

APR 03 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-23-90036

ORDER

An individual has filed a Complaint against a 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 February 2021 a federal grand jury returned an indictment charging Complainant and a codefendant with two drug-related crimes and charging Complainant with two additional drug-related crimes. Retained counsel later entered an appearance on Complainant's behalf. In June 2021, Complainant pleaded guilty to one charge pursuant to written plea agreement, and his codefendant pleaded guilty to a different charge.

At a hearing in September 2021, Complainant stated he wanted to terminate his counsel and “proceed pro se with the appointment of assisting counsel and investigative services.” The Subject Judge later stated, “And so your professional relationship with [counsel] has unfortunately – maybe fortunately for her -- reached its end,” “If we get to the same point with a next attorney, then we’re going to know who the problem was, right?” and “I think it’s a mistake to represent yourself.” Complainant’s attorney then moved to withdraw, and the Subject Judge granted the motion and appointed a new attorney to represent Complainant. After another conference, Complainant’s next attorney moved to withdraw, and the Subject Judge granted the motion and appointed new counsel to represent him.

In January 2022, Complainant filed a motion to withdraw his guilty plea, contending his initial attorney did not adequately explain or review the case and that one of his other attorneys did not adequately explain the plea agreement and did not provide or review any discovery with him in the case. At a hearing on the motion, Complainant’s attorney requested that the court order a psychological evaluation for him, and the Subject Judge later stated he “always need[s] to do this premortem analysis to determine what could go wrong if we continue on the path we’re on.” The Subject Judge then granted the request for a psychological evaluation and referred the case to a magistrate judge for a competency hearing. After a competency hearing, the magistrate judge entered an order determining that Complainant was not mentally competent and

directing that he be committed to the custody of the Attorney General for treatment for a reasonable time not to exceed four months. The case remains pending.

The record also shows that in October 2022 Complainant filed a *pro se* petition for writ of habeas corpus, 28 U.S.C. § 2241, challenging his continued detention and delay in connection with the competency proceedings. He also filed a motion to disqualify the Subject Judge for bias and prejudice and for violating Complainant's due process rights. In January 2023, the Subject Judge denied the habeas petition and the motion to disqualify. The Subject Judge ruled in part that the habeas petition alleged nothing extraordinary that would justify an exception to the general rule that a pretrial detainee should raise objections in his criminal case.

Complaint

Complainant alleges that the Subject Judge exhibited bias and prejudice "to assist a Selective & Prejudicial Prosecution" in an effort "to obtain an Unfair, Unethical, and Unconstitutional, criminal conviction." He alleges that, in June 2021, the Subject Judge accepted involuntary plea agreements and allowed his codefendant to receive a favorable plea agreement that was not offered to him.

Next, Complainant alleges that, at the hearing in September 2021, the Subject Judge allowed the government to conceal misconduct in connection with his codefendant's sentencing, attempted to sentence him on an unconstitutional conviction, twice interrupted him "in an effort to tailor the record," ignored his

request to proceed *pro se*, deprived him of his right to proceed *pro se*, misinterpreted his request to proceed *pro se* with “assistant counsel and investigative services,” misinformed him about what “investigative services” meant, and ignored his claims of ineffective assistance of counsel. Complainant also alleges the Subject Judge insulted him by stating it was “maybe fortunate[]” for his attorney that their professional relationship had ended, exhibited partiality by stating he wanted the attorney to continue representing Complainant, and inappropriately stated that if Complainant could not work with the next attorney “we’re going to know who the problem was.”

Complainant alleges that in October 2021 the Subject Judge replaced effective counsel with ineffective counsel, and that the next month, the Subject Judge engaged in misconduct by allowing Complainant’s new counsel to make an appearance on his behalf without first introducing himself to Complainant. He alleges that in February 2022 the Subject Judge allowed his attorney to obstruct his microphone to prevent him from making a statement and conducted a “‘Prejudicial’ premortem analysis on” him. He contends that in March 2022, the Subject Judge engaged in misconduct by failing to notify the chief district judge of a “Notice of Complaint” he had sent to the Subject Judge. He alleges that in April 2022 the Subject Judge neglected to address the Notice of Complaint, allowed his counsel to continue “intentionally misrepresenting” him, and “gambled” on his competency before making a decision on his motion to withdraw his plea. Finally, Complainant contends that

the Subject Judge failed to review his habeas petition promptly in order to protect the government's reputation and to keep him indefinitely detained.

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 Judge’s official actions, rulings, findings, and orders in the above-described cases, the allegations are directly related to the merits of the Subject Judge’s 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 Judge was biased or partial, acted with an illicit or improper motive, treated Complainant in a demonstrably egregious and hostile manner, 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