

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 21 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-21-90055

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 July 2020 a federal grand jury issued a superseding indictment charging Complainant with one count of being a felon in possession of a firearm. In October 2020 Complainant filed a 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 was released. Complainant appealed, and this Court later clerically dismissed the appeal for want of prosecution. In April 2011 Complainant pled guilty to the charge in the superseding indictment.

At the sentencing hearing in May 2021 Complainant’s retained attorney sought to withdraw from representation, and Complainant generally complained about the representation provided and took issue with the Presentence Investigation Report. The Subject Judge denied the motion to withdraw, denied various motions to recuse the Complainant had filed, and ruled upon other motions that had been filed. The Subject Judge then found that Complainant qualified as an armed career criminal based on his prior convictions.

Complainant’s counsel then objected to the consideration of a prior conviction because the Subject Judge had been the state judge involved in the case, and the Subject

Judge denied the request, noting that, until the issue had been raised, he had no personal recollection of Complainant or the case. After that, Complainant stated he would like to withdraw his plea and that he had been coerced into pleading guilty, and the Subject Judge found that he had freely and voluntarily pled guilty. The Subject Judge again found that Complainant was an armed career criminal based on his prior convictions.

The Subject Judge then stated it was his job to sentence Complainant fairly “no matter what I think about your personality,” stating Complainant was “a very difficult individual.” After Complainant stated, “Your Honor,” the Subject Judge stated, “It is my time. You need to shut up; it is my time.” The Subject Judge noted Complainant deserved a 188-month sentence at the low end of his guideline range, stating, “You didn’t do anything that in your conduct that calls for me to give more than 188 months except for making me angry, frankly, in the way that you have proceeded in these fashions. But I am not free to give you more time just because you make me angry.” The Subject Judge ultimately sentenced Complainant to a term of 188 months of imprisonment.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge abused his discretion by over-sentencing him, applied “the incorrect federal applications” in the case,” erred by “using insufficient weight of evidence and plain error,” was “very combative,” and displayed bias, prejudice, and hostility. Complainant contends that, during the sentencing hearing, the Subject Judge admitted on the record that he was angry with Complainant for filing complaints and challenging the sufficiency of his guidelines and applications.

Next, Complainant contends the Subject Judge acted with bias when he: (1) used a prior state court conviction to enhance Complainant’s sentence when he was the judge involved in the state court conviction; and (2) denied all of Complainant’s motions, objections, and “considerations” he requested. Finally, Complainant asserts the Subject Judge told his attorney that the Subject Judge knew Complainant personally, that he did not like Complainant, that he was a “scum bag,” and that it was the Subject Judge’s job to “lock [Complainant] up for eternity.” He attached various 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 above-described 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 prejudiced against him, treated him in a demonstrably egregious and hostile manner, 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