

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL
AUG 16 2021
CIRCUIT EXECUTIVE

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

11-21-90019

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

ON PETITION FOR REVIEW

Before: WILSON, MARTIN, and BRANCH, Circuit Judges; COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioner's complaint filed on 2 March 2021, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on 12 May 2021, and the petition for review filed by petitioner on 24 May 2021. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

The Judicial Council Review Panel hereby **AFFIRMS** the disposition of this matter by Chief Judge Pryor. The petition for review is **DENIED**.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 12 2021

David J. Smith
Clerk

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90019

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”).

Background

The record shows that in June 2015 a federal grand jury issued a superseding indictment charging Complainant and three codefendants with multiple crimes. The indictment set out that: (1) the _____ (“the Vessel”) was a cargo ship registered in _____; (2) Complainant performed classification surveys and issued certifications to ships registered in _____ on behalf of the government of _____; (3) the United States is a party to an international treaty that regulates the discharge of oil from vessels at sea, the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (MARPOL); (4) a statute makes it a crime for any person to knowingly violate MARPOL; and (5) _____ was a party to MARPOL and the “flag state” of the Vessel. The indictment specifically charged Complainant in Count _____ with knowingly violating MARPOL by failing to conduct a complete survey of the Vessel, and in Count _____ with knowingly making a false official statement that the Vessel complied with MARPOL.

The case proceeded to trial, where Complainant was represented by retained counsel. At trial, _____ testified on behalf of the defense as an expert in classification surveying. At the conclusion of trial, a jury found Complainant guilty of Counts _____ and _____. Complainant and another defendant filed a joint motion for judgment of acquittal, which the Subject Judge denied. In December 2010 the Subject Judge sentenced Complainant to a total term of five years of probation.

Complainant appealed, and in August 2012 this Court affirmed Complainant's convictions.

The record shows that in April 2018 Complainant filed a *pro se* Petition for a Writ of Error Coram Nobis in which he argued, among other things, that: (1) he had received ineffective assistance of counsel at trial; (2) fraud had been committed; (3) evidence had been fabricated or omitted; (4) the government engaged in malicious prosecution; and (5) the government knowingly presented perjured testimony at trial. In June 2018 the Subject Judge issued an order denying Complainant's petition, finding he offered no sound reasons for failing to seek relief earlier.

The record also shows that in November 2019 Complainant filed another Petition for a Writ of Error Coram Nobis in which he argued that the government fraudulently alleged that the Vessel was operating under the authority of _____ when it knew the Vessel was operating under the authority of _____. The Subject Judge then entered an order denying the petition, finding Complainant had not advanced any additional grounds to grant the extraordinary relief sought.

In December 2019 Complainant filed another Petition for a Writ of Error Coram Nobis in the case. The Subject Judge entered an order denying the petition and warning Complainant that further abusive litigation could result in sanctions. Complainant appealed the denial of this third petition, and this Court later granted the government's motion for summary affirmance, holding Complainant failed to present sound reasons for failing to seek relief earlier and failed to demonstrate any fundamental error that made his prosecution irregular and invalid.

In January 2021 in the original criminal case, Complainant filed a motion for leave to file a *coram nobis* petition, arguing that exculpatory evidence had been withheld that caused a "jurisdictional error" in the case. Later that month, the Subject Judge issued an order denying the motion for leave to file and directing Complainant to show cause why the court should not prohibit any further filings concerning his convictions unless signed by a member of the court's bar.

The next month, Complainant filed in his initial *coram nobis* proceeding a Motion for Referral to Volunteer Attorney Program, and the Subject Judge entered an order denying the motion. In the criminal case, the Subject Judge then entered an order imposing sanctions on Complainant and directing the clerk not to accept further pleadings pertaining to his convictions unless signed by a member of the court's bar.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends that the Subject Judge knew that the Vessel was "flagged and operating under _____

rather than _____ at the time of MARPOL violation,” and he alleges the Subject Judge falsified facts and “knowingly and willfully altered” the Vessel’s country. Complainant alleges the Subject Judge committed a fundamental, jurisdictional error, which resulted in a void judgment and made his prosecution irregular and invalid. He asserts the Subject Judge’s actions constituted misconduct, undermined public confidence in the integrity and impartiality of the judiciary, and created the appearance of impropriety. Complainant states the Subject Judge and prosecution knew he did not own the Vessel, was not a crew member, was not a part of the Vessel’s operation company, and was not physically present in the Vessel at the time of the MARPOL violation, and he alleges they failed to disclose exculpatory evidence and falsified facts to punish him.

Complainant then asserts the Subject Judge: (1) obstructed Complainant’s ability to present his defense by, among other things, denying him a proper attorney and threatening to sanction him; (2) treated him in a demonstrably egregious and hostile manner; (3) defamed him to damage his integrity; (4) discriminating against him based on his race, color, national origin, or disability, noting he was of Cuban origin; (5) retaliated against him; (6) harassed his expert witness, who was also of Cuban origin, and treated the witness with disrespect; (7) interfered or failed to comply with the judicial complaint process and refused to cooperate in the investigation of a complaint; (8) failed to report judicial misconduct or disability; (9) violated other specific mandatory standards of judicial conduct because he failed to disclose exculpatory evidence, rendered a void judgment, and lacked jurisdiction in the case; (10) demonstrated “extreme disrespect” for Complainant because he knew the government failed to disclose exculpatory evidence; (11) acted in bad faith and constructed a fraudulent scheme to damage his integrity “in a manner of hate, lack of judicial temperament, and a failure to maintain and observe the ‘high standards of conduct’ required of federal judges”; (12) disparaged the United States Supreme Court and expressed contempt towards the Court’s rules; (13) intentionally misrepresented the law; and (14) expressed and exhibited bias and lack of impartiality concerning Hispanics and those of Cuban nationality.

Next, Complainant states that the Subject Judge “asserted as a ‘fact’ that ‘a lot of Hispanic people [are] involved in drug trafficking,’ which itself ‘involved a lot of violent crime.’” He states the Subject Judge dismissed race, jurisdictional error, and void judgments as legitimate concerns. Complainant also states the Subject Judge was “very dismissive of claims of innocence” and did not take seriously the possibility that people have been sentenced for crimes they did not commit. Finally, he alleges the Subject Judge violated multiple canons of the Code of Conduct for United States Judges. 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, findings, rulings, and orders in the cases, 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 acted with an illicit or improper motive, falsified facts or withheld evidence, treated him or his expert witness in a demonstrably egregious and hostile manner, discriminating against him based on his race, color, national origin, or disability, retaliated against him, interfered or failed to comply with the judicial complaint process, exhibited bias or a lack of impartiality concerning Hispanics and those of Cuban nationality, 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