

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

APR 30 2021

CIRCUIT EXECUTIVE

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-20-90126

**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW*


Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MOORE, THRASH, CORRIGAN, COOGLER, DuBOSE, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, Martin, Branch, Coogler, and Walker, the order of Chief Judge William H. Pryor Jr., filed on 13 January 2021, and of the petition for review filed by the complainant on 11 February 2021, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

* Chief Circuit Judge William H. Pryor Jr. did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 13 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90126

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 multiple supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in March 1981 a federal grand jury indicted Complainant on four drug-related charges. The case proceeded to trial in May 1981, and on the second day of trial, a district judge who is not the Subject Judge issued a bench warrant due to Complainant’s failure to appear. The day after that, the jury found Complainant guilty as charged, and in June 1981 he was sentenced in absentia to a total term of 60 years of imprisonment. Following a re-sentencing hearing in March 1998, Complainant was sentenced to a total term of 15 years of imprisonment. On appeal, this Court affirmed.

In February 2002 Complainant filed a motion to vacate the judgment and to compel discovery, arguing his convictions were based on fraud, and he also filed an addendum to the motion to vacate. The same month, the Subject Judge issued an order “denying/dismissing” the motions to vacate, the motion to compel discovery, and the addendum. Complainant filed a petition for reconsideration, which the Subject Judge denied. Complainant then appealed, and this Court later clerically dismissed the appeal for want of prosecution.

In June 2002 Complainant filed a motion to stay the proceedings pending a determination of the validity of his conviction in absentia based upon a finding in another court that his failure to appear for trial was involuntary. The Subject Judge entered an order denying the motion a couple of days later. Complainant filed a petition for reconsideration, which the Subject Judge denied. In August 2002 Complainant filed a motion to vacate a void or invalid judgment, which the Subject Judge denied. Complainant appealed, and this Court later affirmed the order dismissing the motion to vacate. The record shows that Complainant continued to file unsuccessful challenges to his convictions in the case.

The record also shows that in May 1981 a federal grand jury issued an indictment charging Complainant with one count of failure to appear for the jury trial in his initial criminal case. Complainant was arrested on the indictment in August 1997, and the case was reassigned to the Subject Judge as the presiding district judge in September 2003. In October 2003 the Subject Judge issued an order denying a motion to dismiss the indictment and other motions that Complainant had filed.

In January 2004 Complainant filed an “Unconditional Waiver of the Specialty Clause,” waiving the specialty clause of a treaty so the case could proceed to trial. The next month, the Subject Judge entered an order closing the case, noting Complainant had withdrawn the waiver of the specialty clause, and the order vacated the trial date, directed the clerk to close the case, and recommended the government expedite Complainant’s return to another country.

After further proceedings, the case was reopened in November 2012. The next month, Complainant filed a renewed motion to dismiss the indictment, which the Subject Judge denied. The case proceeded to trial in January 2013, and the jury found Complainant guilty as charged in the indictment. In March 2013 the Subject Judge sentenced Complainant to a term of time served. Complainant appealed, and this Court later affirmed his conviction, holding in part that the district court did not err in failing to dismiss the indictment.

In July 2014 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence, arguing his standby counsel had been ineffective by failing to inform the court that Complainant had been absent from trial in the initial criminal case because he received information that his family was in danger. The Subject Judge denied the § 2255 motion, generally finding Complainant did not establish that he was entitled to the relief sought. Complainant filed a motion for reconsideration, construed as a Fed. R. Civ. P. 60(b) motion, which the Subject Judge denied.

Complainant appealed the denial of his Rule 60(b) motion, and this Court denied him a certificate of appealability (COA) because his motion was impermissibly successive. In November 2017 the Subject Judge issued an order denying a motion to

reopen and other motions Complainant had filed, sanctioning him for his “abusive and vexatious” conduct in filing multiple frivolous motions, and directing that no further pleadings would be accepted from him unless filed by an attorney. Complainant appealed, and this Court later denied him a COA, holding the district court did not abuse its discretion in denying the motion to reopen.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant describes the events that transpired during his trial in the initial criminal case, and he asserts that this Court held that the trial judge (not the Subject Judge) and Assistant United States Attorney were co-conspirators in orchestrating his failure to appear at trial, resulting in his conviction in absentia.¹ He contends that testimony at trial exonerated him, but the trial judge took action to cover it up by, among other things, “invent[ing] a clerical error” that the wrong “recording clerk” attended the trial and by failing to docket the “minutes” of the trial.

Complainant then alleges the Subject Judge engaged in misconduct by: (1) “fail[ing] to react on the missing trial minutes” after he was assigned to the cases; (2) permitting a trial on the failure-to-appear charge while knowing that the original conviction was invalid and that the trial minutes were never docketed; and (3) issuing an order that prevented Complainant from submitting additional pro se pleadings without the assistance of counsel. He attached a document to his Complaint purporting to be an email exchange in which the district court clerk’s office stated that the minutes of the trial were never docketed.

Supplements

In Complainant’s supplemental statements, he, among other things: (1) corrects a statutory citation in his statement of facts; (2) states he believes a certain United States Supreme Court case governs the matter²; (3) describes other proceedings in which he was involved; and (4) generally reiterates his allegations.

¹ Contrary to Complainant’s assertion, in the appeal he cites in support of his statement, this Court held, among other things, that the district court did not err in dismissing a civil complaint against the trial judge and a former Assistant United States Attorney on absolute-immunity grounds.

² In the case, Hardy v. United States, 375 U.S. 277 (1964), the Court held that, where new counsel is appointed for an indigent defendant on appeal in a criminal case, counsel is entitled to a transcript of the entire testimony, evidence, and jury charge.

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 Complainant’s cases, 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 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