

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

**.11-21-90023**

FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL

AUG 24 2021

CIRCUIT EXECUTIVE

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

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**ON PETITION FOR REVIEW**

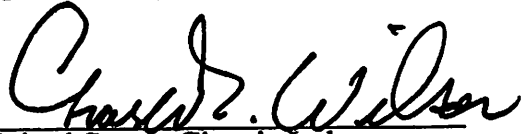
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Before: WILSON, MARTIN, and BRANCH, Circuit Judges; COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioner's complaint filed on March 22, 2021, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on May 26, 2021, and the petition for review filed by petitioner on June 14, 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  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL

AUG 24 2021

CIRCUIT EXECUTIVE

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

**11-21-90024**

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

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**ON PETITION FOR REVIEW**

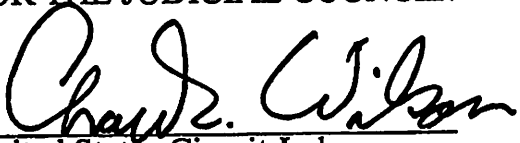
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The Judicial Council Review Panel hereby **AFFIRMS** the disposition of this matter by Chief Judge Pryor. The petition for review is **DENIED**.

FOR THE JUDICIAL COUNCIL:

  
United States Circuit Judge

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

MAY 26 2021

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint Nos. 11-21-90023 and 11-21-90024**

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

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IN RE: The Complaint of \_\_\_\_\_ against former United States Magistrate Judge \_\_\_\_\_ and 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 former United States Magistrate Judge \_\_\_\_\_ and United States District Judge \_\_\_\_\_ (collectively, the “Subject Judges”), 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”). Judge \_\_\_\_\_ retired as a magistrate judge in \_\_\_\_\_.

Background

The record shows that in November 2008 a federal grand jury issued an indictment charging Complainant and multiple codefendants with various crimes. Counsel was appointed to represent him, but he later elected to represent himself and his counsel became standby counsel. In March 2010, in response to a letter sent by Complainant’s standby counsel, Judge \_\_\_\_\_ issued an order directing the government to provide Complainant with material that pertained to the case.

In August 2010 Complainant filed a motion to dismiss the case due to a violation of the Speedy Trial Act, and the government filed a response in opposition in which it argued the motion should be dismissed because, at a pretrial conference, the court correctly noted that the time for trial of Complainant’s codefendant had not run because he was in a fugitive status. Judge \_\_\_\_\_ then denied the motion, finding no time under the Speedy Trial Act had elapsed because Complainant’s codefendant remained a fugitive. Complainant filed a “Motion for Transcripts, Documents, and Statements,” and Judge \_\_\_\_\_ issued an order denying the motion, stating that after reviewing the government’s disclosures, the court was satisfied the government had provided Complainant or his standby counsel with all required discovery.

In September 2010, following a trial, a jury convicted Complainant as charged in the indictment. After that, he filed a notice of appeal and a motion for the appointment of counsel for purposes of appeal and for an extension of time “for the appeal process.” Judge \_\_\_\_\_ issued an order dismissing the motions as moot, noting this Court had appointed counsel to represent him on appeal and construing the filing as a notice of appeal that would become effective after sentencing. In January 2011 Judge \_\_\_\_\_ sentenced Complainant to a total term of 210 months of imprisonment. In June 2012 this Court issued an opinion affirming Complainant’s convictions and sentences, holding in part that the district court did not err in denying his motion to dismiss the indictment based on the Speedy Trial Act.

In July 2013 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, raising multiple challenges to his convictions and sentences. The next month, Judge \_\_\_\_\_ issued a report recommending that the § 2255 motion be denied, finding three claims were not sufficiently pled and the remaining claim was meritless. Complainant filed a motion to amend his § 2255 motion, and Judge \_\_\_\_\_ issued a report and order granting the motion to amend and concluding Complainant’s amending filings simply rehashed his earlier filings and thus warranted no alteration of the initial report and recommendation.

In November 2013 Judge \_\_\_\_\_ issued an order adopting the report and denying Complainant’s § 2255 petition. Complainant filed a motion for reconsideration, which Judge \_\_\_\_\_ denied. He also filed a notice of appeal and motions for a certificate of appealability (COA), and Judge \_\_\_\_\_ and this Court later denied his motions for a COA.

In July 2015, in the criminal case, Judge \_\_\_\_\_ *sua sponte* denied Complainant a sentence reduction based on an amendment to the United States Sentencing Guidelines. In March 2020 Complainant filed a motion to reduce his sentence pursuant to the First Step Act, the government then filed a response in opposition, and in December 2020 Judge \_\_\_\_\_ denied the motion. Complainant filed a motion for reconsideration, and the government filed a response in opposition.

In February 2021 Judge \_\_\_\_\_ denied the motion for reconsideration, noting he had found the First Step Act did not apply to Complainant’s offenses. Complainant then filed, among other things, a notice of appeal and a Fed. R. Civ. P. 60(b) motion to vacate, alleging Judge \_\_\_\_\_ committed fraud by denying the motion for a sentence reduction. Judge \_\_\_\_\_ entered an order denying the motion because Rule 60(b) did not apply in criminal cases, and Complainant filed a notice of appeal.

## Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that Judge \_\_\_\_\_ conspired with the prosecutor to deny him his constitutional rights to a speedy, fair, and impartial trial. Complainant states Judge \_\_\_\_\_ “argued against” him at an August 2010 pretrial conference by stating he was going to trial with a codefendant in fugitive status, when nothing in the record supported the statement. He also contends Judge \_\_\_\_\_ “created that argument for the government” concerning the codefendant in fugitive status.

Next, Complainant states that Judge \_\_\_\_\_ knew or should have known that he did not receive discovery because Judge \_\_\_\_\_ did not order standby counsel to send him discovery, and he alleges Judge \_\_\_\_\_ allowed the prosecutor to use evidence at trial that was denied to the defense. He complains that Judge \_\_\_\_\_ had the prosecutor state on the record what was sent to Complainant without requiring further proof, and that the prosecutor lied on the record by stating that discovery had been provided to Complainant and his standby counsel.

Complainant then alleges that Judge \_\_\_\_\_ denied him a chance to present his defense when Judge \_\_\_\_\_ ordered paper copies of certain evidence picked up from the jury in the middle of Complainant’s defense. He also contends Judge \_\_\_\_\_ misconstrued his October 2010 requests for appointment of counsel and an extension of time as pertaining to an appeal when they concerning a motion for a new trial.

Complainant alleges that in 2015 Judge \_\_\_\_\_ maliciously and intentionally denied him a sentence reduction by finding his career-offender status controlled, when he knew the Sentencing Guidelines were only advisory. Complainant further alleges Judge \_\_\_\_\_ and the government submitted fictitious evidence into the record in connection with his motion for a sentence reduction by stating he was convicted under a certain statutory provision when he had been sentenced under a different provision.

Complainant asserts the Subject Judges conspired to deny him his right to be heard in his § 2255 proceedings by refusing to follow the rules that govern such motions. He states the government was never ordered to respond, no evidentiary hearing was held, the Subject Judges “argued against” the § 2255 motion, and Judge \_\_\_\_\_ failed to address an issue concerning a sentence enhancement. In conclusion, Complainant states that “judicial officials” and others have violated the United States Constitution and its principles for over 10 years, and that the actions constitute criminal acts. He attached documents to his Complaint.

## Discussion

Judge \_\_\_\_\_

Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides, “The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible as to the subject judge.” With respect to this rule, the “Commentary on Rule 11” states in part, “Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to ‘conclude the proceeding,’ if ‘action on the complaint is no longer necessary because of intervening events,’ such as a resignation from judicial office.”

To the extent the Complaint concerns Judge \_\_\_\_\_, in light of his retirement, “intervening events render some or all of the allegations moot or make remedial action impossible,” JCDR 11(e). For this reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(2) and Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint proceeding is **CONCLUDED** to the extent it concerns Judge \_\_\_\_\_. The conclusion of this proceeding in no way implies that there is any merit to Complainant’s allegations against Judge \_\_\_\_\_.

Judge \_\_\_\_\_

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 Judge \_\_\_\_\_ official actions, findings, rulings, and orders in the cases, the allegations are directly related to the merits of Judge \_\_\_\_\_ 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 Judge \_\_\_\_\_ was part of a conspiracy, acted with an illicit or improper motive, committed crimes, or otherwise engaged in misconduct.

Therefore, to the extent the Complaint concerns Judge \_\_\_\_\_, 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** to the extent it concerns Judge \_\_\_\_\_.

/s/ William H. Pryor Jr.

Chief Judge