

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL
DEC 07 2023
CIRCUIT EXECUTIVE

CONFIDENTIAL

Before the Judicial Council of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-22-90175 through 11-22-90177

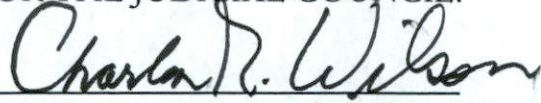
ORDER

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 the materials described in JCDR 18(c)(2), including petitioner's complaint, the order of Chief United States Circuit Judge William H. Pryor Jr., and the petition for review filed by petitioner. 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

JAN 11 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-22-90175 through 11-22-90177

ORDER

An individual has filed a Complaint against two United States circuit judges and one United States district judge under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–364, and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States.

Background

The record shows that in 2014 a federal grand jury issued an indictment charging Complainant with multiple counts related to alien smuggling. The case proceeded to trial where a jury found Complainant guilty as charged in the indictment. After additional proceedings, Complainant was sentenced to a term of imprisonment, and he appealed.

In July 2022, a panel of this Court composed of the Subject Judges, with the Subject District Judge sitting by designation,

issued an opinion affirming Complainant's convictions and sentences. Complainant then filed a petition for panel rehearing and rehearing en banc in which he argued in part that the indictment was defective. He also filed a motion arguing this Court lacked jurisdiction because his conduct did not violate the charging statute, but the motion was treated as moot in the light of an order issued by one of the Subject Judges ruling on various motions Complainant had filed. In December 2022, the Subject Judges issued an order denying the petition for panel rehearing and rehearing en banc.

Complaint

Complainant asserts that his conduct did not violate the charging statute as to various counts, which was a jurisdictional defect this Court was required to address, and he contends that another court was presented with the identical issue and vacated the defendant's convictions in that case. Complainant then alleges that the Subject Judges refused to consider the jurisdictional issue, refused to provide him with relief, violated his due process rights, acted deliberately to preserve his "unjust conviction," and failed to accept a timely filing raising the issue to "deliberately hamper" his appeal. He asserts that every ruling the Subject Judges made on appeal was "totally contradicted by the record." Complainant also takes issue with the actions of an individual who is not one of the Subject Judges, and he attached documents to his Complaint.

Discussion

Judicial-Conduct Rule 4(b)(1) 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 explains the rationale for this rule as follows:

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.

The Complaint fails to present a basis for a finding of misconduct. To the extent Complainant’s allegations concern the substance of the Subject Judges’ official actions, rulings, orders, and opinion on appeal, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Judicial-Conduct Rule 11(c)(1)(B). 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 or otherwise engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). For these reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge