

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 1 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-21-90035 through 11-21-90042

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Circuit Judges _____, _____, _____, _____, _____, _____, and _____ of the United States Court of Appeals for the _____ Circuit, 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.

ORDER

_____ (“Complainant”) has filed this Complaint against United States Circuit Judges _____, _____, _____, _____, _____, _____, and _____, 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”).

Background

The record shows that in January 2008 a federal grand jury issued a superseding indictment against Complainant and a codefendant, specifically charging Complainant with conspiracy to possess with intent to distribute controlled substances (Count One), possession with intent to distribute a controlled substance (Count Two), two counts of distribution of a controlled substance (Counts Four and Five), possession of firearms in furtherance of a drug trafficking crime (Count Six), and possession of a firearm by a convicted felon (Count Seven).

Complainant, through retained counsel, filed a motion to suppress certain evidence obtained as a result of the search of his residence, and after a hearing, Judge _____ denied the motion to suppress. In March 2008 the case proceeded to trial where a jury found Complainant guilty as to Counts One, Two, and Seven, and not guilty as to Counts Four, Five, and Six. In June 2008 Judge _____ sentenced Complainant to a total term of 480 months of imprisonment. Complainant appealed.

On appeal, in Appeal No. _____, Complainant filed a motion to discharge counsel and to proceed *pro se*, and his attorney filed a motion to withdraw as counsel. In

November 2008 Judge _____ issued an order granting counsel's motion to withdraw and granting Complainant's motion to proceed *pro se*. In July 2009 a panel of this Court that included Judges _____ and _____ issued an opinion affirming Complainant's convictions and sentences. Complainant filed a petition for rehearing en banc, which the panel denied.

After that, Complainant filed a motion for appointment of counsel and a motion to recall the mandate, which a judge who is not one of the Subject Judges denied in October 2009. Years later, in August 2015 Complainant filed in the appeal a motion to recall the mandate in light of a certain case, and a circuit judge who is not one of the Subject Judges later denied the motion. Complainant filed a motion for reconsideration, and in January 2018 a panel that included Judges _____ and _____ denied the motion.

Meanwhile, in January 2011 Complainant filed in the district court a *pro se* 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, raising various challenges to his convictions and sentences, including that his decision to proceed *pro se* on direct appeal was unknowing and involuntary, no hearing was held to inform him of the dangers and disadvantages of self-representation, and he was improperly sentenced as an armed career criminal. After various proceedings, in December 2013 the magistrate judge issued a report recommending that Complainant's § 2255 motion be denied, generally finding that he failed to establish he was entitled to relief on his claims.

Over Complainant's objections, in March 2014 Judge _____ entered an order adopting the magistrate judge's report and recommendation, denying Complainant's § 2255 motion, and ruling on various other motions he had filed. Complainant then filed, among other things, a motion to alter or amend the judgment. After that, Judge _____ entered orders denying the motion to alter or amend and other motions. Complainant filed a notice of appeal as to the orders denying his § 2255 motion and motion to alter or amend the judgment.

On appeal, in March 2016 Judge _____ issued an order denying Complainant's motion for a certificate of appealability, holding that he failed to make the requisite showing. Complainant filed a motion for reconsideration and for recusal, and a panel composed of Judges _____ and _____ denied those motions. Complainant then filed a petition for writ of certiorari, and in April 2017 the United States Supreme Court granted the petition, vacated this Court's judgment, and remanded the case to this Court for further consideration in light of a certain Supreme Court decision. In July 2017 a panel of this Court composed of Judges _____, _____, and _____ vacated the district court's denial of Complainant's § 2255 motion and remanded the case for the district court to reconsider his sentence on Count Seven in light of the case identified by the Supreme Court.

In August 2017 in the district court, Judge _____ issued an "Order Amending Sentence" that: (1) found Complainant no longer qualified as an armed career criminal as

to Count Seven; (2) determined that correcting a jurisdictional issue as to Count Two reduced the applicable statutory maximum penalty as to that count; (3) reduced Complainant's sentences as to both counts; and (4) stated that all other provisions of the earlier judgment and sentence remained in full force and effect. An amended judgment was then entered again sentencing Complainant to a total term of 480 months of imprisonment.

In October 2017 Complainant filed a *pro se* notice of appeal as to various orders Judge _____ had entered, including the Order Amending Sentence. On appeal, in Appeal No. _____, he filed multiple motions seeking various types of relief, including a motion to recuse certain circuit judges, contending it would be a structural error if the judges participated in the case and alleging he had been denied his Sixth Amendment right to counsel. In June 2018 a panel composed of Judges _____, _____, and _____ issued an order that, among other things, denied the motion to recuse. Complainant then filed additional motions, including motions for reconsideration, and the panel issued an order denying the motions in August 2018.

After additional proceedings, in September 2019 a panel of this Court composed of Judges _____, _____, and _____ issued an opinion affirming the district court's Order Amending Sentence and the court's denial of several motions relating to Complainant's resentencing and post-conviction proceedings. Complainant then filed, among other things, a motion for the appointment of counsel in which he contended he had the right to be appointed counsel in the direct appeal. In February 2020 this Court issued an order granting Complainant's motion for the appointment of counsel.

Several months later, Complainant filed a counseled petition for panel rehearing and rehearing en banc. He also filed *pro se* motions to supplement his counsel's petition and for the substitution of appellate counsel, and the panel composed of Judges _____, _____, and _____ entered an order that, in part, granted the motion to supplement and denied the motion for substitute counsel. The panel also issued an order denying Complainant's petition for panel rehearing and rehearing en banc. After that, Complainant filed a motion to recall the mandate in which he argued that a structural error occurred because he did not have counsel during the appeal, in violation of his Sixth Amendment rights, and the panel denied the motion in September 2020. Complainant filed a motion for reconsideration, which the panel denied.

The record also shows that in November 2015 Complainant filed in this Court a petition for writ of mandamus seeking to compel the district court to comply with certain case law and requesting that this Court assign the case to another district judge. In January 2016 a panel of this Court that included Judge _____ denied the petition, generally concluding that Complainant was not entitled to the requested relief. Complainant filed a motion for reconsideration, which a panel that included Judge _____ denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states he has never been provided a “First Tier Direct Appeal” by this Court, he never waived his right to the assistance of counsel in Appeal Nos. _____ and _____, and a structural error requiring reversal occurred in those appeals. He alleges the circuit Subject Judges in those appeals “refused to comply with, have respect for and/or have not maintained a professional competence in the law with regard to Sixth Amendment assistance of counsel jurisprudence,” in violation of the Code of Conduct for United States Judges.

Complainant asserts a reasonable inquiry will show the circuit Subject Judges acted with an improper motive, willfully failed to perform the duties of their office, and covered up the violation of his constitutional rights. He contends the circuit Subject Judges have created an appearance that they worked together to cover up the violation of his constitutional right to counsel, and “it raises questions in regards to what misconduct could have occur[r]ed in other cases” He states the circuit Subject Judges engaged in misconduct in connection with the granting of his attorney’s motion to withdraw in Appeal No. _____, which left him without the assistance of counsel, constituted a structural error, and required automatic reversal. He also takes issue with Judges _____, _____, and _____ September 2020 order denying his motion to recall the mandate in Appeal No. _____.

Next, Complainant alleges Judge _____ violated the Code of Conduct for United States Judge by deliberately refusing to comply with, have respect for, and maintain a professional competence in the rule of law. Complainant alleges Judge _____ engaged in a concerted effort to keep him wrongfully incarcerated by silencing him in the § 2255 proceedings and effectively suppressing facts and evidence. He asserts Judge _____ “legal premise” in an order denying a motion to reopen was foreclosed by precedent and that he deliberately abused his discretion and issued orders with no substantive explanation.

In a footnote, Complainant states that a certain order will be appealed, but that it is likely the appeal will be “intercepted” by Judge _____ or a circuit judge who is not one of the Subject Judges. Complainant alleges that Judge _____ and “his enablers” on this Court are refusing to comply with and be faithful to the law for the sole purpose of suppressing the fact that he was wrongfully convicted and is being falsely imprisoned. He also alleges the Subject Judge covered up that he was found not guilty of the “controlled buys” described in the indictment, which were the “sole factual predicates for probable cause to have issued a search warrant that is ‘dispositive’ to the indictment” in his criminal case. Complainant contends the Subject Judges’ honesty, integrity, impartiality, temperament, and fitness to serve as judges have been impaired. He also takes issue with the actions of individuals other than the Subject Judges, and he attached this Court’s September 2019 opinion in Appeal No. _____ 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 Judges’ official actions, findings, rulings, orders, and opinions in his cases and appeals, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judges acted with an illicit or improper motive, violated the Code of Conduct for United States Judges, violated Complainant’s constitutional rights, covered up matters, worked together to keep him wrongfully imprisoned, 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**.



Acting Chief Judge