

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-19-90010

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

FEB 03 2020

CIRCUIT EXECUTIVE

**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW*

Before: WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, and GRANT, Circuit Judges; MOORE, MERRYDAY, THRASH, COOGLER, LAND, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, William Pryor, Martin, Land, and Walker, the order of Chief Judge Ed Carnes, filed on 5 September 2019, and of the petition for review filed by the complainant on 21 October 2019, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:

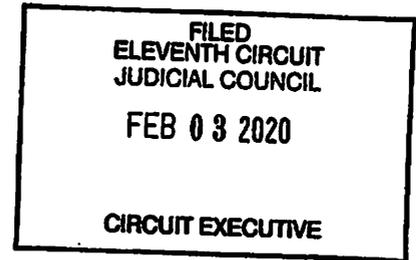


United States Circuit Judge

* Chief Circuit Judge Ed Carnes did not take part in the review of this petition.

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-19-90011



**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW*

Before: WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, and GRANT, Circuit Judges; MOORE, MERRYDAY, THRASH, COOGLER, LAND, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, William Pryor, Martin, Land, and Walker, the order of Chief Judge Ed Carnes, filed on 5 September 2019, and of the petition for review filed by the complainant on 21 October 2019, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:

United States Circuit Judge

* Chief Circuit Judge Ed Carnes did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

SEP 05 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-19-90010 and 11-19-90011

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against 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

_____ (“Complainant”) has filed this Complaint against 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 November 2011 a federal grand jury indicted Complainant, along with two codefendants, on drug and firearm-related charges. In January 2012 Complainant, who was represented by _____, pleaded guilty to the charges, and a magistrate judge issued a report recommending that the plea be accepted. No objections were filed, and in late January 2012 Judge _____ entered an order accepting the guilty plea.

At a May 2012 hearing on a motion to continue the sentence hearing, Judge _____ stated that _____ had already filed objections to the Presentence Investigation Report (PSI), and the sentence hearing would not be continued just because Complainant had retained a different attorney to represent him. At the sentence hearing later in May 2012, Complainant stated that he had informed _____ in January 2012 that he intended to withdraw his plea and retain new counsel. Judge _____ then asked if Complainant would want to withdraw his plea if he were charged with a lower quantity of drugs, and Complainant responded in the negative. Judge _____ sentenced Complainant to a total term of 180 months of imprisonment. The district court’s judgment was affirmed on appeal.

The record also shows that in January 2014 Complainant filed a 28 U.S.C. § 2255 motion contending that his counsel was ineffective for failing to file a motion to

withdraw Complainant's guilty plea before it was accepted. In October 2015 Judge _____ entered an order denying the § 2255 motion, generally finding that Complainant failed to show that his counsel had been ineffective. Complainant appealed, and in March 2018 this Court vacated Judge _____ order and remanded the case for the district court to hold an evidentiary hearing to determine whether counsel had been instructed to withdraw the plea before it was accepted.

After that, the case was reassigned to Judge _____ as the presiding district judge, and an evidentiary hearing was held in August 2018. At the hearing, Judge _____ noted that he had read the parties' pre-trial statements. The government called _____ who testified that Complainant had informed him in January 2012 that he was hiring a different attorney and was going to withdraw his plea, but Complainant never directed him to withdraw the plea. After _____ testimony, he was excused.

Complainant testified that in January 2012 he asked _____ to file a motion to withdraw the plea, and _____ responded that he would not do so. At that point, Judge _____ stated that he wanted _____ to return because he was released without being made aware Complainant was going to claim he gave _____ specific instructions to withdraw the plea. After a recess, Complainant continued his testimony. _____ was later called back to the stand, and he testified that Complainant did not direct him to file a motion to withdraw the plea before the plea was accepted.

Later in August 2018, Judge _____ issued an order denying Complainant's § 2255 motion, generally finding that _____ did not render ineffective assistance of counsel. Judge _____ determined that _____ testimony was more credible than Complainant's testimony, that Complainant never directed _____ to file a motion to withdraw the plea, and that Complainant had not shown any prejudice. After that, Complainant filed, among other things, a notice of appeal and a motion to correct the record, contending that the transcripts did not accurately reflect what had happened at the evidentiary hearing. Judge _____ denied the motion, finding that Complainant failed to show any material omissions or misstatements in the transcript. Complainant appealed the denial of his § 2255 motion, and this Court denied a certificate of appealability. Complainant also appealed the denial of his motion to correct the record, and that appeal was clerically dismissed for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant asserts that Judge _____ statement during the May 2012 hearing that _____ "filed" objections to the PSI "is [f]alse and is intended to reconcile a conflict of interest between _____" and Complainant. Complainant also states that, at the evidentiary hearing in August 2018, Judge _____ called a recess during which "it is believed that Judge _____ by and through himself or someone else in his office gave _____

specific orders to take the stand and testify falsely.” Complainant notes that Judge _____ stated he had read the parties’ pre-trial statements, and Complainant asserts that Judge _____ statement that he was not aware Complainant was going to claim that _____ was instructed to withdraw the plea “is false, and by calling _____ back and giving orders to commit perjury, Judge _____ suborn[ed] perjury.” Finally, Complainant states that the transcripts “have been edited to conceal other statements.”

Discussion

Complainant provides no credible facts or evidence in support of his allegations that the Subject Judges made false statements, that Judge _____ instructed _____ to commit perjury, or that the Subject Judges otherwise engaged in misconduct.

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 that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge