

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90084

IN THE MATTER OF A COMPLAINT FILED BY _____

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 06 2020

David J. Smith
Clerk

IN RE: The Complaint of _____ against United States District 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 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 August 2014 a federal grand jury returned a superseding indictment charging Complainant with producing child pornography (Count One), coercing and enticing a minor to produce child pornography (Count Two), and possessing child pornography (Count Three). After a four-day trial in October 2014, a jury found him guilty of all charges. In June 2015 the Subject Judge imposed concurrent sentences of 360 months imprisonment on Count One, life imprisonment on Count Two, and 120 months imprisonment on Count Three, each followed by concurrent life terms of supervised release.

In his direct appeal, Complainant contended that the Subject Judge erred in failing to suppress an incriminating pre-Miranda¹ statement and that his life imprisonment sentence was unreasonable. This Court affirmed Complainant’s convictions and sentences in August 2016.

In November 2016 Complainant filed a 28 U.S.C. § 2255 motion to vacate. As grounds for the motion, Complainant asserted (1) a Fourth Amendment violation; (2) the bad faith destruction of email evidence; (3) ineffective assistance of counsel; and (4) a Brady² claim stemming from the government’s alleged withholding of emails.

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

² Brady v. Maryland, 373 U.S. 83 (1963).

Complainant filed a civil rights complaint based on similar allegations, which the Subject Judge dismissed in May 2017.

Complainant filed multiple motions in his § 2255 proceeding. Included among them were: (1) a motion for a new trial based on newly discovered evidence; (2) a motion to compel the government to turn over certain evidence; (3) a motion for an evidentiary hearing; and (4) motions to amend his § 2255 motion as to the Brady claim.

In December 2018 Complainant filed a petition for a writ of mandamus asking this Court to direct the Subject Judge to rule on his § 2255 motion. In March 2019 this Court permitted him to proceed in forma pauperis and held in abeyance his mandamus petition for 60 days to allow for a ruling on his § 2255 motion. On May 2, 2019, the Subject Judge denied Complainant's § 2255 motion and resolved his other pending motions by granting his request to amend his § 2255 motion and denying all remaining motions. After that, this Court dismissed as moot the petition for a writ of mandamus.

Complainant filed a "notice of newly discovered evidence" arguing that his § 2255 motion should be reopened to consider new evidence. He also filed a motion for a certificate of appealability and a notice of appeal. The Subject Judge denied the request to reopen and the motion for a certificate of appealability on May 29, 2019. Complainant's notice of appeal was construed as a motion for a certificate of appealability. The appeal was clerically dismissed for want of prosecution in August 2019 because Complainant failed to pay the filing fee.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first contends that the Subject Judge acted improperly with respect to the jury in three ways. First, he states that during opening statements, the Subject Judge discreetly asked the government's attorney to move on from a particular point but then, in similar circumstances, more forcefully chastised his own attorney. Second, he states that the Subject Judge acted inappropriately through his body language during the government's examination of the victim. More specifically, Complainant points to the victim's testimony that the reason she changed her statement to law enforcement was that her mother told her to change her statement or she would go to jail. According to Complainant, the Subject Judge "looked away from [the victim] as if he didn't just hear the victim admit she [was] under duress." Complainant states that through his body language, the Subject Judge communicated to the jury that "he had already made up his mind about the case." Third, Complainant asserts that the Subject Judge acted improperly at sentencing by stating that he felt the jury "got it right" even though Complainant had stated that he was innocent.

Complainant also contends that the Subject Judge acted improperly in his § 2255 proceedings for several reasons. First, Complainant argues that in denying his § 2255 motion, the Subject Judge improperly relied on the reasoning that the issues he raised

should have been raised in his direct appeal. According to Complainant, this reasoning was flawed because he had explained that he tried to raise the issues on direct appeal but that his court-appointed lawyer repeatedly ignored his requests. Second, Complainant argues that the Subject Judge improperly overlooked his argument that evidence was withheld which would have revealed that he did not send certain emails from the email account at issue, based on an inconsistency in what name was shown as associated with the email account at issue. Complainant asserts that the Subject Judge (1) “flat out ignored th[e] Brady violation and never ruled on the issue,” including by failing to address a certain portion of the transcript raised by Complainant in seeking to amend his § 2255 motion; (2) failed to recognize an actual innocence exception to procedural default; (3) “has a clear prejudice and no amount of proof of [Complainant’s] innocence would ever be enough in his mind;” and (4) would have ordered an evidentiary hearing to better understand the evidence concerning the relevant emails if not for his prejudice.

Third, Complainant argues that the Subject Judge improperly denied his request to reopen and his request for a certificate of appealability, noting that the requests were denied in a two-page order and without an evidentiary hearing. Fourth, Complainant also argues that the Subject Judge “rushed through” ruling on his motions after this Court held in abeyance the petition for a writ of mandamus for 60 days. Complainant states that the Subject Judge “does not care about justice” and “felt pressed for time and didn’t care that an innocent person is kept in prison for a crime he didn’t do.”

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.

To the extent that Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, findings, and orders, 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 improperly

influenced the jury, failed to devote sufficient time to considering his motions, 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 "Ed Lamer", written over a horizontal line.

Chief Judge