

JUL 30 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90042

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”).

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 2011 a federal grand jury indicted Complainant and a codefendant on various charges, including multiple counts related to sex trafficking. At an initial appearance where Assistant United States Attorney _____¹ appeared on behalf of the government, a magistrate judge noted that the indictment would be unsealed and stated, “The charges are summarized as sexual exploitation of a minor and sex trafficking of children by force, fraud or coercion.” _____ stated, “Your Honor, as a correction, there is no allegation that there were any minors involved.”

After various proceedings, in October 2011 the grand jury issued a superseding indictment, charging Complainant with multiple counts related to sex trafficking and distribution of a controlled substance. Complainant pleaded not guilty to the charges and proceeded to trial, and _____ acted as the prosecutor in the case. A jury ultimately found Complainant guilty on 18 counts charged in the superseding indictment. In

¹ _____ became a district judge of the United States District Court for the _____ District of _____ in _____.

February 2012 the Subject Judge sentenced Complainant to a total term of life imprisonment. Complainant appealed his convictions and sentences, and he later appealed a forfeiture order.

In August 2012 Complainant filed a motion for disclosure of grand jury transcripts and materials, arguing such materials were necessary to establish whether the grand jury was influenced by the suggestion that the acts committed involved minors. The next month, the Subject Judge denied the motion, generally finding that Complainant did not demonstrate a compelling and particularized need for disclosure of the grand jury transcripts. Complainant also appealed that order. In March 2013 Complainant filed two motions requesting information about the grand jury, and the Subject Judge denied the motions, finding he failed to meet his burden to justify disclosure.

In May 2014, after consolidating Complainant's appeals, this Court issued an opinion affirming Complainant's convictions and sentences and affirming the order denying his motion for disclosure of grand jury transcripts and materials. This Court held, among other things, that: (1) Complainant waived his challenges to the indictment; (2) the evidence was sufficient to sustain his convictions; (3) his argument that the government improperly withheld evidence was meritless; and (4) with respect to his argument that the indictments were procured by deception, even if his allegations of misconduct were true, the jury verdict rendered any error harmless.

In January 2016 Complainant filed a counseled 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, raising various challenges to his convictions. A few months later, he filed an amended § 2255 motion, arguing, among other things, that his counsel was ineffective for failing to challenge the indictment and superseding indictment on the ground that each was obtained by the government misleading the grand juries that the alleged crimes involved minors. After that, the government, through a different Assistant United States Attorney, filed a response, and Complainant filed a reply in which he requested an evidentiary hearing.

In June 2017 a magistrate judge entered an order and report denying Complainant's motion for an evidentiary hearing and recommending that his § 2255 motion be denied. The magistrate judge found in part that there was no merit to Complainant's claim that the government misled the grand jury into believing he had been involved in crimes against minors. Complainant filed objections to the report and recommendations. He also filed a motion to terminate counsel and proceed pro se, which the Subject Judge granted.

In December 2017 the Subject Judge issued an order adopting the magistrate judge's report with certain exceptions, denying Complainant's § 2255 motion, denying him a certificate of appealability (COA), and denying as unnecessary his request for an evidentiary hearing. After that, Complainant filed an amended Fed. R. Civ. P. 59(e)

motion to alter or amend the judgment, which the Subject Judge denied. Complainant appealed and filed a motion for COA in this Court. In January 2019 this Court denied Complainant's motion for a COA, holding that he failed to make the requisite showing.

Meanwhile, in the district court, Complainant filed multiple motions seeking various types of relief, including a motion to recuse the Subject Judge in which he alleged the Subject Judge could not be impartial and allowed _____ to commit misconduct and engage in fraud on upon the court. In September 2019 the Subject Judge denied the motion to recuse, generally finding Complainant did not establish he was entitled to the relief sought. Complainant then filed, among other things, an amended second motion to recuse, which the Subject Judge denied in April 2020. Complainant has continued to file documents in the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge's impartiality might reasonably be requested and that he has been put in the position of investigating the Subject Judge himself and Judge _____. He alleges the Subject Judge is "very close friends" with Judge _____ and "will be tempted to tamper with the administration of justice" to protect Complainant's conviction and protect his friend from an impeachment inquiry due to felonies he committed while a prosecutor. Complainant states the Subject Judge is directly involved in misconduct and fraud and "will be tempted" not to be impartial.

Complainant states the district court is attempting to cover up a "landmark case of federal corruption," alleges the Subject Judge is "a party to this sophisticated fraud," contends there is "significant doubt" as to the Subject Judge's impartiality, and alleges the Subject Judge failed to take appropriate action upon learning that an attorney may have engaged in misconduct. Next, Complainant states the Subject Judge and others "suppressed a federal indictment" in his case and entered two fraudulent indictments on the record. Finally, he requests that this Court obtain certain documents from grand jury proceedings and from the district court.

Supplement

In his supplemental statement, Complainant states that this Court must issue a subpoena to obtain a sealed indictment, which is needed to prove the Subject Judge engaged in misconduct by failing to take appropriate action after learning that an attorney engaged in misconduct.

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 Complainant’s cases, 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 not impartial, acted to protect his friend, engaged in or covered up fraud, 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