion to appoint counsel. In October 2021 this Court dismissed as frivolous Complainant’s appeal of the denial of his motion to reduce his sentence. The next month, Complainant filed in the district court a motion to recuse Judge _____, alleging in part that he exhibited bias against Complainant and caused exculpatory material to be removed from the record, and Judge _____ denied the motion to recuse.

In October 2021 Complainant filed a 28 U.S.C. § 2255 motion to vacate, correct, or set aside his sentence and a supporting memorandum. Judge _____ then issued an order directing Complainant to file an amended § 2255 motion that included all the claims he intended to raise, and Complainant filed an amended § 2255 motion in November 2021.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that Judge _____: (1) exhibited “severe bias and misconduct of judicial prejudice” in violation of the Code of Conduct for United States Judges; (2) “altered, modified, deleted, and otherwise caused the deletion of exculpatory and material evidence,” which prevented him from providing indispensable evidence on appeal; (3) conspired to direct others to remove evidence and obstruct justice; (4) violated certain criminal statutes; (5) was “guilty of reckless and criminal negligence by erroneously instructing the jury” regarding the elements of the offense and Complainant’s professional status; (6) failed to address or explain the “prejudice standard”; (7) erred in using the wrong version of the United States Sentencing Guidelines; (8) erred in applying certain sentencing enhancements; (9) increased Complainant’s sentencing range “in violation of ex post facto constitutional law”; (10) erred by not reducing his sentence pursuant to the First Step Act; (11) allowed the prosecution to coerce witnesses; and (12) erred in not dismissing the case because two witnesses did not testify at trial in violation of his right to face his accusers.

Next, Complainant contends that Judge _____ imposed an excessive sentence. He states that Judge _____ “criminal sentencing is at least (60) sixty months higher than any other judge in any other district court in the United States,” and that his “prejudicial trial bias and sentencing abuse of discretion” violated Complainant’s Eighth Amendment rights. Complainant asserts that Judge _____ conduct requires reversal of his conviction.

Complainant also alleges Judge _____ suffered from, among other things, a delusional disorder, paranoia, abnormal thinking, and auditory hallucinations. In support, Complainant states that Judge _____: (1) was unable to cite the statute pursuant to which Complainant was charged; (2) spent six years in the military without receiving a promotion in rank; (3) is easily distracted; (4) determined Complainant could not be called “doctor” even though he has a medical degree; (5) dehumanized Complainant by referring to him as a “monster” and “arrogant” even though Complainant made no statements during trial; (6) responded to statements with “one or two words”; (7) perceived benign remarks or events as threatening; (8) responded aggressively to perceived slights against him; and (9) continued to bear a grudge against Complainant three years after his sentencing.

Complainant alleges Judge _____: (1) failed to respond to the motion to recuse Judge _____ that he filed and failed to respond to his § 2255 motion; (2) intentionally covered up Judge _____ misconduct; (3) became Judge _____ “accomplice in prejudicial judicial misconduct conspiring to remove evidence and obstruct justice”; and (4) committed misconduct by refusing to appoint him an attorney. Complainant alleges Judge _____ acted with “questionable authority” and

designated himself to the case “he was interested in destroying against” the Fourth and Sixth Amendments. Finally, Complainant asserts that the judges in the United States District Court for the _____ District of _____ engage in “extreme sentencing” that is more severe than any other district in the country, and that this Court acts as their accomplices to “rubber stamp their sentencing against constitutional law.”

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 Judges’ official actions, findings, rulings, reports, orders, and opinion in Complainant’s cases and appeal, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judges acted with an illicit or improper motive, improperly altered the record, committed crimes, were part of a conspiracy, covered up misconduct, suffered from a disability, 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