

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 20 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-18-90005 through 11-18-90007

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judges _____ and _____ of the U.S. 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

_____ ¹ (“Complainant”) has filed this Complaint against United States
Magistrate Judge _____ and United States District Judges _____ and _____
(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 2010 a federal grand jury indicted
Complainant, along with a codefendant, on multiple drug and firearm-related charges. In
January 2011, at a hearing before Judge _____, Complainant pleaded guilty to two of
the counts. In May 2011 Judge _____ sentenced Complainant to a total term of 60
months of imprisonment. Complainant filed a notice of appeal, and this Court later
dismissed the appeal based on the appeal waiver in Complainant’s plea agreement. In
October 2011 Complainant filed a motion to reduce his sentence under the Fair
Sentencing Act of 2010, and Judge _____ denied the motion without prejudice as
premature. The next month, Complainant filed another motion to reduce his sentence
under the Fair Sentencing Act, and Judge _____ denied the motion several months
later. Complainant appealed, and this Court later dismissed the appeal based on his
motion for voluntary dismissal.

In March 2012 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside,
or correct his sentence, arguing, among other things, that he did not receive the benefit of
the Fair Sentencing Act in violation of the Equal Protection Clause of the Fourteenth

¹ Complainant’s first name is spelled “_____” on the district court’s docket sheet and in
some parts of the record.

Amendment. In November 2012 Judge _____ recommended that the § 2255 motion be dismissed, finding Complainant's challenges to his sentence based on the Fair Sentencing Act were procedurally barred and that his remaining claim would not support the grant of habeas relief. Over Complainant's objections, in December 2012 Judge _____ adopted Judge _____ recommendations and dismissed the § 2255 motion. After that, Complainant filed two motions for reconsideration, which Judge _____ denied.

Complainant then filed a motion to amend his § 2255 motion to add a claim of ineffective assistance of counsel, a motion for a certificate of appealability (COA), and a notice of appeal. Judge _____ denied the motion for a COA and referred the motion to amend to the magistrate judge for further consideration. Judge _____ later denied the motion to amend, as well as a motion for "plain error review" that Complainant had filed. Complainant appealed that order, and this Court later dismissed the appeal for lack of jurisdiction.

In February 2013 Complainant filed a motion to be resentenced and to withdraw his appeal. A few days later, Judge _____ dismissed the motion, stating that the court believed it had made clear that Complainant was not entitled to a sentence reduction and "[t]hat will not change no matter how many times he requests that relief." In August 2013 this Court granted Complainant a COA on the issue of whether the district court erred in dismissing his § 2255 motion as procedurally barred without addressing his claim of ineffective assistance of counsel. In September 2014 this Court affirmed the dismissal of Complainant's § 2255 motion, holding that the district court did not abuse its discretion in denying his request to amend the motion to raise a claim of ineffective assistance of counsel.

Meanwhile, in February 2013 Complainant filed another § 2255 motion to vacate, arguing that he should have received the benefits of the Fair Sentencing Act. The next month, Judge _____ recommended that the § 2255 motion be dismissed as an unauthorized second or successive motion to vacate. In April 2013 Judge _____ adopted the recommendation and dismissed the § 2255 motion.

The record also shows that in June 2015 Complainant and another individual filed a lawsuit against the Subject Judges and others in which they, among other things, took issue with the Subject Judges' rulings and orders pertaining to the Fair Sentencing Act in Complainant's criminal and habeas cases. The defendants filed motions to dismiss the complaint. In November 2016 a magistrate judge who is not one of the Subject Judges recommended that the case be dismissed as time-barred, as well as because the federal defendants were absolutely immune from suit, and because a Bivens action could not be sustained against the other defendants. Over the plaintiffs' objections, in January 2017 a district judge who is not one of the Subject Judges entered an order adopting the

magistrate judge's recommendation, and the case was dismissed. The district court's judgment was affirmed on appeal.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the Subject Judges' findings, rulings, and orders in his criminal and habeas cases pertaining to the Fair Sentencing Act. He alleges that the Subject Judges: (1) conspired with the federal government "to discriminate against" the Fair Sentencing Act, in violation of the Equal Protection Clause; (2) acted with bias and impropriety; (3) conspired with the "United States Attorney Administration Office and The Federal Probation Staff" to violate the Fair Sentencing Act; (4) "made non-judicial decisions" in the cases; (5) "did not consider the legal[] and factual standards and rulings," such that they "must have had another improper motive" for ruling against him; and (6) "conspired with the Federal Government knowingly the [sic] Fair Sentenc[ing] Act of 2010 was in violation and in the Face of clearly valid statutes or caselaw expressly depriving them of jurisdiction, subjected them to Recklessly and Judicial Misconduct as Article III Judges." Complainant also asserts that Judge _____ made a "hostile statement" in an order when he stated: "that will not change no matter how many times Complainant request[s] that relief."

Discussion

Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include "an allegation that is directly related to the merits of a decision or procedural ruling." The Rule provides that "[a]n allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." *Id.* The "Commentary on Rule 3" states in part:

Rule 3(h)(3)(A) 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 power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge's ruling. Any allegation that calls into question the correctness of an official action 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, recommendations, and orders entered in the cases, the allegations are directly related to the merits of the Subject Judges' decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his

allegations that the Subject Judges were part of a conspiracy, acted with an illicit or improper motive, treated Complainant in a demonstrably egregious and hostile manner, 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.**

A handwritten signature in black ink, appearing to read 'E. Lamer', is written above a horizontal line.

Chief Judge