

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90004

IN THE MATTER OF A COMPLAINT FILED BY _____

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 19 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”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in August 2017 a federal grand jury issued an indictment charging multiple codefendants, including _____ (_____),¹ with one count of conspiracy to possess with intent to distribute and to distribute controlled substances and to manufacture crack cocaine. After that, an attorney entered an appearance on behalf of _____.

In October 2018 _____ filed a motion to dismiss his attorney, raising various complaints about her representation. Following a hearing, a magistrate judge dismissed the motion as moot, noting that _____ and his counsel had reported that _____ complaints had been resolved. In June 2019 _____ filed another motion to dismiss his counsel, which a magistrate judge later denied, finding that _____ had not shown good cause for replacing his attorney.

¹ _____ is referred to by his first name in order to distinguish him from Complainant, who has the same last name.

In July 2019 _____ pleaded guilty before the Subject Judge to a lesser included offense in the indictment. In December 2019 _____ filed two pro se motions to withdraw his plea, generally arguing that his plea was induced by his counsel's deficient performance. That same month, the Subject Judge issued an order denying the motions, finding that _____ had not shown fair and just cause for the withdrawal of his plea.

In January 2020 _____ attorney filed a motion to withdraw, contending that she and _____ had irreconcilable differences, and the next month, the Subject Judge denied the motion on procedural grounds. In March 2020 the Subject Judge sentenced _____ to a term of 71 months of imprisonment.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant asserts that _____ involuntarily pleaded guilty due to the deficient performance of his appointed counsel and "pressure of court 'to work things out.'" Complainant states that _____ attorney was informed that he wished to withdraw his plea but took no action. He notes that the Subject Judge denied _____ motion to withdraw his plea and his request for new counsel.

Complainant states that _____ repeatedly informed the Subject Judge that he was accepting the plea only because he was unable to afford counsel. He attached documents to his Complaint. In one attachment, Complainant states that _____ correspondence with the Subject Judge "has been ignored and/or returned" and a judgment was not rendered "in a reasonable amount of time."

Supplement

Complainant's supplemental statement consists of letters that do not directly pertain to the Subject 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.

In addition, Rule 4(b)(2) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 4” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”

All of Complainant's allegations, including the allegations of delay, concern the substance of the Subject Judge's official actions, findings, rulings, 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