

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

11-21-90060

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

NOV 22 2021

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW

Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges;
WALKER and BEAVERSTOCK, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioner's complaint filed on June 23, 2021, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on August 11, 2021, and the petition for review filed by petitioner on September 21, 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

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90060

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 11 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”).

Background

The record shows that in July 2008 a federal grand jury issued an indictment charging Complainant and a codefendant with one count each of conspiracy to possess with intent to distribute cocaine base, distribution of cocaine base, and attempted distribution of cocaine base. An attorney was later appointed to represent Complainant, and the case proceeded to trial where the jury found Complainant guilty as charged in the indictment. A transcript of voir dire shows that, after various proceeding, the court took a recess to allow the parties to exercise their peremptory strikes. After that, the jury was selected in open court, the Subject Judge asked the defense “Is this your jury?” and Complainant’s counsel responded, “Yes, sir.”

In March 2013 the Subject Judge sentenced Complainant to a total term of 360 months of imprisonment. Complainant filed a notice of appeal, and he later filed in the district court a motion for a new trial and a motion for an indicative ruling. In January 2017 this Court issued an opinion affirming Complainant’s convictions and dismissing the portion of the appeal concerning the pending motion for a new trial for lack of jurisdiction. This Court held, among other things, that Complainant’s arguments—that he was improperly excluded from voir dire and the district court improperly admitted evidence concerning his involvement with heroin—were meritless. In March 2017 the Subject Judge issued an order denying Complainant’s motion for a new trial and motion for an indicative ruling.

The record shows that in January 2019 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence challenging his convictions. In May 2019 the government filed a response to the § 2255 motion, and the next month, Complainant filed a reply. In December 2019 Complainant filed a motion to amend the § 2255 motion.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that at the outset of his jury trial, the Subject Judge “told the CSO not to let anyone in the courtroom,” which deprived Complainant of his constitutional rights to a public trial and an unbiased judge. He states the Subject Judge’s actions were prejudicial to him and caused a fundamentally unfair trial that resulted in a miscarriage of justice. Complainant asserts there was no plausible explanation for the Subject Judge’s actions other than the fact that Complainant made “racially offensive” comments during his pretrial detention. Complainant states he strongly believes the Subject Judge took “a position of extreme prejudice and interest in the outcome” because of the racially offensive statements and because he had been a fugitive for four years.

Next, Complainant contends that he was improperly excluded from the selection of the jury. He states that the Subject Judge gave the parties 15 minutes to discuss which jurors to strike, and while he was discussing the matter with his attorney, the Subject Judge’s clerk informed the attorney that the judge immediately wanted the list of jurors to be stricken. Complainant states that, upon returning to the courtroom, he thought everything would be done in open court, but that the jury had already been selected.

Complainant asserts that a certain juror should have been stricken for cause because of biased statements she made during voir dire pertaining to family members who had abused drugs. He states he informed the Subject Judge that he was uncomfortable with the jury due to the juror’s presence and because he had been excluded from jury selection, and the Subject Judge told him it was something he would have to raise on appeal. Complainant states he requested audio recordings of the trial but was denied, and that his appeal brief was filed “using altered, deleted, omitted and manipulated transcripts.”

Complainant states his “trial was akin to a legal lynching of the 40’s and 50’s” in the light of the public being excluded from the courtroom, the exclusion of Complainant and his attorney from jury selection, the presence of the juror who made prejudicial comments, heroin being admitted as evidence, and the Subject Judge’s statement that no fingerprints were found on the drugs when he knew there was sealed fingerprint evidence in a codefendant’s case. He also asserts the Subject Judge abused his power and authority.

Complainant then states that the Subject Judge should be disqualified from presiding over the collateral proceedings because he: (1) has personal knowledge of disputed facts; (2) has “racial bias towards” Complainant; (3) is a stakeholder in the Bureau of Prisons; (4) has a personal interest in the outcome of the proceeding; and (5) is the _____ in the district court. He also complains about the delay in his collateral proceedings.

Complainant states that individuals involved in the case and others have evidence that support his allegations, and that audio and video recordings would substantiate his allegations. He attached documents to his Complaint, including an affidavit from his trial attorney responding to allegations made in the § 2255 motion where the attorney states: (1) from his recollection, the court was never closed to the public during Complainant’s jury trial; (2) the allegation that he and Complainant were not present during parts of voir dire and the striking of potential jurors “never happened”; and (3) he had “no idea” to what Complainant was referring in connection with an alleged suppression of fingerprint evidence.

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.

Furthermore, Rule 4(b)(2) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 4” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”

To the extent Complainant's allegations concern the substance of the Subject Judge's official actions, findings, rulings, and orders in the above-described cases, including his allegations of delay, 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 Complainant, was racially biased, abused his power and authority, 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