

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

11-20-90157

FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL

JUN 01 2021

CIRCUIT EXECUTIVE

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

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ON PETITION FOR REVIEW\*

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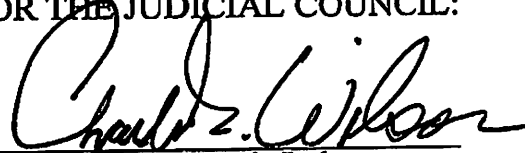
Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MOORE, CORRIGAN, COOGLER, DuBOSE, BATTEN, HALL, TREADWELL, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, Martin, Branch, Moore, and Coogler, the order of Chief Judge William H. Pryor Jr., filed on 10 February 2021, and of the petition for review filed by the complainant on 22 March 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. and Chief District Judge Mark E. Walker did not take part in the review of this petition.

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-20-90157**

**FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT**

**FEB 10 2021**

**David J. Smith  
Clerk**

**IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_**

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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.

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**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 2020 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus in which he argued his sentence was illegal and he was deprived of an adequate means of challenging his sentence in state court. A magistrate judge later issued a report recommending that the petition be dismissed for lack of jurisdiction as an unauthorized successive petition. Over Complainant’s objections, in August 2020 the Subject Judge issued an order adopting the report and recommendation and dismissing the petition.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with the calculation of his prison sentence, alleging a “fraudulent miscalculation” caused him to be falsely imprisoned on an expired term. He then alleges that the Subject Judge enforces an unwritten policy or practice that prohibits review of his expired prison term, in violation of his right to habeas corpus relief. Next, Complainant alleges the Subject Judge withheld exculpatory material, and that he and the magistrate judge agreed to commit extrinsic fraud by “exclud[ing] any merits based disposition that determines no available remedy exist[s] in state court” to detain him on an expired term of imprisonment. Complainant also takes issue with other proceedings and the actions of individuals other than the Subject Judge, and he attached documents to his Complaint.

## 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 order dismissing Complainant’s § 2254 petition, 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 enforced an inappropriate policy or practice, agreed to commit 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