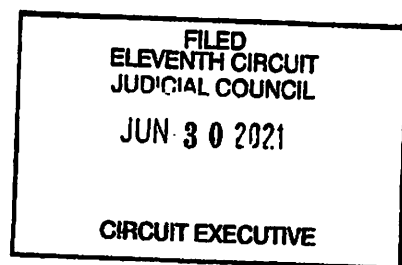


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-21-90010



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

ON PETITION FOR REVIEW*

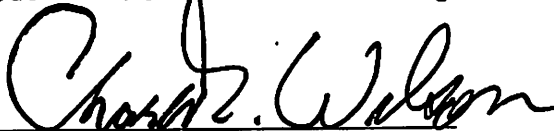
Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MOORE, CORRIGAN, COOGLER, DuBOSE, BATTEN, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

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 15 April 2021, and of the petition for review filed by the complainant on 10 May 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.

CONFIDENTIAL

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

Judicial Complaint No. 11-21-90010

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

APR 15 2021

David J. Smith
Clerk

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 June 2017 a federal grand jury issued an indictment charging Complainant with multiple crimes. After various proceedings, in March 2018 a superseding information was issued charging Complainant with conspiracy to commit wire fraud and subscribing to a false income tax return, and Complainant entered into a written plea agreement in which he agreed to plead guilty to the charges in the superseding information. Following a hearing before a magistrate judge, the magistrate judge recommended that the guilty plea be accepted, and the Subject Judge accepted the plea and adjudged Complainant guilty of the offenses.

In October 2018 Complainant filed a motion to withdraw his guilty plea, contending that he pled guilty because he was suffering from severe pain the day the plea was entered. At the sentencing hearing that month, Complainant testified as to his multiple illnesses and health issues and argued that, on the day of his plea, he was not of sound mind due to the pain he was experiencing. On cross-examination, Complainant stated that, on the day of the plea, he did not mention to the court that he was in pain. The Subject Judge then denied the motion to withdraw the plea, finding Complainant failed to meet his burden to establish by competent evidence that there was a fair and just reason to withdraw the guilty plea. The Subject Judge ultimately sentenced Complainant to a total term of 60 months of imprisonment, and Complainant appealed.

In March 2019 Complainant filed in the district court a “Motion for Preservation of Electronic Transcription” in which he asserted that the transcripts of the change-of-plea hearing and sentencing hearing were incomplete and inaccurate. The next month, the Subject Judge denied the motion, finding sufficient procedural safeguards existed to provide the relief Complainant sought without a court order.

In April 2020 Complainant filed a motion for compassionate release and for the appointment of counsel due to his terminal medical condition, and the next month, a magistrate judge granted the motion for appointment of counsel. In July 2020 the Subject Judge issued an order granting in part the motion for compassionate release, finding the motion raised a substantial issue, and requesting that this Court relinquish jurisdiction so the court could determine if release was warranted.

After that, this Court issued an order staying the appeal pending the resolution of Complainant’s motion for compassionate release. Following a hearing, the Subject Judge issued an order: (1) denying the motion for compassionate release without prejudice; (2) stating that, by appealing the denial of his motion to withdraw his guilty plea, Complainant had prevented his victims from receiving any restitution; (3) further stating that, while appealing was “unquestionably his right,” it also demonstrated he had not fully accepted responsibility; and (4) finding that releasing him before his sentence was completed or his victims had received any restitution would fail to reflect the seriousness of the offense, fail promote respect for the law, and be unjust.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge caused the “removal and deletion” of material exculpatory evidence from the transcripts. He asserts that, beginning in February 2018, the Subject Judge “directed specific modification of real-time events” to be made in favor of the government. He notes that he suffers from multiple illnesses and disorders and alleges that a portion of the March 2018 plea colloquy where he vomited into his face mask was removed from the transcripts, overwritten, or not recorded. Complainant also alleges statements made at the sentencing hearing were removed from the transcripts, including statements the Subject Judge made that violated Complainant’s constitutional rights and created the appearance of impropriety.

Next, Complainant alleges that, at the compassionate-release hearing, the Subject Judge directed Complainant’s attorney not to ask him certain questions, which infringed upon the attorney-client privilege. During the same hearing, Complainant alleges, the Subject Judge abused his oath of office “by ranting on and on about his personal prejudice against” Complainant and about irrelevant matters. Complainant contends the Subject Judge ordered him to dismiss his right to appeal before the Subject Judge would consider his petition for release. He seeks various types of relief.

Supplement

In his supplemental statement, Complainant argues the Subject Judge's denial of his Motion for Preservation of Electronic Transcription was "without subject matter reasoning."

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 caused the removal or deletion of statements from transcripts, was biased or prejudiced against Complainant or in favor of the government, abused his oath of office, 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