

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90081

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 29 2018

David J. Smith
Clerk

IN THE MATTER OF A COMPLAINT FILED BY _____

**IN RE: The Complaint of _____ against _____, U.S. District Judge for
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

_____ (“Complainant”) has filed this Complaint against United States District Judge _____ (the “Subject Judge”), 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 December 2014 Complainant was charged with possession of 15 or more unauthorized access devices, and he pleaded guilty a few months later. In June 2015 the Subject Judge sentenced him to a term of 108 months of imprisonment. The Subject Judge later reduced his sentence to a term of 52 months of imprisonment under Fed. R. Crim. P. 35. Complainant’s conviction and sentence were affirmed on appeal.

In January 2018 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence, arguing in part that his trial counsel was ineffective for failing to correct false information that was used against him at sentencing. Complainant also filed a Motion for Bond, which a magistrate judge denied. Complainant then filed, among other things, a motion to recuse the Subject Judge, arguing that in his criminal case she had made statements pertaining to a previous trial where Complainant was a defendant and that her statements indicated that she was not impartial.

In March 2018 Complainant filed an objection to the magistrate judge’s order denying his Motion for Bond, challenging certain sentencing enhancements he had received. The Subject Judge issued an order overruling the objection, finding that the magistrate judge’s order was not clearly erroneous or contrary to law. The Subject Judge’s order stated that the proper vehicle for challenging sentencing enhancements was

a direct appeal and that Complainant had failed to raise the issue on direct appeal or in his § 2255 motion.

Complainant filed a notice of appeal as to the rulings on his Motion for Bond, which was construed as a motion for a certificate of appealability (COA). The Subject Judge issued an order denying the motion for a COA, finding that Complainant did not make a sufficient showing, and this Court later denied him a COA. In April 2018 the Subject Judge entered an order denying the motion to recuse.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first states that he received ineffective assistance of counsel which caused the Subject Judge to rely on false information in imposing his sentence. He then notes that in her order denying his Motion for Bond, the Subject Judge stated that Complainant failed to challenge the imposition of sentencing enhancements on direct appeal or in his § 2255 motion. He states, “It is perfectly clear from the record that [the Subject Judge] is incorrect and that she misapprehends the chain of events.”

Complainant takes issue with the Subject Judge’s order denying him a COA, stating it is “obvious from the record” that his Sixth Amendment rights were violated. Finally, he asserts that the Subject Judge “committed perjury by violation of the oath of office” and “failed to uphold and enforce the Constitution of the United States of America (specifically the Sixth Amendment).”

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 Judge's official actions, findings, rulings, and orders in Complainant's cases, the allegations are directly related to the merits of the Subject Judge's 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 claims that the Subject Judge committed perjury, violated her oath of office, 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. J. Lane", written over a horizontal line.

Chief Judge