

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAR 16 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90109

IN THE MATTER OF A COMPLAINT FILED BY _____

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 June 2008 a federal grand jury issued a superseding indictment charging Complainant and multiple codefendants, including _____, with various offenses. In February 2009 _____ pleaded guilty to a lesser-included offense in one count of the indictment, and in May 2009 he was sentenced to 235 months imprisonment. In May 2009 Complainant pleaded guilty to a lesser-included offense in one count of the indictment, and he was sentenced to 156 months imprisonment.

In February 2019 Complainant moved for appointment of counsel to assist him with filing a motion to reduce his sentence, under 18 U.S.C. § 3582(c)(2), based on the First Step Act, Pub. L. No. 115-391 (S.756), 132 Stat. 5194 (2018). That motion was also docketed as a motion to reduce his sentence. The government opposed a sentence reduction, asserting that the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372 (2010) did not result in a lower guidelines range, and as a result, Complainant was not entitled to a sentence reduction under the First Step Act.

In March 2019 _____ moved to reduce his sentence, under § 3582(c)(2), based on the First Step Act. The government did not oppose reducing _____’s sentence to 188 months’ imprisonment, asserting that he was eligible for a reduction because he was sentenced for a cocaine base offense that was committed before the enactment of the Fair Sentencing Act and application of the Fair Sentencing Act would result in a lowered

guidelines range. The Subject Judge granted _____'s motion and reduced his sentence to 188 months' imprisonment.

In May 2019 Complainant filed a second motion to reduce his sentence, under § 3582(c)(2), based on the First Step Act. The government opposed the new motion for the same reasons that it had opposed the first motion. The Subject Judge denied all of Complainant's motions. In June 2019 Complainant filed a "traverse," which was docketed as a reply in support of his § 3582(c)(2) motions.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the government and the Subject Judge "colluded, ex parte, to make a particular ruling against [him]." Complainant asserts that he and _____ were both involved in the same conspiracy and both pleaded guilty to a lesser included offense, and he should have received a sentence reduction also. Complainant contends that he was denied a sentence reduction because the Subject Judge personally dislikes him, as evidenced from his case being assigned as "low-priority" and _____'s case being resolved more quickly. Complainant asserts that the "deliberate delay" in his case arose from the Subject Judge's "improper motive." Complainant asserts that this treatment violated his rights under the Due Process and Equal Protection Clauses of the Fifth Amendment. Additionally, Complainant contends that he filed the "traverse" because he was not notified that the Subject Judge had denied his § 3582(c)(2) motion. He attached documents to his Complaint.

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, findings, rulings, and orders in the case, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Complainant's remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge was part of a conspiracy, was biased against him, delayed his case because of an improper motive, 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**.



Chief Judge