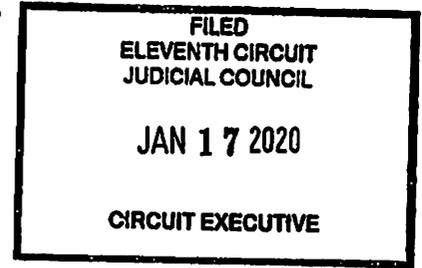


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-19-90034



**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 23 October 2019, and of the petition for review filed by the complainant on 4 November 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

OCT 23 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90034

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge
_____ of the United States 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 Magistrate 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 July 2013 Complainant was charged by information with one count of distribution of child pornography. Complainant filed a “Consent” in which he, among other things: (1) declared his intention to enter a plea of guilty; and (2) consented to have a United States magistrate judge conduct the plea proceedings and adjudicate him guilty based on his plea. At the plea hearing, Complainant pleaded guilty to the charge, and the Subject Judge accepted the plea and adjudged him guilty of the offense. In February 2014 the district judge sentenced Complainant to a term of 121 months of imprisonment. This Court later issued opinions affirming in part and dismissing in part Complainant’s appeal of the denial of his motion for free transcripts, and affirming the denial of his motion to stay collection of restitution.

In July 2017 Complainant filed in the district court a motion to vacate the judgment, which the district judge referred to the Subject Judge. The Subject Judge entered an order directing the clerk to docket the motion in a new civil action under 28 U.S.C. § 2255, and in August 2017 the motion to vacate was docketed as a § 2255 motion to vacate, set aside, or correct sentence. Later in August 2017, Complainant filed an amended § 2255 motion in which he argued in part that the Subject Judge’s acceptance of his guilty plea violated 28 U.S.C. § 636.

The Subject Judge directed the government to respond to the amended § 2255 motion, and it did so, arguing that the motion was untimely. Complainant filed a reply, asserting that he was entitled to equitable tolling due to his physical and mental disabilities. He also filed a motion for an evidentiary hearing, which the Subject Judge denied. Complainant appealed that ruling, and this Court later dismissed the appeal for lack of jurisdiction.

In May 2018 Complainant filed in the district court a “Motion for a Speedy Answer,” seeking a ruling on his § 2255 motion. The Subject Judge entered an order construing the filing as a motion to expedite a ruling on the § 2255 motion and denying it, finding that Complainant had failed to show good cause to expedite a ruling. Complainant filed a motion for reconsideration, which the Subject Judge denied. In September 2018 Complainant filed in this Court a petition for writ of mandamus seeking an order directing the district court to rule on his § 2255 motion, and this Court later clerically dismissed the petition for want of prosecution.

In February 2019 Complainant filed in the district court a “Motion for Summary Judgment,” generally arguing that there was no genuine dispute as to any material fact and that his § 2255 motion should be granted. The next day, the Subject Judge entered an order: (1) construing the motion for summary judgment as a motion to expedite ruling on the § 2255 motion; (2) denying the motion because Complainant had failed to show good cause to expedite a ruling on the § 2255 motion; and (3) advising the parties that no dispositive motions may be filed without permission of the court.

Complainant filed a motion under Fed. R. Civ. P. 72(b), seeking review of the Subject Judge’s order and objecting to the recharacterization of his motion for summary judgment. In March 2019 the district judge entered an order denying the Rule 72(b) motion, finding the putative motion for summary judgment was premature and the Subject Judge did not err by construing it as a motion to expedite or by advising the parties that no dispositive motions may be filed without permission. Complainant appealed that order, and this Court later dismissed the appeal for lack of jurisdiction.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends that the Subject Judge accepted his felony guilty plea in violation of 28 U.S.C. § 636, and he complains that the Subject Judge construed his Motion for Summary Judgment as a motion to expedite. Complainant alleges that the Subject Judge exceeded his authority in accepting the felony guilty plea and “by making rulings on documents that are dispositive, even going so far as to recharacteriz[e] them so that he then has jurisdiction to deny them.” He asserts the Subject Judge “is making decisions that, according to statute, should only be made by the District Court judge.”

Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “Allegations Related to the Merits of a Decision or Procedural Ruling,” 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” states in part:

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.

All of Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, rulings, and orders in the cases, and the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. With respect to Complainant’s argument that the Subject Judge exceeded his authority by accepting the felony guilty plea, this Court has held that a magistrate judge may accept a felony guilty plea and adjudicate a defendant guilty of an offense when the defendant consented to have the magistrate judge conduct the plea proceedings. See United States v. Woodard, 387 F.3d 1329, 1330-31 (11th Cir. 2004); see also Brown v. United States, 748 F.3d 1045, 1071 n.53 (11th Cir. 2014) (describing the Woodard decision and noting that a magistrate judge’s actions in plea proceedings are “akin to a report and recommendation rather than a final adjudication of guilt”).

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge