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CONFIDENTIAL

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

**David J. Smith
Clerk**

Judicial Complaint No. 11-20-90078

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 June 2014 a federal grand jury issued an indictment charging Complainant with being a felon in possession of a firearm, and he later pleaded guilty to the charge. At a sentencing hearing in November 2014, the Subject Judge first found that Complainant’s guideline range was 37 to 46 months of imprisonment. The government noted that Complainant’s Presentence Investigation Report noted that he had been charged with a separate crime, Complainant’s attorney noted that Complainant denied the charges, and the Subject Judge stated he could consider conduct that had not resulted in a conviction.

After a recess, the government called a law enforcement officer who testified as to evidence that Complainant had participated in a burglary, including that a witness had stated Complainant hit him on the head with the butt of a handgun. The government then recommended a sentence at the high end of Complainant’s guideline range. The Subject Judge stated he did not believe a guideline sentence was appropriate in light of Complainant’s conduct that included using a firearm to “pistol whip[]” a victim. The Subject Judge ultimately sentenced Complainant to a term of 120 months of imprisonment, to run consecutive to any sentence imposed by the state court on charges of assault, burglary, home invasion, or in any other case.

Complainant appealed, and this Court later issued an opinion affirming Complainant's sentence, holding in part that the district court properly considered the evidence regarding the pending state court criminal charges against Complainant. After that, Complainant filed multiple motions seeking relief from his conviction and sentence.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states the Subject Judge sentenced him above his guideline range based on "erroneous testimony" from an investigator concerning "unadjudicated pending state cases," and he complains the Subject Judge imposed his sentence to run consecutively with no credit for time served in jail. Complainant reports that his state cases were later dismissed and a codefendant admitted Complainant had nothing to do with the cases, and he states the Subject Judge "put the cart before the horse," which caused a miscarriage of justice.

Complainant states he was presumed innocent in the pending state court cases and they had "absolutely nothing to do with [his] federal case," and he asks whether receiving an enhancement for his pending state cases constituted a double jeopardy violation. Complainant then states no decision has been made on recent motions he filed and that he feels the Subject Judge "has something personal against" him. He also states the Subject Judge knows about the outcome of the state court cases and "do[es] not want to correct his wrongdoings."

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.

Complainant's remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge had a personal bias against him 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