

CONFIDENTIAL

DEC 31 2020

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

David J. Smith
Clerk

Judicial Complaint No. 11-20-90104

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 December 2012 a federal grand jury issued a second superseding indictment charging Complainant and two codefendants with conspiracy to commit arson, mail fraud, wire fraud, bankruptcy fraud, possession of a forged security or implement for making a forged security, bank fraud, and false declarations before a court (Count One), and also charging Complainant with two counts of being a felon in possession of a firearm (Counts Two and Four) and one count of possession of a firearm with an obliterated serial number (Count Three). After various proceedings, the case proceeded to trial in October 2015.

At the conclusion of trial, the jury issued a “Special Verdict” finding Complainant guilty as charged in the second superseding indictment, and further finding as to Count One that he participated in a conspiracy to commit all of the offenses charged. The jury also found both codefendants guilty as to Count One, with one guilty of conspiring to commit only mail fraud and the other guilty of conspiring to commit only arson, mail fraud, and false declaration to a court.

Complainant filed a motion for judgment of acquittal, arguing in part that the government failed to prove that he conspired with anyone with respect to Court One, and failed to show that he had previously been convicted of a felony with respect to Counts Two and Four. In March 2016 the Subject Judge entered an order denying the motion, determining that a reasonable jury could have found beyond a reasonable doubt that Complainant was guilty of the offenses charged. The Subject Judge then sentenced Complainant to a total term of 121 months of imprisonment. Complainant appealed, and in February 2019 this Court affirmed his convictions. After that, Complainant filed in the district court multiple motions seeking various types of relief, which the Subject Judge denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge: (1) was partial, unfair, and unjust; (2) violated his oath of office; (3) failed to “seek and protect the truth” and “tamper[ed] with the truth”; (4) allowed the government to prosecute him on a void charge and knew Complainant was not a convicted felon; (5) “change[d] the verdict[] and pr[e]tend[ed] that the defendants ha[d] a special verdict by the jury”; and (6) made the verdict unlawful, unjust, illegal, and unconstitutional as to Count One by finding him guilty of conspiring to commit all the charged offenses when his codefendants were found guilty of conspiring to commit only certain offenses. Complainant lists multiple individuals who he asserts “can witness the truth.” He attached documents to his Complaint.

Supplement

In his supplemental statement, Complainant notes that the Subject Judge entertained a motion in the case in 2019, and he states he is “asking this Court to Reconsider their action.”

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, rulings, findings, and orders in Complainant's 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 was not impartial, violated his oath of office, changed the verdict, 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