

OCT 30 2020

David J. Smith
Clerk

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90076

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 July 2017 a federal grand jury issued an indictment charging _____, along with multiple codefendants, with conspiracy to distribute and possess with intent to distribute marijuana. A few months later, _____ pleaded guilty to the charge. During the sentencing hearing in April 2018, a government witness testified that a co-conspirator, _____, provided marijuana to _____ and generally testified as to _____ statements concerning the amount of such marijuana. The Subject Judge then found by a preponderance of the evidence that _____ was responsible for more than 100 kilograms of marijuana and ultimately sentenced him to a term of 59 months of imprisonment. _____ filed a notice of appeal.

On appeal, this Court issued an opinion vacating _____ sentence, holding the Subject Judge clearly erred at sentencing when he relied on the government witness’ recitation of _____ hearsay testimony as to drug weight without making an explicit finding about the reliability of the statement and without its reliability being apparent from the record. This Court remanded the case for resentencing.

At a resentencing hearing in July 2020, the Subject Judge found that: (1) _____ was credible given that his testimony was used in other sentencings and because the Subject Judge took his plea, sentenced him, and gave him a sentence

reduction for his assistance to law enforcement; (2) the drug-weight estimates were reasonable; and (3) _____ was responsible for over 100 kilograms of marijuana. The Subject Judge again sentenced _____ to a term of 59 months of imprisonment.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge “disregarded” and “ignored” this Court’s decision concerning _____ sentence “by not demanding any burden of proof, and accepting this quantity of 100 kilograms” as a reasonable determination based on hearsay evidence. She also states the Subject Judge “ignored the recommendation” of this Court and sentenced _____ to the same sentence that was vacated.

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 _____ 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, she provides no credible facts or evidence in support of her claims that the Subject Judge ignored or disregarded this Court’s decision.

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