

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90038

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUN 30 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 April 2009 a federal grand jury issued an indictment charging Complainant with multiple crimes, and in July 2009 he pleaded guilty to three counts of the indictment. The next month, a superseding indictment was issued again charging Complainant with multiple crimes. Following a sentencing hearing, in January 2010 a district judge who is not the Subject Judge sentenced Complainant to a total term of 180 months of imprisonment, and a judgment was entered showing that he pled guilty to 3 counts in the superseding indictment. After that, the district judge dismissed Complainant from the superseding indictment. In March 2010 the district judge issued an amended judgment correcting a clerical mistake, and the amended judgment reflected that Complainant pled guilty to the original, not the superseding, indictment. The case was reassigned to the Subject Judge in 2015.

After various proceedings, in February 2020 Complainant filed a “Petition for an immediate release from defendant[']s unjust and unconstitutional incarceration,” arguing he had not been lawfully convicted because both the original and superseding indictments had been dismissed. Also in February 2020, the Subject Judge entered an order denying the motion for immediate release, finding Complainant’s argument that there was no valid indictment to which he could have pleaded guilty was “wrong.” Complainant filed a notice of appeal and a motion to proceed in forma pauperis (IFP) on appeal. In April 2020 the Subject Judge entered an order denying the IFP motion, noting an appeal was

frivolous if it was without arguable merit in law or fact, and stating Complainant did not meet the standard for the court to grant him IFP status on appeal.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge violated the “model code of Judicial Conduct” and intentionally used her power and position to deprive him of his liberty and constitutional rights by issuing the February 2020 order denying his request to be relieved from an unjust conviction. He asserts the Subject Judge knew the “rule of law” supported his request, and that she acted to cover up a miscarriage of justice.

Complainant contends that the Subject Judge “abused her authority and acted outside the scope of her employment when she refused to recognize that a superseding indictment actually nullifies” a previous indictment. He asserts the Subject Judge abused her discretion, kept him illegally imprisoned, issued an illegal order, and refused to be impartial. Complainant also alleges the Subject Judge violated the code of judicial conduct and intentionally used her power and position to deprive him of his liberty by issuing the April 2020 order denying his IFP motion, contending the decision “clearly shows bias and discrimination.”

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, 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 allegations that the Subject Judge violated the any

codes of judicial conduct, acted with an illicit or improper motive, was biased, was not otherwise impartial, discriminated against Complainant, 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