

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAR 03 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90165

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 November 2017 a federal grand jury issued an indictment charging Complainant with one count of being a felon in possession of a firearm. Counsel was later appointed to represent him. In May 2018 Complainant entered into a written plea agreement in which he agreed to plead guilty to the charge. In December 2018 Complainant filed a motion for a detention hearing and reinstatement of bond, which the Subject Judge denied. After additional proceedings, a competency hearing was held in March 2020.

In July 2020 a superseding indictment was issued, again charging Complainant with one count of being a felon in possession of a firearm. Complainant, through counsel, then filed, among other things, a motion for release on home confinement pending trial and a motion for an evaluation to determine his competency. In August 2020 the Subject Judge issued an order denying the motion for bond, and Complainant filed a notice of appeal. This Court later clerically dismissed the appeal for want of prosecution.

In October 2020 Complainant filed a renewed motion for bond, and the Subject Judge entered an order denying the motion, finding there were no conditions of release that would reasonably assure the safety of the community if Complainant were released. Complainant appealed the order.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states the Subject Judge has denied him bail approximately 6 times, and he alleges the Subject Judge denied him bail in August 2020 “without reason or fairness,” contending he is not a flight risk, he has cooperated with the government, and the charge against him is non-violent. Complainant alleges the Subject Judge violated the state supreme court’s canons of judicial ethics by being biased and partial in the case, and he contends he is unable to receive a fair trial because the Subject Judge discriminated against him in connection with his conviction in state court in 2002.

Next, Complainant asserts that the Subject Judge and the Assistant United States Attorney “have friends, family, social and political ties to law enforcement” in the city, and that law enforcement have plotted to cause him suffering and keep him in “the system” due to statements he made in the past. He states he feels he is being racially discriminated against because “courts” have refused to give him credit for assisting the government while giving credit to individuals of other races. He also takes issue with the Subject Judge’s failure to recuse himself from the case. He attached documents to his Complaint.

Supplement

In his supplemental statement, Complainant states that, “[i]n connection with” the Subject Judge’s bias and prejudice, the United States Marshals Service has, among other things, excessively and unnecessarily caused him to be transferred to different facilities, which has prevented him from having a fair trial. He asserts his attorney has stated that the case has been handled unethically and “with discrimination by multiple parties,” and that his attorney asked him “who did [he] tick off for [him] to receive such cruel [and] unusual punishment regarding [his] case.”

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 was biased or partial, discriminated against Complainant, 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