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David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-24-90021

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 a federal grand jury returned an indictment charging Complainant and a codefendant with three crimes. The case proceeded to a trial before the Subject Judge, and a jury found Complainant guilty as charged in the indictment. Complainant filed a motion for a new trial and a supplemental motion, arguing in part that a juror stated on a questionnaire that “it was not clearly explained about the unanimous voting of guilty or not guilty” and that the juror “truly felt [Complainant] wasn’t guilty.” The Subject Judge denied the motions, finding in part that

the court could not rely on a juror evaluation form in setting aside the verdict. The Subject Judge later sentenced Complainant to a term of imprisonment.

Complaint

Complainant states he believes the Subject Judge was unfairly biased and prejudiced at trial. He alleges the Subject Judge allowed the prosecutor to violate his rights to a fair trial by “bringing a witness back on the stand after they decided the pleaded [sic] the 5th Amendment,” allowed the prosecutor to threaten the witness with charges when the statute of limitations had expired, “allowed non-admissible material into” the trial, interrupted his attorney’s cross-examination of a witness, and “made an outburst in the presence of the Jury” by stating “This is Nonsense,” which was biased, prejudiced, and influenced the jury. Complainant also contends that the Subject Judge’s denial of his motion for a new trial “was error and was not fair.”

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 case, 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 prejudiced 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