

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90131

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 06 2020

David J. Smith
Clerk

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 May 2004 a federal grand jury issued an indictment charging Complainant and a codefendant with multiple offenses. Complainant later pleaded guilty as charged in the indictment. Following a sentence hearing, in October 2004 the Subject Judge sentenced Complainant to a total term of life imprisonment. Complainant appealed, and in January 2006 this Court affirmed Complainant’s convictions.

After various additional proceedings, in July 2016 Complainant filed a motion alleging that an error in his Presentence Investigation Report relating to a prior conviction caused him to receive a life sentence. The next month, the Subject Judge entered an order denying Complainant’s motion, finding in part that there was no basis for the requested relief because he was mistaken that his prior conviction could not support the sentencing enhancement he had received.

In February 2019 Complainant sent a letter to the clerk of court complaining about and seeking correction of a purported error in his PSR. The next month, the Subject Judge entered an order construing the letter as a motion to correct the PSR and denying it for the reasons stated in the previous order. Complainant filed a motion for reconsideration, which the Subject Judge denied. In December 2019 Complainant filed a motion for the appointment of counsel, which the Subject Judge denied.

Complaint¹

In his Complaint of Judicial Misconduct or Disability, Complainant states that an error in his PSR concerning a prior conviction caused his sentence to be enhanced to a life sentence. He states he is “innocent of the enhancement” and that the Subject Judge and others allowed the enhancement to remain even after he provided documentation showing the error. He attached various 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.

All of Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, and orders in the case, and the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

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

¹ The Complaint’s statement of facts appears to be missing one or more pages.