

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90024

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUN 17 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 August 2019 a federal grand jury issued a superseding indictment charging Complainant with multiple offenses. The next month, a magistrate judge appointed counsel to represent Complainant, and an attorney entered an appearance on his behalf. After various proceedings, counsel filed a notice of Complainant’s desire to represent himself, which the Subject Judge granted the same day. A few days later, Complainant filed a notice of termination of counsel, which was filed under seal.

In March 2020, following a Faretta hearing, the magistrate judge entered an order allowing Complainant to proceed pro se, but appointing a new attorney to act as standby counsel. Complainant then filed a motion to dismiss the indictment and two motions for a transcript of the Faretta hearing, and the Subject Judge denied the motions for a transcript. Later in March 2020, Complainant filed an affidavit in which he took issue with the magistrate judge’s order regarding self-representation, and he later filed a motion for reconsideration of that order.

In April 2020 the Subject Judge entered an order granting in part and denying in part Complainant’s motion for reconsideration. The order, among other things, provided Complainant would proceed pro se with standby counsel and unsealed Complainant’s notice of termination of counsel. In May 2020 the Subject Judge entered an order denying Complainant’s motion to dismiss the indictment.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge has refused to allow him to file notices and motions in the case by ordering the clerk not to enter his pleadings in the record. He states he feels he is a victim of a conspiracy to deprive him of his constitutional rights, in violation of 18 U.S.C. § 245 (“Federally protected activities”).

Complainant then takes issue with the representation he received from his appointed counsel. He complains the Subject Judge, “without exception,” granted his attorney’s notice that Complainant wished to represent himself, and he contends the Subject Judge did not file his notice of termination of counsel. Complainant asserts he has been “extremely prejudiced and crippled” in his defense, and he states that the court’s actions amount to obstruction of justice. 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 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. Apart from the decisions or procedural rulings that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judge did not allow him to submit filings, was part of a conspiracy, obstructed justice, 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**.

/s/ William H. Pryor Jr.

Chief Judge